AUTHENTICATED
U.S. GOVERNMENT
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HINDS' PRECEDENTS

OF THE

HOUSE OF REPRESENTATIVES

OF THE

UNITED STATES

INCLUDING REFERENCES TO PROVISIONS
OF THE CONSTITUTION, THE LAWS, AND DECISIONS
OF THE UNITED STATES SENATE

By
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Clerk at the Speaker's Table

VOLUME V

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4936. The question of consideration has been established by long practice as a means by which the House may protect itself against business which it does not wish to consider.

The rule provides that the question of consideration shall not be put unless demanded by a Member.

Present form and history of section 3 of Rule XVI.

Section 3 of Rule XVI provides:

> When any motion or proposition is made, the question, "Will the House now consider it?" shall not be put unless demanded by a Member.

It appears that in the very early years of the House a practice grew up, without any rule, of putting the question of consideration in regard to any matter of business without a motion by a Member and apparently at the suggestion of the Speaker. On March 31, 1808,[3] during proceedings in secret session of the House on each of two resolutions offered by Mr. John Randolph, of Virginia, the question of consideration was put and the House declined to consider them. The Journal does not indicate that the question of consideration was demanded by any Member. On the next day, April 1, Mr. Randolph spoke of what had been done and said it was in accordance with a practice very lately introduced into the House. It was

[1] In relation to the motion to reconsider. (Sec. 5626 of this volume.)

[2] See section 4598 of Vol. IV.

[3] First session Tenth Congress, Journal (supplemental), pp. 252 324, 325; Annals, pp. 1887, 1889.

in his opinion an engine of oppression in the hands of the majority, and he proposed, but without result, a rule that the question of considering should not intervene to prevent debate. On April 1 [1] Mr. Speaker Varnum held that the question of consideration was not debatable, saying that was the ruling also of his predecessor, Mr. Speaker Macon. From the debate at this time it seems evident that the ruling as to the question of consideration was to prevent delay of public business. On December 23, 1811,[2] Mr. Richard Stanford, of North Carolina, proposed a rule, "but no question of consideration shall be required upon an original motion." This was negatived, yeas 30, nays 68. On May 29, 1812,[3] Mr. John Randolph, of Virginia, assailed bitterly the practice of having first a vote on considering a matter as restrictive of the rights of the Member. It was replied that the House could not be subjected to the caprice of the individual, and Mr. Speaker Clay said that while at first he had had doubts about the propriety of the practice, he had become convinced that it was wise. So much controversy arose that the Speaker defended his ruling in a letter [4] to the press, in which he said:

> In England a motion to proceed to the orders of the day puts by whatever subject is under consideration and the rule is not used there to consider. In the House of Representatives we practice the rule to consider, and do not the motion to proceed to the orders of the day. * * * This rule to consider was a novel one to me when I came into the House of Representatives. I found most of the old Members clinging to it with great tenacity, and subsequent observation satisfied me of its wisdom and removed whatever doubts I entertained originally of its propriety. * * * The right of one or two Members to compel a body to consider a proposition which on account of the time, its manner, or its matter, they do not think proper to deliberate upon can only be maintained by a reversal of the rule that the plurality of the Members is to govern, and would, as to that particular subject, make the mover and his second superior to the whole body.

Mr. Randolph, replying to the Speaker, called attention to the fact that the question to consider was not mentioned in the rules and orders of the House. On January 27, 1814,[5] Mr. Cyrus King, of Massachusetts, made the charge that the question of consideration as applied was subversive of the rights of Members, unconstitutional, and not warranted by any rule of the House. He therefore offered a resolution preventing its use as an original motion or resolution. The House voted not to consider it, yeas 21, nays 102. The exact usage as to the motion seems to have been a matter of doubt. Mr. Speaker Barbour, at a later date,[6] said that he had admitted this motion as conformable to English practice, but ruled that it was not allowable under the rule specifying the motions allowable when a question was under debate.

Finally this rule was adopted on December 12, 1817,[7] on motion of Mr. Burwell Bassett, of Virginia:

> When any motion or proposition is made, the question, "Will the House now consider it?" shall not be put unless it is demanded by some Member, or is deemed necessary by the Speaker.

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[1] First session Tenth Congress, Annals, p. 1891.

[2] First session Twelfth Congress, Journal, p. 91; Annals, p. 581.

[3] First session Twelfth Congress, Annals, pp. 1467, 1468.

[4] Annals, pp, 1472 (footnote), 1478.

[5] Second session Thirteenth Congress, Journal, pp. 259–261; Annals, pp. 1154–1157.

[6] On March 11, 1822. First session Seventeenth Congress, Annals, p. 1250.

[7] First session Fifteenth Congress, Journal, pp. 40, 46; Annals, p. 445.

In connection with the adoption of this rule, the Annals of Congress for that date says:

> The question of consideration, which has heretofore been a matter of much contention in the House in the days of party conflict, is thus expunged from the rules of the House.

On February 14, 1831,[1] Mr. Speaker Stevenson, in the course of a decision, said that during the whole time while he had presided in the chair he had never exercised the privilege of requiring the question of consideration.

The present form of the rule dates from the revision of 1880.[2]

4937. The question of consideration may not be demanded as to a proposition after debate has begun.

A Member must submit his proposition and it must be stated by the Chair before it is in order for debate to proceed.

On February 28, 1822,[3] Mr. Ezekiel Whitman, of Maine, rose and intimated his intention of submitting certain resolutions, proposing a disposition of the documents accompanying the President's message of the 28th January, and proceeded to urge the propriety of adopting the course suggested, when, being called to order by a Member, the Speaker declared Mr. Whitman out of order in his remarks until his proposition was stated from the chair, or, being in writing, "was handed to the Chair and read aloud by the Clerk."

Mr. Whitman then submitted certain resolutions relating to referring parts of the message of the President of January 28, relating to the actions of Andrew Jackson in Florida, to the Committees on Foreign Relations, Judiciary, and Military Affairs.

These having been read, Mr. Whitman proceeded in his argument, until Mr. John Rhea, of Tennessee, demanded that the question be put: "Will the House, now consider it?"

This demand the Speaker[4] declared out of order because it had not been deemed necessary by the Speaker nor demanded by any Member until the mover had proceeded to discuss his resolutions and was actually discussing them.

Mr. Hugh Nelson, of Virginia, having appealed, the decision of the Chair was sustained.

4938. On March 5, 1828,[5] Mr. William Haile, of Mississippi, having proposed a resolution, was recognized, and had proceeded with his remarks for a short time, when Mr. Lewis Condict, of New Jersey, moved the question of consideration.

The Speaker[6] decided that the motion was not in order, being too long delayed.

4939. On April 27, 1858[7] while the House was considering a resolution offered by Mr. James Hughes, of Indiana, to censure Mr. Francis E. Spinner, of New York, and after debate had begun on the resolution, Mr. Joshua R. Giddings, of Ohio, proposed to raise the question of consideration.

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[1] Second session Twenty-first Congress, Debates, p. 683.

[2] Second session Forty-sixth Congress, Record, p. 206.

[3] First session Seventeenth Congress, Journal, pp. 296, 297; Annals, pp. 1156–1158.

[4] Philip P. Barbour, of Virginia, Speaker.

[5] First session Twentieth Congress, Debates, p. 1755.

[6] Andrew Stevenson, of Virginia, Speaker.

[7] First session Thirty-fifth Congress, Globe, p. 1830.

The Speaker[1] said:

The Chair thinks that the application of the gentleman from Ohio comes too late when the House has permitted debate on the pending proposition.

4940. The refusal of the House to consider a bill does not amount to its rejection and does not prevent its being brought before the House again.—On February 7, 1885,[2] Mr. William A. Russell, of Massachusetts, moved that the House proceed to the consideration of a bill relating to certain drawbacks on duties, the bill being on the Calendar of the Committee of the Whole House on the state of the Union.

Mr. Roger Q. Mills, of Texas, made the point of order that this motion was not in order, for the reason that the bill named had been heretofore indicated under the special rule and rejected.

The Speaker pro tempore[3] overruled the point of order, on the ground that the bill had not been rejected, but that the motion to consider the same had not been brought before the House by reason of the objection of ten Members thereto.

More than ten Members objecting thereto, the motion was not considered.[4]

4941. The question of consideration may be demanded against a question of the highest privilege, such as the right of a Member to his seat.— On June 11, 1858,[5] Mr. Thomas L. Harris, of Illinois, having proposed to call up the report of the Committee of Elections in the case of W. Pinkney Whyte, contesting the right of J. Morrison Harris to a seat in the House from the State of Maryland, Mr. Israel Washburn, jr., of Maine, demanded that the question be put, "Will the House now consider it?"

Mr. Thomas L. Harris made the point of order that the report being a question of privilege it was not competent for a Member to raise the question of consideration.

The Speaker[1] overruled the point of order, and decided that, under the fifth[6] rule of the House, it was competent for a majority, upon the demand of a Member, to determine whether they would now consider the report.

From this decision of the Chair Mr. George S. Houston, of Alabama, appealed. The appeal was laid on the table.

The record of debate[7] shows that in the course of the debate on the point of order Mr. George W. Jones, of Tennessee, quoted the paragraph from Jefferson's Manual:

A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be fast disposed of.

From this Mr. Jones argued that other business must be suspended until the question of privilege could be disposed of.

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[1] James L. Orr, of South Carolina, Speaker.

[2] Second session Forty-eighth Congress, Journal, p. 491; Record, p. 1388.

[3] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

[4] This precedent did not arise under the rule relating to consideration (see sec. 4936 of this work); but under a special and temporary rule, which provided for a morning hour, during which a bill on any of the calendars or on the Speaker's table might be called up, subject to the objection of ten Members. (See p. 1290 of Record.)

[5] First session Thirty-fifth Congress, Journal, pp. 1083, 1085.

[6] See section 4936.

[7] First session Thirty-fifth Congress, Globe, pp. 2959, 2960.

The Speaker said:

The gentleman will perceive that if the House had taken up the subject without objection it would have been perfectly competent for the House to have postponed its consideration; and if it be competent for the House to relieve itself from the immediate consideration of a question of privilege by postponement to a day certain, or till next session, or by an indefinite postponement, why may not the House, under his rule, have the privilege of saying that they will not consider the subject?

4942. Although the House may vote not to consider a matter of privilege, it may be called up again on the same legislative day, and the question of consideration may be demanded again.—On June 8, 1896,[1] Mr. Charles Daniels, of New York, called up the contested election case of Aldrich *v.* Underwood, from Alabama.

Mr. Benton McMillin, of Tennessee, raised the question of consideration, and on a division there were 55 ayes and 64 noes; so the House determined not to consider the case.

After intervening business Mr. Daniels again called up the case.

Mr. McMillin made the point of order that, as the House had already decided the question of consideration adversely, the case could not be called up again on the same legislative day.

The Speaker pro tempore[2] said:

The Chair will have to overrule the point of order of the gentleman from Tennessee. It is entirely competent to call up a contested election case, which is a matter of the highest privilege, at this time and the Clerk will report the resolutions submitted by the Committee on Elections.

Mr. McMillin having again raised the question of consideration, the House by a vote of 131 yeas to 68 nays decided to consider the case.

4943. The question of consideration may be raised after a motion to lay on the table has been made.—On March 4, 1828,[3] Mr. Thomas Whipple, jr., of New Hampshire, presented resolutions relating to the execution of certain soldiers of General Jackson's command at Mobile in 1814.

The resolutions having been read, Mr. Whipple moved that they lie on the table.

Mr. Richard H. Wilde, of Georgia, raised the question of consideration.

Mr. Whipple asked whether, after the motion to lay on the table had been entertained, the question of consideration could be raised.

The Speaker[4] decided that it was perfectly in order. The particular moment at which the question of consideration might be demanded, might sometimes be a subject of difficulty, but in the present case he felt none, and decided the motion to be in order.[5]

4944. A Member may demand the question of consideration although the Member in charge of the bill may claim the floor for debate, but the

[1] First session Fifty-fourth Congress, Record, pp. 6283, 6299.

[2] John Dalzell, of Pennsylvania, Speaker pro tempore.

[3] First session Twentieth Congress, Journal, p. 375; Debates, p. 726.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] The debates show that the yeas and nays were also ordered on the motion to lay on the table, and that the Speaker took account of this fact in his decision. But the Journal does not show such ordering of the yeas and nays.

previous question may not be demanded in a similar way.—On June 10, 1898,[1] Mr. James Hay, of Virginia, from the Committee on Military Affairs, called up a privileged resolution of inquiry relating to positions in the Volunteer Army.

Mr. Charles H. Grosvenor, of Ohio, asked for the previous question on the adoption of the resolution.

Mr. Hay claimed the floor for debate.

The Speaker[2] decided that Mr. Hay was entitled to the floor.

Mr. Grosvenor then raised the question of consideration.

Mr. John S. Williams, of Mississippi, made the point of order that the gentleman from Virginia had the floor and the gentleman from Ohio could not be recognized.

The Speaker decided:

Any Member has a right to raise the question of consideration, and in order to raise it he has to be given the floor.

4945. On June 18, 1884,[3] the contested-election case from the Second Mississippi district had been called up by Mr. Samuel H. Miller, of Pennsylvania. Mr. Philip B. Thompson, jr., of Kentucky, raised the question of consideration. Mr. Miller said that he had not yielded the floor for any such purpose.

The Speaker[4] ruled:

The gentleman can not deprive the House of the opportunity to determine whether it will consider the matter now or not. It was formerly the rule and practice of the House for the Chair to submit the question of consideration to the House in all cases, but under the existing rules it is provided that the Chair shall not submit that question unless some gentleman demands it. Every gentleman has the right to demand that the question of consideration shall be put, and there must of course be a time, after a proposition is submitted and before its consideration has actually commenced, when the demand can be in order.

4946. The intervention of an adjournment does not destroy an existing right to raise the question of consideration.—On January 18, 1877,[5] the regular order being demanded, the Speaker announced the regular order of business to be the motion of Mr. J. Proctor Knott, of Kentucky, to reconsider the vote by which certain resolutions relating to the counting of the electoral votes were recommitted to the Select Committee on the Privileges, Powers, and Duties of the House of Representatives in counting the vote for President and Vice-President of the United States.

Mr. James Wilson, of Iowa, raised the question of consideration.

The Speaker[6] stated that the motion to reconsider was called up on the preceding day by Mr. Knott, who then yielded for a motion to adjourn, and being pending at the time of adjournment became the unfinished business of the previous session, and was thereby the regular order of business after the reading of the Journal. The gentleman from Iowa [Mr. James Wilson] having stated his purpose to raise the question of consideration, which he was precluded from doing by the motion to adjourn, the Chair would now entertain the question of consideration.

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[1] Congressional Record, second session Fifty-fifth Congress, June 10, 1898.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Forty-eighth Congress, Record, p. 5299.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Second session Forty-fourth Congress, Journal, p. 252; Record, p. 725.

[6] Samuel J. Randall, of Pennsylvania, Speaker.

The record of the debate shows that the Speaker said:

This question, therefore, turns upon the matter of fact whether the gentleman from Iowa is in time in raising the question of consideration this morning, the resolutions having been called up yesterday. But the Chair recognizes also the fact that when the resolutions then came before the House a higher question was immediately raised, which was not by the rules debatable—that is, a motion to adjourn. If the gentleman from Iowa now states that yesterday he wished to raise the question of consideration, the Chair will entertain it.

The gentleman from Iowa having so stated, the question was entertained.

4947. When the question of consideration is undisposed of at an adjournment, it does not recur as unfinished business on a succeeding day.—On January 5, 1894,[1] during the call of committees for reports,[2] Mr. Charles A. Boutelle, of Maine, submitted the question of order whether the resolution introduced by him, upon which the question of consideration was pending when the House adjourned on the preceding day, did not recur to-day and take precedence before the call of committees.

The Speaker[3] ruled that the resolution did not recur until its consideration should be demanded, and that the question pending on the previous day terminated with the adjournment of the House.

4948. On January 6, 1894,[4] after Mr. T. C. Catchings, of Mississippi, had been recognized to call up a privileged report from the Committee on Rules, Mr. Charles A. Boutelle, of Maine, made the point that the resolution called up by him on Wednesday, the 3d instant, involved a question of privilege under Rule IX,[5] and that its consideration took precedence over the resolution reported from the Committee on Rules. He therefore demanded that said resolution, presented by himself, be first considered.

The Speaker[3] declined to entertain the demand of Mr. Boutelle for the consideration of his said resolution, and held as follows:

The rules provide that when any matter is called up the question of consideration shall not be put to the House unless some Member demands it. The resolution of the gentleman from Maine has never been before the House in the sense of being before it for consideration, because when it was called up by the gentleman from Maine the gentleman from Tennessee (Mr. McMillin) raised the question of consideration, whereupon it became a question for the House to determine, Will the House proceed to consider the resolution?

Upon the question, "Will the House proceed to consider the resolution?" no quorum voted, and with the business in that position the House adjourned. That question of consideration might be raised each day. For instance, the House might refuse one day to consider the resolution, and yet the next day the gentleman might call it up again. The business of the House might be in such a condition on one day that the House would not consider the resolution, and on the next day business might be in such a condition that the House would consider the resolution.

Now, then, the question of consideration having been raised, no quorum having voted, and adjournment having taken place, the Chair held that on the next legislative day the resolution was not before the House, but that the gentleman might call it up again; that the practical effect of the failure to obtain a quorum was when the adjournment took place the same as though the House had refused to consider the resolution, because the proceedings of that day were ended; and the only

[1] Second session Fifty-third Congress, Journal, p. 57; Record, p. 501.

[2] Reports of committees are now filed with the Clerk.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 66, 67; Record, pp. 508, 509.

[5] See section 2521 of Vol. III of this work.

purpose of the question raised by the gentleman from Tennessee was that the House should determine whether that day it would consider that resolution.

Therefore the Chair held and holds that the resolution was not before the House, but that the resolution was just exactly where it was before the gentleman from Maine made his motion; that is to say, it had been reported back by the Committee on Foreign Affairs with the recommendation that it be laid on the table. It was laid on the table, not being thus finally disposed of by a vote of the House, but laid on the table temporarily until called up and acted upon by the House.

Now, on yesterday the gentleman from Mississippi (Mr. Catchings) called up the report from the Committee on Rules which is pending. The question of consideration was raised against that report. The Chair held that the question of consideration could not be raised against the report of the committee, for it was a question which was res adjudicata in the House; that the Chair had previously so held, and on an appeal from that decision by the vote of a large majority of the House the appeal was laid on the table, which had the effect of sustaining the judgment of the Chair.

So the distinction between the case the gentleman from Maine presents and the present question—that is, the report of the Committee on Rules presented by the gentleman from Mississippi to the House on yesterday—is very clear; for in one case—the resolution presented by the gentleman from Maine—the House had not determined to consider the resolution which he called up, whereas on the other hand the House had entered upon the consideration of the report of the Committee on Rules. The gentleman from Mississippi had demanded the previous question on the report. The yeas and nays had been ordered on the demand for the previous question, so that the pending question before the House, the regular order of business, would be the consideration of the report from the Committee on Rules when called up by the gentleman having it in charge.

4949. A vote by yeas and nays having been without result because of the failure of a quorum, it was held that the question of consideration might not intervene on a succeeding day before the second call of the yeas and nays.—On August 11, 1890,[1] Mr. Louis E. Atkinson, of Pennsylvania, called up the bill of the House (H. R. 8243) supplementary to an act entitled "An act to authorize the construction of the Baltimore and Potomac Railroad in the District of Columbia," coming over as unfinished business from July 14, on which day, the yeas and nays having been ordered and taken, no quorum had appeared.

Mr. Seth L. Milliken, of Maine, raised the question of consideration.

Mr. Atkinson, of Pennsylvania, made the point of order that the question could not be raised at this stage of the proceedings.

The Speaker[2] sustained the point of order on the ground that the yeas and nays having been ordered and taken on the motion on the 14th of July, when a quorum failed to vote and the House adjourned, the roll call to be now taken was merely a continuation of the call then ordered and had and was in the nature of a continuous proceeding, which could not be interrupted for any purpose except by unanimous consent.

4950. A point of order which, if sustained, might prevent the consideration of a bill, should be made and decided before the question of consideration is put.

A point of order relating merely to the manner of considering a bill should be passed on after the House has decided the question of consideration.

On June 30, 1898,[3] Mr. Ebenezer J. Hill, of Connecticut, called up from the House Calendar, under the call of committees, the bill (H. R. 10807) "to carry into

[1] First session Fifty-first Congress, Journal, p. 941; Record, p. 8432.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 6553.

effect the recommendations of the International American Conference by the incorporation of the International American Bank."

Mr. Joseph W. Bailey, of Texas, inquired of the Chair whether or not raising the question of consideration would waive the further point that the bill was not of the special class that could be called up in the morning hour under the call of committees.

The Speaker [1] expressed the opinion that it would waive the point.

Thereupon Mr. Bailey made the point that the bill was improperly on the House Calendar.

On March 11, 1890,[2] Mr. Charles S. Baker, of New York, from the Committee on the Territories, to which was recommitted the bill of the House (H. R. 982) to provide for the admission of the State of Wyoming into the Union, reported the same with amendments.

Mr. William M. Springer, of Illinois, raised the question of consideration against the bill, and also made the point of order that under clause 3 of Rule XXIII [3] the bill must receive its first consideration in a Committee of the Whole.

The Speaker [1] held that the point of order could not be made or passed upon until the question of consideration had been determined by the House.

It having been decided to consider the bill, Mr. Springer renewed his point of order, which was sustained.

4951. On May 16, 1868,[4] Mr. Speaker Colfax, in response to a parliamentary inquiry raised by Mr. James G. Blaine, of Maine, stated that the question as to whether a resolution involved a question of privilege, when raised, should be decided before the question of consideration could be put.

4952. The House having given unanimous consent for the consideration of a bill with a proposed committee amendment this action was held to be in effect an affirmative decision of the question of consideration, thus precluding a point of order against the amendment.—On April 24, 1900,[5] Mr. Henry A. Cooper, of Wisconsin, from the Committee on Insular Affairs, reported a joint resolution (S. 116) "to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of civil officers provided for in the act approved April 12, 1900, entitled," etc., with amendments in relation to the granting of franchises, proposed by the Committee on Insular Affairs.

Mr. Cooper asked unanimous consent for the consideration of the resolution.

The resolution and the amendments proposed by the Committee on Insular Affairs having been read, the Speaker asked if there was objection to present Consideration. There was no objection, and debate began as to an arrangement of the time for discussion.

Thereupon Mr. Ebenezer J. Hill, of Connecticut, said that he desired to reserve a point of order against the amendment.

During the debate on the point of order, Mr. William H. Moody, of Massachusetts, made the argument that the gentleman from Connecticut, Mr. Hill, had reserved his point of order too late.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Journal, p. 331; Record, p. 2133.

[3] See section 4792 of Vol. IV of this work.

[4] Second session Fortieth Congress, Globe, p. 2498.

[5] First session Fifty-sixth Congress, Record, pp. 4615, 4616; Journal, pp. 500, 501.

After debate the Speaker said:[1]

The gentleman from Massachusetts [Mr. Moody], however, submits a point of order against the point of order, on the question of the time at which the point of order was made. The Chair has directed the Clerk to bring the record here. The Chair is very accurate in his recollection, and this morning before the matter came up gave some thought to the possible questions that might arise, and had reached the conclusion that if consent were given for consideration of the joint resolution, that it was past raising the point of order. When the Chair was listening to a gentleman on the right, who addressed the Chair, he was also addressed vigorously and promptly by the gentleman from Connecticut, but who did not state that he rose to a point of order, and as soon as the gentleman got the attention of the Chair he made the point of order. Now, the Chair is not certain whether the matter had reached the point of consideration after he had declared that there was no objection, and has sent for the Record to ascertain the facts, and will not be prepared finally to dispose of the question until the Record is before him. The Chair, as suggested by one gentleman, will not permit anyone to be deprived of his rights if he understands what they are.

I now have the Record, and it shows this, and the Chair asks the attention of the House:

"The SPEAKER. The gentleman from Wisconsin asks unanimous consent for the consideration of Senate joint resolution 116. Is there objection?

"Mr. MCRAE. I ask that it be read, Mr. Speaker.

"The SPEAKER. Let the resolution be reported.

"The joint resolution was read, as follows."

Then follows the joint resolution.

"Mr. MCRAE. I make no objection, Mr. Speaker.

"The SPEAKER. Is there objection? [After a pause.] The Chair hears none. Is there any arrangement as to time?

"Mr. COOPER, of Wisconsin. I spoke to the gentleman from Virginia [Mr. Jones] last evening, and he said that an hour would be sufficient.

"Mr. HILL. Mr. Speaker, I wish to reserve the point of order against the two amendments.

"The SPEAKER. What was the statement of the gentleman from Wisconsin?

"Mr. COOPER, of Wisconsin. I spoke to the gentleman from Virginia last night, who is the leading member of the committee on the other side, concerning the resolution, and he consented that an hour should be allowed.

"The SPEAKER. Then it is understood that there is to be an hour's debate, thirty minutes to be controlled by the gentleman from Wisconsin and thirty minutes by the gentleman from Virginia [Mr. Jones]. Is there objection?

"Mr. HILL. Mr. Speaker, it is understood that I reserved the point of order against the two amendments?

"The SPEAKER. The gentleman's statement was heard. The Chair will state to the gentleman from Connecticut that unanimous consent has been given for the consideration of the bill."

It would seem, therefore, from the Record that the matter was submitted to the House. That is the recollection of the Chair, that unanimous consent was given and two or three interlocutory remarks were made. Then the gentleman from Connecticut for the first time made his point of order. Subsequent discussion went on, when he made it again, and the Chair called the gentleman's attention to the fact that unanimous consent had been given.

While the Chair is clearly of the opinion that this point of order, if made in time, should have been sustained, the Chair is equally clear that his point of order came too late. If the gentleman had addressed the Chair in the first instance, when he was giving it attention, and said, "A point of order," the Chair would have dropped every colloquy with other members and given his attention to the gentleman from Connecticut, but that point was not made until the point of consideration was passed.

The House very well knows—it has been held over and over again—that after the question of consideration has been raised and the House has voted to consider a matter a point of order can not be raised. The question of consideration was submitted as soon as the bill and the amendments proposed by the committee were read and the unanimous consent of the House was granted. This, the Chair

[1] David B. Henderson, of Iowa., Speaker.

considers, was equivalent to a vote that the House would consider the bill and amendments proposed by the committee. After that the Chair holds that the point of order came too late, and therefore overrules it.[1]

The committee reports a bill with a proposed amendment. This amendment is a part of the matter reported—to such an extent a part that the proposition of the committee would be defective without it.

The matter reported by the committee is presented to the House. The committee amendment as well as the bill has been reported, and the committee amendment as well as the bill is presented to the House.

The presentation being by unanimous consent, the bill with committee amendment is subject to two conditions—a Member must be recognized by the Speaker in order to have the bill and committee amendment read for information, and then the House must decide unanimously to consider them, after having heard them read.

This reading of the bill, although for information, is in effect the second reading. It is the only second reading that ever occurs in such a case. If it is not a second reading, no bill passed by unanimous consent ever gets a second reading. If it is not a second reading, then a second reading may be demanded after consent for consideration is given. And if the second reading may be so demanded, the House is face to face with the theory that a bill presented by unanimous consent must be read in full twice before being debated, if demand is made. When the length of some bills is considered, the awkwardness of the theory is manifest.

The bill and committee amendment having been read the second time through the agency of the Speaker's recognition, the Speaker says:

"Is there objection to the present consideration of the bill? There being no objection the House has voted to consider the bill. The question of consideration has been decided. If it has not been, then a Member may raise it and force a vote. No one would say that such a thing could be done unless his motive were the consumption of time.

"Now when the House votes to consider a matter it votes to consider that which has been presented by the reading clerk—in this case the bill with the committee amendment.

"The time to raise a point of order, either against the bill or the committee amendment, is when they are presented through the reading clerk. It is in accordance with the regular practice of the House that the point of order should follow the reading.

"If a point of order is to be made against what is read, it should be made before the question of consideration is put, since the decision of the point may remove the matter and obviate the necessity of a vote on consideration. For the same reason, after the House has decided to consider a matter, it should not be deprived of that consideration by the removal of the matter through a point of order."

4953. Although a bill may come up by reason of being individually specified in a special order, yet the question of consideration may be raised against it.—On July 22, 1886,[2] Mr. Hilary A. Herbert, of Alabama, as a privileged question, under the special order of the 20th instant, called up the bill of the House to increase the naval establishment, reported from the Committee on Naval Affairs on the 10th of March last.

Mr. John H. Reagan, of Texas, raised the question of consideration.

Mr. Herbert made the point of order that the question of consideration could not be raised against the bill, the same having been made a special order and a day having been assigned and set apart for its consideration, basing, his point on the decision of the Speaker in the first session of the Forty-seventh Congress,[3] that the question of consideration could not be raised as against a day set apart for the busi

[1] The status of a bill presented for unanimous consent, and the relations of the committee amendments to the bill are involved in this decision.

[2] First session Forty-ninth Congress, Journal, p. 2297; Record, p. 7335.

[3] See section 4959 of this chapter.

ness of a particular committee, and that in the present case there was but one bill assigned for consideration.

The Speaker[1] held that, while the decision referred to was correct, it could not be held that it was competent to raise the question of consideration seriatim against any particular bill presented by a committee under such an order, and thus refuse to consider any bill and all bills called up, and not permit the same question to be raised in the case of a single bill assigned for consideration on a particular day.

The question then recurred on the question of consideration raised by Mr. Reagan; and the House refused to consider the bill.

4954. On February 12, 1887,[2] Mr. Williaim M. Springer, of Illinois, called for the special order of the day, which was as follows:

Resolved, That the Committee of the Whole House on the state of the Union be discharged from the further consideration of Senate bill 199, entitled "An act for the retirement and recoinage of the trade dollar," and that Saturday, February 12, immediately after the reading of the Journal, be set apart for the consideration of the same in the House, no other business to be transacted until the consideration of said bill is concluded.

Mr. John J. O'Neill, of Missouri, raised the question of consideration against the bill.

Mr. Springer made a point of order against the question of consideration.

The Speaker[1] said:

There have been quite a number of orders made containing substantially the same language, and it has been always held to be within the power of the House to consider the order or not. The House never deprives itself of the right to determine whether it will or will not consider a question.

4955. On March 30, 1888,[3] a Friday, the House had before it the bills (H. R. 3191) granting a pension to Mary S. Logan and (S. 574) to increase the pension of Mrs. Apolline A. Blair, which had been made a special order for the day at an evening session on a previous Friday, the terms of the order being that after a certain time for debate the previous question should be considered as ordered.

Mr. Samuel W. T. Lanham, of Texas, having made a parliamentary inquiry, the Speaker[1] said:

This is a special order which has to be disposed of before the House goes into Committee of the Whole; but the gentleman can raise the question of consideration. It is always in the power of the House to decide, if it so chooses, that it will not proceed to take up the consideration of any particular matter. The gentleman from Texas can raise that question.

4956. On January 21, 1889,[4] the House adopted a special order providing that January 24 be set apart for the consideration of the bill (H. R. 10614) "to organize the Territory of Oklahoma, and for other purposes," and that at 4 o'clock on that day the previous question should be considered as ordered upon the bill and amendments to the final passage, etc. It was also provided that if the bill should not be taken up on January 24 the order should continue until one day should have been occupied, as specified in the order.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Second session Forty-ninth Congress, Record, p. 1684; Journal, p. 581.

[3] First session Fiftieth Congress, Record, p. 2514.

[4] Second session Fiftieth Congress, Record, pp. 1062, 1400.

On February 1 the bill came over from the preceding day as unfinished business, with the previous question ordered according to the terms of the order.

Mr. Samuel W. T. Lanham, of Texas, having proposed to raise the question of consideration against the bill, Mr. William M. Springer, of Illinois, made the point that such question could not be raised.

The Speaker[1] said:

> The Chair will state that the situation of the Oklahoma bill is this: The bill, if it comes up this morning, comes up not because of the special order assigning a day for its consideration, but simply because the previous question has been ordered upon its passage.
>
> On the day set apart for the consideration of the bill under the special order made by the House, after the Committee of the Whole House on the state of the Union had reported the bill back to the House, the question of consideration could not have been made. But on another, subsequent day, the Chair will repeat, if the bill comes up at all it comes up not by reason of the fact of the special order, but solely by reason of the fact that the previous question was ordered upon it, and the question of consideration can be raised against it.[2]

The House voted to consider the bill, 135 ayes to 3 noes.

4957. On Friday, April 21, 1882,[3] the Speaker had ruled that private business must yield to the consideration of the bill (H. R. 684), which had been made a special order "from day to day until disposed of."

Thereupon Mr. George C. Hazleton, of Wisconsin, raised the question of consideration against the bill.

The Speaker[4] entertained the question, saying:

> The House has always the right to refuse to consider any business that may otherwise be in order.

4958. The question of consideration may not be demanded against a class of business in order under a special order or a rule, but may be demanded against each bill individually as it is brought up.

It is not in order to move to postpone a special order providing for the consideration of a class of bills.

On June 26, 1882,[5] the regular order was the consideration of business presented by the Committee for the District of Columbia, under a special order which provided that on the second and fourth Mondays of each calendar month during the Forty-seventh Congress the time, after the call of States and Territories for bills and joint resolutions, should be devoted to business presented by this committee.[6]

Mr. William D. Kelley, of Pennsylvania, proposed to raise the question of consideration against the special order.

The Speaker[4] held that this day being set apart for the consideration of such business as might be presented by the Committee for the District of Columbia, the question of consideration could not be raised against such special order, but could only be raised as against a particular bill or measure. The Speaker further held

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] See also section 4965 of this chapter.

[3] First session Forty-seventh Congress, Record, p. 3146.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] First session Forty-seventh Congress, Record, p. 5349; Journal, p. 1540.

[6] This committee now has these days regularly under section 3 of Rule XXVI. (See sec. 3304 of Vol. IV of this work.

that a motion to postpone the special order was not in order, and that the Committee for the District of Columbia could not be dispossessed of their rights under the terms of the special order so long as the committee had any business to present and claimed their rights under the order.

In this decision of the Chair the House acquiesced.

4959. On January 14, 1889,[1] Mr. John J. Hemphill, of South Carolina, from the Committee for the District of Columbia, presented a bill (H. R. 11785) relative to the laying of certain railroad tracks in the District.

Mr. Newton C. Blanchard, of Louisiana, raised the question of consideration against the bill.

Mr. Hemphill having called attention to Rule XXVI[2] giving the second and fourth Mondays of each month to the Committee for the District of Columbia, made the point that it was not in order to demand the question of consideration.

The Speaker[3] held:

It is not competent for the House, except by an order made by unanimous consent, or upon a suspension of the rules, or upon a report from the Committee on Rules, to vacate the order setting apart this day for the consideration of business reported from the Committee on the District of Columbia. But it is in order for any gentleman on the floor of the House to raise the question of consideration on any bill called up by the committee, just as may be done on Friday when, though private business may not be dispensed with, the question of consideration can be raised with reference to any private bill. The House might desire to go on with the consideration of business reported from the Committee on the District of Columbia, but may not want to consider this particular bill; and the Chair has always held that the question of consideration can be raised against each bill.

The Chair overrules the point of order.

4960. Where a special order provides that immediately upon its adoption a certain bill shall be considered, the question of consideration may not be raised against that bill.—On July 16, 1894,[4] Mr. T. C. Catchings, of Mississippi, submitted from the Committee on Rules and the House agreed to this resolution:

Resolved, That immediately upon the adoption of this resolution the House shall proceed to consider House bill 4609, "a bill to establish a uniform system of bankruptcy," in the House as in Committee of the Whole on the state of the Union. That after an hour of general debate there shall be two hours' debate under the five-minute rule. The previous question shall be considered ordered on the amendments, if any, and, without intervening motion, the vote shall then be taken on the bill and amendments to its final passage.

That the remainder of this day and Tuesday, the 17th instant, after the morning hour, be assigned to the consideration of business reported from the Committee on the Judiciary.

The bill mentioned in the resolution (H. R. 4609), to establish a uniform system of bankruptcy, was accordingly read.

Mr. Thomas B. Reed, of Maine, demanded that the question of consideration be put.

The Speaker pro tempore[5] held that the resolution just agreed to was a decision of the question of consideration and that the House was, by its terms, required to proceed immediately with the consideration of the bill.

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[1] Second session Fiftieth Congress, Record, p. 762; Journal, p. 239.

[2] See section 3304 of Vol. IV of this work.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 484, 485; Record, p. 7548.

[5] James D. Richardson, of Tennessee, Speaker pro tempore.

4961. In the later, but not in the earlier, practice, it has been held that the question of consideration may not be raised against a report from the Committee on Rules relating to the order for considering individual bills.— On March 7, 1892,[1] Mr. T. C. Catchings, of Mississippi, called up a resolution from the Committee on Rules providing for the consideration of a bill (H. R. 4426) for the free coinage of gold and silver, etc.

Mr. Charles Tracey, of New York, demanded that the question be put, "Will the House now consider said resolution?"

The Speaker[2] refused to entertain the demand, holding that a report from the Committee on Rules was not subject to the question of consideration.[3]

Mr. Tracey appealed from the decision of the Chair, refusing to entertain his demand for the question of consideration. The appeal was laid on the table by a vote of 178 yeas to 82 nays.

4962. On January 8, 1894,[4] while the House was considering a resolution reported from the Committee on Rules, Mr. Thomas B. Reed, of Maine, asked a reconsideration by the Speaker of his former decision, to wit, that the question of consideration could not be demanded against the report from the Committee on Rules.

The Speaker[2] stated that the report involved the order of business of the House, and inasmuch as it had been held in former Congresses that the question of consideration could not be raised against the order of business, the Chair would adhere to the decision previously made.

Mr. Charles A. Boutelle, of Maine, stated that he appealed from the decision just made.

The Speaker declined to recognize the appeal, upon the ground that the consideration of the report from the Committee on Rules could not be interrupted.

4963. On February 20, 1891,[5] Mr. Joseph G. Cannon, of Illinois, from the Committee on Rules, reported a resolution relating to the consideration of certain bills reported from the Committee on the Judiciary and relating to the courts of the United States.

Mr. W. C. P. Breckinridge, of Kentucky, raised the question of consideration against the said resolution.

The question being put by the Speaker,[6] the House determined, by a vote of 115 yeas to 80 nays, to consider the resolution.

On February 24, 1891,[7] Mr. William McKinley, jr., of Ohio, from the Committee on Rules, reported a resolution to provide a time for the consideration of the bill (S. 172) to refund the direct tax of 1861.

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[1] First session Fifty-second Congress, Journal, p. 91.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] The Record (first session Fifty-second Congress, pp. 1826, 1827) shows that the Speaker based his ruling upon the provision, then recently adopted, of Rule XI, which provided that "it shall always be in order to call up for consideration a report from the Committee on Rules." (See sec. 4621 of Vol. IV of this work.)

[4] Second session Fifty-third Congress, Journal, pp. 71–72; Record, p. 528.

[5] Second session Fifty-first Congress, Journal p. 273.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Fifty-first Congress, Journal, p. 295.

Mr. Roger Q. Mills, of Texas, raised the question of consideration against the resolution, and the House, by a vote of 130 to 78, decided to consider it.

4964. The question of consideration may not be raised against a proposition before the House for reference merely.

Incidental discussion of the right of the House to decline to receive a petition.

On April 15, 1878,[1] Mr. Thomas Swann, of Maryland, presented a resolution of the general assembly of Maryland proposing to bring before the Supreme Court for revision the action of the Electoral Commission of 1876. Mr. Swann moved the reference of the resolution to the Committee on the Judiciary.

Mr. Nathaniel P. Banks, of Massachusetts, raised the question of consideration, under Rule 41.[2]

The Speaker[3] held that the resolution was before the House under Rule 130,[4] which prescribed the mode of procedure during the morning hour of Monday, and that Rule 41 referred and related only to the mode and time of considering a subject already before the House, and in effect related only to the order of business, and being long anterior in date to Rule 130, could not change the specific provisions of the latter rule.

This question of order was debated at some length. Mr. James A. Garfield, of Ohio, raised the point that if the question of consideration might not be raised on a matter presented for reference, the House would be compelled to consider by its committee that which it might not wish to consider. Mr. Alexander H. Stephens, of Georgia, on the other hand, contended that the rule relating to the question of consideration was for the purpose of deciding, "Will we act upon the measure now?" But the question before the House in this case was whether the proposition from the Maryland legislature should be received or rejected. He contended that the House had the right to say whether it would receive or reject petitions. This was an inherent right. "It should," he said, "be discreetly, prudently, wisely, and patriotically exercised. The grand mistake of those who contended against the policy of receiving petitions of a certain character was discovered when it was too late. The great right of the American people to petition and have their petitions received on all subjects is now settled, I think, as the best policy. The power to reject, however, still exists."

The Speaker said:

> The Chair thinks that the inherent right alluded to by the gentleman from Georgia as existing in every legislative body is realized by the body in case they should refuse to refer. For a refusal to refer is in effect equivalent to an adverse expression.

4965. The question of consideration may not be raised against a bill on which the previous question has been ordered.—On June 24, 1884,[5] the

[1] Second session Forty-fifth Congress, Journal, pp. 844, 845; Record, pp. 2523–2527.

[2] Now section 3 of Rule XV, I; see section 4936 of this volume.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Rule 130 provided for a call of the States and Territories for the introduction of bills and resolutions. They are now referred through the box at the Clerk's desk. Rule 130 then provided specifically that joint resolutions of State and Territorial legislatures should be introduced under the call provided in this rule.

[5] First session Forty-eighth Congress, Record, p. 5543.

House proceeded to the consideration of unfinished business, the Speaker making the statement that there were pending as unfinished business two bills on which the previous question had been ordered—a bill to repeal the preemption laws and the timber-culture laws—to which various amendments had been offered; and also an unfinished report from the select committee on the law respecting the election of President, etc. The bill from the Committee on Public Lands would come first, as it was unfinished business, having priority when the other bill was taken up.

Mr. Albert S. Willis, of Kentucky, then proposed to raise the question of consideration against the unfinished business, his purpose being to ask the House to take up the education bill.

Mr. J. Warren Keifer, of Ohio, made the point that the question of consideration might not be raised against a bill on which the previous question had been ordered.

The Speaker[1] said:

> The Chair has some doubts. It has been the custom of the House to take up at once as unfinished business bills on which the previous question has been ordered. It happens that in this case there are two bills in precisely the same situation.

Then, at the suggestion of Mr. Keifer, the bills were taken up in the order of priority.[2]

4966. On January 6, 1893,[3] the order of business was the consideration of bills heretofore reported from the Committee of the Whole House at the Friday evening session of July 2, 1892, and on the passage of which the previous question had been ordered.

Mr. F. E. Beltzhoover, of Pennsylvania, submitted the question of order whether it was in order to raise the question of consideration against the bills on the passage of which the previous question had been ordered.

The Speaker[4] held that the effect of the previous question being to bring the House to an immediate vote on the question on which it was ordered, namely, the third reading and passage of the bills, the question of consideration could not be raised against them.

4967. The question of consideration has been admitted where other business has intervened between the ordering and execution of the previous question, but not after an adjournment merely.—On February 28, 1881,[5] Mr. Hiram Price, of Iowa, demanded the consideration of the bill (H. R. 7026) making an apportionment of Representatives in Congress, etc., on which bill the previous question had been ordered on February 24.[6]

Mr. John G. Carlisle, of Kentucky, raised the question of consideration on the bill.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] See also section 4956 of this chapter, wherein the same Speaker inclined to the view that the question of consideration could be raised against a bill on which the previous question had been ordered on a preceding day.

[3] Second session Fifty-second Congress, Journal, p. 33; Record, p. 381.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Third session Forty-sixth Congress, Journal, pp. 537, 538; Record, pp. 2235–2298.

[6] Journal, p. 490.

Mr. J. Warren Keifer, of Ohio, made the point of order that the question of consideration could not be raised against a bill on which the previous question had been ordered.

After debate the Speaker[1] said:

The Chair recognizes the gentleman from Kentucky to raise the question of consideration. Many days have elapsed since the main question was ordered, and other subjects considered. * * * It is the inherent right of every legislative body that the majority shall regulate its course of proceeding in reference to the transaction of business. And every rule of every legislative body, so far as the Chair is advised, conforms to that feature as illustrative of the power of the majority to control its proceedings. Now, in reference to this case the Chair recognizes, and it is not disputed, that it has the semblance of unfinished business, and that the main question was ordered upon it. The binding feature of the previous question should have operated immediately upon reassembling after the adjournment. But at any time the motion is in order to test whether the House will proceed to consider the unfinished business; and the Chair recognizes that as the substance of the effort made by the gentleman from Kentucky. There can not be a doubt but that the House in its inherent right, and the right under the very rules that govern it, has the power to say whether it will consider unfinished business. And that right of consideration can not be interfered with or interrupted.

The Speaker referred in this connection to a decision in the Forty-fourth Congress.[2]

Mr. Keifer having appealed, the appeal was laid on the table, yeas 121, nays 93.

4968. On January 4, 1889,[3] Mr. Thomas B. Reed, of Maine, as a privileged question, called up the following resolution reported from the Committee on Rules and under consideration at the adjournment on the preceding day, the pending question being upon the demand for the previous question, the yeas and nays having been ordered:

Resolved, That during the remainder of the present session of Congress there shall be no call of the States and Territories[4] on the first and third Mondays of each month.

Mr. John A. Anderson, of Kansas, proposed to raise the question of consideration against the resolution.

Mr. Reed made the point of order that the question of consideration could not now be raised against the resolution:

After debate the Speaker[5] said:

So far as the Chair is advised this is entirely a new question. The general rule of the House is that the question of consideration can be raised against any proposition when reached on the Calendar or called up, even though a privileged measure. In the present instance the question is this: This resolution was reported from the Committee on Rules yesterday as a matter of privilege and its consideration entered upon. The previous question was demanded by a Member and the yeas and nays ordered by the House, and the vote was actually being taken; in fact, according to the recollection of the Chair, two or three efforts were made to take a vote and secure a quorum, but they failed. Now, when the matter is called up again to-day, still being a matter of privilege under the rules of the House, the gentleman from Kansas, Mr. Anderson, raises the question of consideration against it; and the Chair rules, though he announces this decision with some hesitation and some doubt, that under the circumstances the question of consideration can not be made against it.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] See section 4946 of this chapter.

[3] Second session Fiftieth Congress, Journal, p. 155; Record, p. 544.

[4] This was the old method of introducing bills.

[5] John G. Carlisle, of Kentucky, Speaker.

4969. The question of consideration may not be demanded against a bill returned with the objections of the President.—On April 4, 1894,[1] Mr. Richard P. Bland, of Missouri, demanded that the House proceed to the consideration of the bill H. R. 4956, entitled "An act directing the coinage of silver bullion in the Treasury, and for other purposes," heretofore returned to the House by the President with his objections thereto.

Mr. Daniel E. Sickles, of New York, thereupon demanded that the question of consideration be put.

Mr. Joseph W. Bailey, of Texas, made the point that inasmuch as the Constitution required the House to reconsider the bill the question of consideration could not be demanded.

After debate the Speaker[2] sustained the point of order, holding as follows:

The Constitution of the United States declares that the message shall be sent to the House in which the bill originated, which House shall proceed to reconsider the bill. The present message was sent to the House a few days ago, at which time the House had under consideration a contested-election case, and was operating under a rule which might fairly be held to postpone the consideration of any other question until that question had been disposed of. Undoubtedly the House would have the right, as has been the precedent, to postpone the consideration of a veto message, although the question of consideration might not be raised. Postponement is itself consideration; and it may be fairly held that the order adopted by the House, under which they were considering the contested-election case, was a postponement of any question that might come in to interfere with the measure until the House had fully disposed of it. Treating it in that way, it is regarded as a postponement of this veto message until that order had exhausted itself. The order has now exhausted itself; the message is before the House. The Constitution says the House must proceed to consider it; the House the other day ordered a postponement until that order was exhausted, and that time has come. Therefore the Chair holds that the question of consideration can not now be raised.

4970. On March 2, 1895,[3] Mr. Hugh A. Dinsmore, of Arkansas, moved that the Committee on Indian Affairs be discharged from the consideration of the bill (H. R. 8681) authorizing the Arkansas Northwestern Railway Company to construct and operate a railway through the Indian Territory, and for other purposes, heretofore returned to the House by the President with his objections thereto, and that the House proceed to its reconsideration.

Mr. Albert J. Hopkins, of Illinois, submitted the question of order, whether the question of consideration could not be demanded thereon.

The Speaker[2] expressed the opinion that, under the provisions of the Constitution and under the rulings heretofore made in such cases, the question of consideration could not be demanded, but that the subject having been presented, a motion to postpone its further consideration might be entertained.

4971. The question of consideration may not be raised on a motion relating to the order of business.

While the House was proceeding under general parliamentary law, before rules had been adopted, a Member offered from the floor a special order for the consideration of a bill.

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[1] Second session Fifty-third Congress, Journal, p. 312; Record, pp. 3458, 3459.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Third session Fifty-third Congress, Journal, p. 190.

On January 7, 1890,[1] Mr. Louis E. McComas, of Maryland, submitted the following resolution:

Resolved, That the House now resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill of the House (H. R. 3711), the District of Columbia appropriation bill, and that general debate thereon shall be limited to one hour, after which the bill shall be considered by clauses or paragraphs under the rules of the last House relating to the considemtion of general appropriation bills in Committee of the Whole House on the state of the Union.[2]

Mr. W. C. P. Breckinridge, of Kentucky, raised the question of consideration.

The Speaker[3] ruled that the question of consideration could not be raised on a motion relating to the order of business.

From this decision of the Chair Mr. Breckinridge, of Kentucky, took an appeal.

After debate on the appeal, the Speaker stated the situation to be as follows: On the motion of Mr. McComas, that the House resolve itself into the Committee of the Whole to consider a certain bill designated, the question of consideration was raised by Mr. Breckinridge, of Kentucky. He had thereupon held that the question of consideration could not be raised on the motion which itself proposed the consideration of a bill, on the ground that under common parliamentary law a doubling up of motions was to be avoided, and he thereupon stated the question to be:

"Shall the decision of the Chair stand as the judgment of the House?" And it was decided in the affirmative—yeas 134, nays 125.

4972. On August 19, 1890,[4] Mr. Ormsby B. Thomas, of Wisconsin, as a privileged question, moved to lay on the table the motion to reconsider the vote by which the House passed the bill of the Senate (S. 846) for the relief of Nathaniel McKay and the executors of Donald McKay.

Mr. William M. Springer, of Illinois, proposed to raise the question of consideration.

The Speaker[3] held the question to be not in order.

4973. On January 24, 1893,[5] Mr. William S. Holman, of Indiana, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider general appropriation bills.

Mr. William C. Oates, of Alabama, demanded that the question of consideration be put on the motion of Mr. Holman.

The Speaker[6] held that the question of consideration could not be demanded against the motion.

4974. On February 7, 1894,[7] Mr. Richard P. Bland, of Missouri, presented as a matter of privilege the bill (H. R. 4956) directing the coinage of the silver bullion held in the Treasury, and for other purposes, heretofore reported from the Committee on Coinage, Weights, and Measures, and the same was refererd to the Committee of the Whole House on the state of the Union.

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[1] First session Fifty-first Congress, Journal, p. 103; Record, p. 433.

[2] This occurred before the adoption of rules and while the House was acting under general parliamentary law.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-first Congress, Journal, p. 968; Record, p. 8814.

[5] Second session Fifty-second Congress, Journal, p. 56; Record, p. 822.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] Second session Fifty-third Congress, Journal, p. 145; Record, p. 2009.

Mr. Bland moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider said bill.

Mr. Charles Tracey, of New York, demanded that the question of consideration be put.

The Speaker [1] held that it was not in order to demand the question of consideration against the motion of Mr. Bland, opposition to the consideration of the proposed measure being available by voting down the pending motion.

The Speaker said:

The Committee on Coinage, Weights, and Measures is accorded under the rules the right to report at any time.[2] That right carries with it the right of consideration at the time the report is made. The gentleman from Missouri has reported from the Committee on Coinage, Weights, and Measures a bill which, by reason of the nature of its provisions, must have its first consideration in the Committee of the Whole. There can not be raised any question as to the right of the gentleman to make this report. There can be raised a question as to the desire of the House to consider the report.

Now, in this particular case, inasmuch as the bill must be considered in the Committee of the Whole under the rules, the gentleman from Missouri must move, as he has done, that the House resolve itself into Committee of the Whole to consider the bill. It has been held that the question of consideration can not be raised against a motion, but that the way to accomplish the same purpose that would be accomplished by raising the question of consideration is to vote up or down the motion to go into Committee of the Whole.

Therefore the Chair thinks that in this case the object sought in raising the question of consideration against the bill of the gentleman from Missouri can only be attained, and is effectually attained, by voting up or down the motion made by him. If the House desires to proceed to consider the bill, it will vote in favor of the motion; but if it does not desire that the bill be now proceeded with, then it will vote down the motion, in which case the bill will not be considered.

4975. On February 23, 1901,[3] Mr. William P. Hepburn, of Iowa, under the terms of a special order which made his motion the regular order, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 5499) to promote the efficiency of the Revenue-Cutter Service.

Mr. Oscar W. Underwood, of Alabama, rising to a parliamentary inquiry, asked if it would be in order to raise the question of consideration.

The Speaker [4] said:

The Chair thinks not; but the question can be tested on the motion to go into Committee of the Whole. That presents the same situation as if the question of consideration were raised.

4976. On February 20, 1903,[5], Mr. Charles N. Fowler, of New Jersey, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 16228) relating to the currency.

Mr. Charles L. Bartlett, of Georgia, proposed to raise the question of consideration.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] That committee no longer has this privilege. See section 4621 of Vol. IV of this work.

[3] Second session Fifty-sixth Congress, Record, p. 2917.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Fifty-seventh Congress, Journal, p. 271; Record, pp. 2426, 2427.

The Speaker pro tempore [1] held that this question might not be raised, saying, after debate:

There is no difference between the gentleman from Georgia [Mr. Bartlett] and the Chair on this question, except a difference of form. The present occupant of the chair stated the other day on the floor of the House that the question of consideration could be raised on this bill. Now, there are two methods of raising the question of consideration. One of them applies to bills on the House Calendar and the other to bills on the Union Calendar. As to bills on the House Calendar, the question of consideration is raised directly by an appeal to the House, the bill being in the House. As to bills that are in the custody of the Committee of the Whole House on the state of the Union and on the Union Calendar, the question is raised by voting down the motion to go into Committee of the Whole, in which committee the bill is pending; so that it is perfectly apparent that between the attitude of the present occupant of the chair in his ruling now and his attitude while on the floor the other day there is no possible inconsistency.

4977. The question of consideration may not be demanded against a motion to discharge a committee.—On March 3, 1905,[2] Mr. Willard D. Vandiver, of Missouri, moved to discharge the Committee on the Judiciary from the consideration of a resolution of inquiry relating to the so-called "armor-plate trust."

Mr. Sereno E. Payne, of New York, proposed to raise the question of consideration on the motion.

The Speaker [3] said:

The Chair finds the following in the Digest: "The question of consideration may not be raised on a motion relating to the order of business."

So the question of consideration was not entertained.

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] Third session Fifty-eighth Congress, Record, p 4021.

[3] Joseph G. Cannon, of Illinois, Speaker.

Chapter CXII.

CONDUCT OF DEBATE IN THE HOUSE.

1. **The rules. Sections 4978, 4979.**
2. **Member's action in. Sections 4980, 4981.**[1]
3. **Motion must be stated before. Sections 4982–4989.**
4. **Member's limitations. Sections 4990–4994.**
5. **Rights as to opening and closing. Sections 4995–5002.**
6. **Division of time. Sections 5003–5005.**
7. **Interruption of another Member. Sections 5006–5008.**[2]
8. **Yielding the floor to motions, etc. Sections 5009–5017.**
9. **Yielding the floor to another Member. Sections 5018–5041.**
10. **Relevancy in debate. Sections 5042–5055.**
11. **Appeals from decisions as to relevancy. Sections 5056–6063.**
12. **Personal explanations. Sections 5064–5079.**

4978. The rule of recognition and the hour rule for debate. Form and history of Rule XIV, section 2.

Section 2 of Rule XIV governs the recognition of Members for debate and the time of debate:

> When two or more Members rise at once, the Speaker shall name the Member who is first to speak, and no Member shall occupy more than one hour in debate on any question in the House or in committee; except as further provided in this rule.

This rule is in the form adopted in the revision of 1880.[3] Previous to that the subject was covered by rules 59 and 60. The former dated from April 7, 1789,[4] and provided:

> When two or more Members happen to rise at once, the Speaker shall name the Member who is first to speak.[5]

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[1] For cases of censure of Members for conduct in debate see sections 1244–1259 of Volume II.

As to recognitions by the Speaker, sections 1419–1479, Chapter XLVI of Volume II; the Speaker's right of participation in, is limited, sections 1367–1376 of Volume II.

The forty minutes of debate after the previous question is ordered, sections 5495–5509 of this volume.

Debate on the motion to reconsider, sections 5694–5702 of this volume.

Debate on points of order, sections 6919, 6920, and on appeals, sections 6947–6952 of this volume.

"Leave to print" remarks in the Congressional Record, sections 6990–7012 of this volume.

[2] The motion to adjourn may not interrupt a Member having the floor in debate. (Secs. 5369, 5370.)

[3] Second session Forty-sixth Congress, Record, pp. 206, 830.

[4] Journal, first session First Congress, p. 9.

[5] The rule of the Continental Congress (Journal, May 26, 1778) was: "When two persons rise together, the President shall name the person to speak."

The clause limiting the time the Member may occupy in debate to one hour dates from December 18, 1847.[1] The hour limitation, however, is older than that rule, the first rule for the purpose having been adopted on motion of Mr. Lott Warren, of Georgia, July 6, 1841.[2] This was a temporary rule, but on June 13, 1842,[3] it was made one of the standing rules of the House that no Member should occupy "more than one hour in debate on any question, either in the House or in the Committee of the Whole." This rule was adopted on motion of Mr. Benjamin S. Cowen, of Ohio. The rule had been long agitated. On March 26, 1820, Mr. John Randolph, of Virginia, spoke more than four hours on the Missouri bill,[4] and on April 28, 1820, Mr. Stevenson Archer, of Maryland, proposed a rule that no Member should speak longer than an hour at a time and that no question should be discussed over five days.[5] This proposed rule was not acted on. In 1822 the hour limit of debate was again proposed by Mr. John Cocke, of Tennessee, but was not adopted.[6] In 1828, Mr. William Haile, of Mississippi, reviewed the tediousness of the debates and again proposed the hour rule, but unsuccessfully.[7] On March 1, 1833,[8] Mr. Frank E. Plummer, of Mississippi, so wearied the House in the last hours of the Congress that repeated attempts were made to induce him to resume his seat, and the House was frequently in extreme confusion and disorder. But the hour rule was not adopted until the practice of unlimited debate had caused the greatest danger to bills in Committee of the Whole.[9] The rule was often attacked,[10] but the necessities of public business always compelled its retention.

4979. Rule regulating the act of the Member in seeking recognition for debate.

Rule governing the Member in debate, forbidding personalities and requiring him to confine himself to the question.

Form of history of Rule XIV, section 1.

Section 1 of Rule XIV provides:

> When any Member desires to speak or deliver any matter to the House, he shall rise and respectfully address himself to "Mr. Speaker," and on being recognized, may address the House from any place on the floor or from the Clerk's desk,[11] and shall confine himself to the question under debate, avoiding personality.

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[1] Congressional Globe, first session Thirtieth Congress, p. 47.

[2] First session Twenty-seventh Congress, Globe, pp. 152–155.

[3] Second session Twenty-seventh Congress, Globe, p. 620; Journal, p. 954.

[4] First session Sixteenth Congress, Annals, p. 1541.

[5] First session Sixteenth Congress, Journal, p. 456; Annals, p. 2093.

[6] First session Seventeenth Congress, Annals, Vol. II, p. 1301.

[7] First session Twentieth Congress, Journal, p. 370; Debates, pp. 1754–1756.

[8] Second session Twenty-second Congress, Debates, p. 1919.

[9] See section 5221 of this volume.

[10] See Globe of December 18, 1847, first session Thirtieth Congress, pp. 43–47, for an attack in the House. Thomas H. Benton, in his Thirty Years' View (Vol. II, pp. 247–257), and Mr. Clement L. Vallandigham, in the House, at the time of the revision of 1860 (see Congressional Globe, first session Thirty-sixth Congress, March 15, 1860), assailed the rule vigorously.

[11] Thus, on February 1, 1875, Mr. Benjamin F. Butler, of Massachusetts, when Members made the point of order that he was addressing the galleries and not the Chair, took his place on the platform beside the Clerk's desk. A question being raised, Mr. Speaker Blaine said that the rule specifically gave the Member the right to speak from the Clerk's desk. (Second session Forty-third Congress, Record, pp. 1896,1897.) At that time the rule was numbered 58 and was as follows: "Members may address the House or committee from the Clerk's desk, or from a place near the Speaker's chair." It has been extremely rare for a Member to avail himself of this privilege. (See sec. 4981.)

The rule has remained unchanged since the revision of the rules in 1880.[1] It was derived from the old rule, No. 57, which was, with the dates upon which the portions originated, as follows:

When any Member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat[2] and respectfully address himself to "Mr. Speaker,"—April 7, 1789[3]—and shall confine himself to the question under debate, and avoid personality—December 23, 1811.[4]

4980. A Member, in addressing the House, must also address the Chair.—On May 9, 1864,[5] the Speaker[6] called to order a Member who, in speaking from a position in front of the Chair, spoke for several minutes with his back to the Chair. The Speaker reminded the Member that it was the usage, in addressing Members of the House, to address the Chair.

4981. Instance wherein a Member addressed the House from the Clerk's desk.—On June 26, 1850,[7] Mr. Jacob B. Thompson, of Kentucky, in addressing the House spoke "from the rostrum," these words of the record of debates meaning evidently that Mr. Thompson availed himself of the privilege given by the rule of addressing the House from the Clerk's desk.

On November 14, 1870,[8] Mr. Simeon B. Chittenden, of New York, said in debate:

When I went to the unusual place of the Clerk's desk to speak yesterday, I went to speak the truth.

So unusual was this that another Member referred to him as having spoken "from his perch."[9]

4982. Debate should not begin until the question has been stated by the Speaker.—Section 2 of Rule XVI[10] provides:

When a motion has been made, the Speaker shall state it or (if it be in writing) cause it to be read aloud by the Clerk before being debated.

4983. The House insists on compliance with the rule that a motion must be stated by the Speaker or read by the Clerk before debate shall begin.—On March 2, 1885,[11] the House took up the contested election case of Frederick *v.* Wilson. It having been voted to consider the case, Mr. Risden T. Bennett, of North Carolina, proceeded to debate.

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[1] Second session Forty-sixth Congress, Record, pp. 206, 830.

[2] This did not mean any particular seat, but merely that the Member should rise. (See ruling of Mr. Speaker Stevenson, July 12, 1832, first session Twenty-second Congress, Debates, p. 3910.)

[3] First session First Congress, Journal, p. 9.

[4] First session Twelfth Congress, Report No. 38.

[5] First session Thirty-eighth Congress, Globe, p. 2194.

[6] Schuyler Colfax, of Indiana, Speaker.

[7] First session Thirty-first Congress, Globe, p. 294.

[8] First session Forty-fifth Congress, Record, p. 405.

[9] It is said to have been a custom of Thaddeus Stevens to speak, from the Clerk's desk; but the practice was then considered exceptional, and has ceased. (See footnote of sec. 4979.) In the assemblies of the Latin nations the Member always speaks from a rostrum in front of the desk of the presiding officer.

[10] See section 5304 of this volume for the full form and history of this rule.

[11] Second session Forty-eighth Congress, Journal, p. 745; Record, pp. 2412, 2413.

Mr. Edward K. Valentine, of Nebraska, made the point of order that the resolutions accompanying the report must be stated by the Speaker or read by the Clerk, as required by clause 2 of Rule XV1,[1] before being debated.

The Speaker[2] sustained the point of order.

4984. A motion must be made before the Member may proceed in debate.—On June 25, 1902,[3] the House had agreed to the conference report on the army appropriation bill, when Mr. John A. T. Hull took the floor and proceeded to debate as to the disposition of the remaining Senate amendments in disagreement.

Mr. James D. Richardson, of Tennessee, raised the question of order that as no motion had been made there was nothing before the House.

The Speaker[4] said:

> The Chair will state that if the gentleman from Tennessee insists upon his point of order the Chair will be obliged to sustain it.

Thereupon Mr. Hull submitted a motion, and proceeded in debate.

4985. On December 18, 1893,[5] after the reading of two messages from the President, Mr. Charles A. Boutelle, of Maine, stated that he desired to submit a privileged motion, and proceeded to make remarks thereon.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that the motion should be first submitted before being discussed.

The Speaker[6] sustained the point of order, holding that the motion proposed by Mr. Boutelle must be read at the desk before discussion thereof was in order.

4986. Before debate is in order the motion must be stated by the Member or even be reduced to writing if required, and announced by the Chair.

After a Member has offered a motion, the House has the right before debate begins to determine whether it will consider it or not.

On May 29, 1812,[7] Mr. John Randolph, of Virginia, was addressing the House at length on the foreign relations of the nation. He had intimated his intention to submit a motion, but had not in fact done so. In the course of his remarks Mr. John C. Calhoun, of South Carolina, rising to a question of order, said there was no question before the House and the gentleman was speaking contrary to order.

Mr. William W. Bibb, of Georgia, who was temporarily in the chair, said that the objection was not valid, as the gentleman from Virginia had announced his intention to make a motion, and it had been usual in such cases to permit a wide range of debate.

Mr. Randolph was proceeding when Mr. Calhoun again interposed a point of order, that if the course now taken were parliamentary and should continue, it would be in the power of any Member at any time to embarrass the proceedings of the House.

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[1] See section 5304 of this volume.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-seventh Congress, Record, p. 7387.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Fifty-third Congress, Journal, pp. 37–41; Record, p. 376.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] First session Twelfth Congress, Journal, pp. 355, 534 (Gales & Seaton ed.); Annals, 1461–1466.

The Speaker[1] decided that Mr. Randolph was bound to state his proposition, which, moreover, ought to be seconded,[2] announced from the Chair, and reduced to writing, if required, before he proceeded to debate it.

Mr. Randolph having appealed, the decision of the Chair was sustained, yeas 67, nays 42.

The question of consideration being put, the House declined to consider Mr. Randolph's resolution when he presented it.

Mr. Clay, the Speaker, writing unofficially but to the public, said at this time:[3]

Two principles are settled by these decisions; the first is that the House has a right to know, through its organ, the specific motion which a Member intends making before he intends to argue it at large; and, in the second place, that it reserves to itself the exercise of the power of determining whether it will consider it at the particular time when offered prior to his thus proceeding to argue it.

It would seem to be altogether reasonable that when a Member intends addressing a copious argument to a public body for the purpose of enforcing a motion he should disclose the motion intended to be supported. It is the practice of the British Parliament, and of several, if not all, of the State assemblies to require not only that this should be done, but that it should be seconded, thus affording a protection against the obtrusion upon the body of the whimsical or eccentric propositions of a disordered or irregular mind by the coincidence in opinion of at least two individuals. At what particular period the proposition ought to be submitted is, perhaps, not exactly defined or definable. Certainly in the courtesy of all bodies will be found a sufficient safeguard against the exclusion of matter properly introductive, explanatory, or prefatory to the motion. The line separating matter of this kind from arguments in chief is not susceptible of accurate description. It does not, however, present more practical difficulty than to discriminate between observations which are relevant or otherwise, decorous or reprehensible.

4987. A communication or a report being before the House may be debated before any specific motion has been made in relation to it.—On January 14, 1875,[4] the House was considering a communication from the Sergeant-at-Arms, when a question was raised as to the pending motion.

The Speaker[5] said:

The communication from the Sergeant-at-Arms itself affords a basis of discussion. There might be some motion made in regard to it; as, for instance, to refer to a committee with or without instructions, but the Chair thinks the discussion is proceeding in a very natural manner upon the question, and that the House, prior to the discussion, need not be forced to a particular line of policy.

4988. On December 15, 1877,[6] the House was proceeding to the consideration of resolutions providing for a general investigation of the Executive Departments, reported from the Committee on Ways and Means, when Mr. John M. Thompson, of Pennsylvania, made the point of order that it was not in order to discuss a report, however privileged it might be, without first making a motion to dispose of the subject-matter in some way.

The Speaker[7] overruled the point of order, on the ground that a motion was neither required by the rules nor in accordance with the practice to debate a report from a committee.

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[1] Henry Clay, Speaker.

[2] The second is no longer required.

[3] Annals, first session Twelfth Congress, p. 1470 (footnote).

[4] Second session Forty-third Congress, Record, p. 473.

[5] James G. Blaine, of Maine, Speaker.

[6] Second session Forty-fifth Congress, Journal, p. 137; Record, pp. 239, 240.

[7] Samuel J. Randall, of Pennsylvania, Speaker.

4989. The withdrawal of a matter precludes further debate on it.—On February 17, 1834,[1] Mr. Abijah Mann, jr., of New York, objected to the printing of certain memorials relating to the United States Bank.

Subsequently Mr. Mann withdrew his objections.

Thereupon Mr. John G. Watmough, of Pennsylvania, proceeded to discuss the objection.

The Speaker[2] called him to order, on the ground that the objection was withdrawn.

4990. The hour rule applies to debate on a question of privilege as well as to debate on other questions.—On September 4, 1890,[3] Mr. Amos J. Cummings, of New York, claimed the floor on a question of personal privilege, and, being recognized, addressed the House. When he had spoken for one hour, the Speaker pro tempore[4] stated that the time allotted under the rule (clause 2, Rule XIV) had expired.

From the ruling of the Speaker pro tempore that a Member was entitled to but one hour on a question of privilege Mr. Cummings appealed.

After debate on the appeal, Mr. Cummings withdrew the same.

4991. No Member may speak more than once to the same question unless he be the mover or proposer, in which case he may speak in reply after all choosing to speak have spoken.

Present form and history of section 6 of Rule XIV.

Section 6 of Rule XIV is as follows:

> No Member shall speak more than once to the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every Member choosing to speak shall have spoken.

This form was established in the revision of 1880.[5] It was taken verbatim from the old rule, No. 63, which was made up on January 14, 1840, from the original rule of April 7, 1789. The form of 1789[6] was:

> No Member shall speak more than twice to the same question without leave of the House;[7] nor more than once until every Member choosing to speak shall have spoken.

In 1840 the words "more than twice" were changed to "more than once," and the clause allowing the speech in reply was added, although it was opposed as too suggestive of legal proceedings and as tending to produce inequality in debate.[8] At this time the hour rule for debate had not been adopted.[9]

4992. It is too late to make the point of order that a Member has already spoken if no one claims the floor until he has made some prog-

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[1] First session Twenty-third Congress, Debates, p. 2728.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] First session Fifty-first Congress, Journal, p. 1013; Record, p. 9679.

[4] Julius C. Burrows, of Michigan, Speaker pro tempore.

[5] Second session Forty-sixth Congress, Record, p. 206.

[6] First session First Congress, Journal, p. 9.

[7] On May 18, 1798 (second session Fifth Congress, Journal, pp. 302, 322; Annals, pp. 1855, 1866) the House agreed to a rule that a Member should not in House or in Committee of the Whole speak more than once to a measure, but on June 1 rescinded it, because of the difficulty of preventing evasions.

[8] First session Twenty-sixth Congress, Globe, p. 121.

[9] See section 4978 of this volume.

ress in his speech.—On June 9, 1846,[1] Mr. Shelton F. Leake, of Virginia, rose, was recognized by the Speaker, and proceeded to address the House.

While proceeding in his remarks Mr. Thomas J. Henley, of Indiana, rose and claimed the floor on the ground that Mr. Leake, having once addressed the House on the question, had no right, under Rule 36, which provided that "No Member shall speak more than once on the same question without leave of the House," to proceed with his remarks.

The Speaker[2] decided that Mr. Leake, having risen, been recognized, and proceeded to address the House, no one claiming the floor, and no one having objected, must be considered as speaking by leave of the House, and he therefore overruled the question of order raised by Mr. Henley, and decided that Mr. Leake was in order.

4993. A Member who has spoken once to the main question may speak again to an amendment.—Jefferson's Manual, in Section XXXV, provides:

> On an amendment being moved, a Member who has spoken to the main question may speak again to the amendment. (Scob., 23.)

4994. On March 7, 1844,[3] the House was considering the bill (No. 80) to amend an act entitled "An act relative to the election of a President and Vice-President of the United States, and declaring the officers who shall act as President and Vice-President of the United States in case of vacancies in the offices of both President and Vice-President," approved March 1, 1792.

Mr. Alexander Duncan, of Ohio, rose and debated the question for one hour. Then Mr. Lucius Q. C. Elmer, of New Jersey, moved an amendment striking out all after the enacting clause and inserting a substitute. And, after debate, Mr. Duncan again obtained the floor and proceeded to debate the question on the amendment.

Mr. David W. Dickinson, of Tennessee, made a question of order that Mr. Duncan, having spoken one hour since this bill was taken up for consideration, was not in order in speaking again.

The Speaker pro tempore[4] decided that, inasmuch as an amendment had been offered since Mr. Duncan had spoken, and the question was entirely changed, he was entitled to the floor.

On an appeal the decision of the Chair was sustained by the House.

4995. The right of the "mover, proposer, or introducer of the matter pending" to close debate does not belong to a Member who has merely moved to reconsider the vote on a bill which he did not report.

In the earlier practice of the House the right of the mover to close the debate might not be cut off by the previous question.

On January 12, 1876,[5] the House proceeded to the consideration of the unfinished business, which was the motion to reconsider the vote by which the amnesty bill was rejected by the House. This motion to reconsider had been made by Mr. James G. Blaine, of Maine.

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[1] First session Twenty-ninth Congress, Journal, p. 934.

[2] John W. Davis, of Indiana, Speaker.

[3] First session Twenty-eighth Congress, Journal, p. 532; Globe, p. 356.

[4] George W. Hopkins, of Virginia, Speaker pro tempore.

[5] First session Forty-fourth Congress, Record, pp. 382, 390.

Mr. Samuel J. Randall, of Pennsylvania, announced that it was his purpose at an appropriate time that day to call for the previous question.

This elicited from Mr. Blaine the following inquiry:

By what right, under the rules, does the gentleman from Pennsylvania, Mr. Randall, observing the courtesies of debate, announce that he will call the previous question on my motion?

Mr. Randall replied:

I claim the right, just as the gentleman did, he being on the prevailing side, to move a reconsideration. The gentleman will observe that the motion for the previous question is a majority motion which I have the right to make. * * * Because otherwise the minority side of this House might continue the debate without limit, contrary to the wish of the majority, of which I am one.

Mr. Blaine then cited Rule 63: [1]

No Member shall speak more than once to the same question without leave of the House unless he be the mover, proposer, or introducer of the matter pending; in which case he shall be permitted to speak in reply, but not until every Member choosing to speak shall have spoken,

and made the point that as the amnesty bill, which the gentleman from Pennsylvania had introduced, was utterly defeated by the House, he had lost all control of it. Therefore he, Mr. Blaine, as the mover, the proposer, the introducer of the motion to reconsider was entitled to the privilege given by the rule.

There was some debate on the point, Mr. Nathaniel P. Banks, of Massachusetts, holding that the motion to reconsider was a subsidiary motion merely, like the motion to postpone, and did not give the Member making it the benefit of the rule.

The Speaker,[2] in ruling, said:

It is claimed that because the motion in this case to reconsider the vote by which the amnesty bill was defeated was made by the gentleman from Maine, therefore he is entitled to open and close the debate—practically to control it. The Chair invites the attention of the House to the sixtieth rule,[3] a part of which the Chair will read:

"No Member shall occupy more than one hour in debate on any question in the House or in committee; but a Member reporting the measure under consideration from a committee may open and close debate."

The gentleman from Maine did not report this measure from a committee. A ruling is given on page 86 of the Digest, which is as follows:

"The right of the 'Member reporting the measure' to open and close debate is not affected by an order either for the previous question or that debate shall cease in committee."

Now, the Chair is very reluctant to hold that in this case the gentleman from Maine is not of right entitled to close this debate. The Chair would prefer to hold that under this ruling, which relates to Rule 60, the right of the gentleman to close the debate is clear, notwithstanding the House may have sustained the previous question; that, in other words, he would be entitled, after the previous question is sustained, to close the debate. But upon the peculiar attitude of this question the Chair feels compelled to rule that, inasmuch as the gentleman from Maine did not report this bill to the House from any committee or in any other way, he has no right to close the debate or to speak after the previous question shall have been demanded by another Member, as in this case. * * * The Chair desires only in addition to say, and he is glad to be able to say it, that in this ruling he is upon all points sustained by the venerable journal clerk [4] of this House, the author of our Digest, who has had experience of twenty-eight years.

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[1] Now section 6 of Rule XIV. (See sec. 4991 of this volume.)

[2] Michael C. Kerr, of Indiana, Speaker.

[3] Now section 3 of Rule XIV. (See sec. 4996 of this chapter.)

[4] Mr. Barclay.

4996. The Member reporting the measure under consideration may open and close where general debate is had; and may have an additional hour to close if debate extend beyond a day.

Present form and history of section 3 of Rule XIV.

Section 3 of Rule XIV provides:

> The Member reporting the measure under consideration from a committee may open and close where general debate has been had thereon; and if it shall extend beyond one day he shall be entitled to one hour to close notwithstanding he may have used an hour in opening.

This is the exact form of rule adopted in the revision of 1880.[1] While it was considered a new rule at that time, it was in reality an amplification of the idea contained in the old rule, No. 60, which dated from December 18, 1847,[2] when the hour rule of debate was adopted permanently and the five-minute rule was instituted:

> No Member shall occupy more than one hour in debate on any question in the House or in committee; but a Member reporting the measure under consideration from a committee may open and close the debate: *Provided,* That where debate is closed by order of the House, any Member shall be allowed in committee five minutes to explain any amendment he may offer.

The Committee on Rules, who made the revision of 1880, explained that the form of rule which they adopted, and which is the present form, was intended to cover a point settled by repeated decisions.

4997. In the later practice of the House the Member reporting the matter under consideration may not exercise his right to close after the previous question is ordered.

The earlier practice as to the right to close debate permitted its exercise after the time for terminating general debate in Committee of the Whole as well as after the ordering of the previous question.

On June 28, 1850,[3] the House resumed the consideration of the report of the Committee on Elections in the Iowa contested-election case of Miller *v.* Thompson, the following resolution, with an amendment, being pending:

> *Resolved,* That William Thompson is entitled to the seat in this House which he now holds as the Representative from the First Congressional district of Iowa.

Mr. Armistead Burt, of South Carolina, moved the previous question; which was seconded, and the main question ordered to be put; when Mr. William Strong, of Pennsylvania, rose and was proceeding to close the debate.

Mr. Alexander Evans, of Maryland, made the point of order that the previous question having been seconded, and the main question ordered to be put, it was not in order for Mr. Strong to proceed.

The Speaker[4] decided that the Member from Pennsylvania [Mr. Strong], having reported the measure under consideration from a committee, was entitled, under the thirty-fourth rule[5] of the House, to open and close the debate thereon, and that he did not think he was deprived of that right by the previous question having been seconded and the main question ordered to be put. That rule was adopted during the last

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[1] Second session Forty-sixth Congress, Record, p. 206.

[2] First session Thirtieth Congress, Globe, pp. 43–47. (See also sec. 4978 of this volume.)

[3] First session Thirty-first Congress, Journal, p. 1056; Globe, p. 1308.

[4] Howell Cobb, of Georgia, Speaker.

[5] See sections 4991 and 4996 of this chapter.

Congress, and, at the same session, the question arose in Committee of the Whole on the state of the Union as to the right of the Member to make his closing speech after the expiration of the hour at which the debate had been ordered to be closed. It was then held by the committee [1] that he had the right, and, by a parity of reasoning (the rule applying as well to the House as the committee), it would seem to be his privilege in the present case, especially as there had been no debate on the subject in Committee of the Whole on the state of the Union; otherwise the Member reporting the measure would be deprived of the benefit of the rule.

From this decision Mr. Alexander Evans appealed, and the question being put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative. So the decision of the Chair was sustained, and Mr. Strong, proceeded to close the debate.

4998. On January 10, 1877,[2] the regular order being demanded, the Speaker announced the regular order of business to be the further consideration of the bill of the House (H. R. 2263) for the repeal of so much of the act of December 17, 1872, as provides for a pivot draw in any bridge to be erected across the Ohio River between the cities of Covington, Ky., and Cincinnati, Ohio.

The House having resumed its consideration, after debate,

Mr. John H. Reagan, of Texas, demanded the previous question; which was seconded and the main question ordered to be put.

Then Mr. Reagan rose, and was proceeding to further debate the bill; when Mr. Milton Sayler, of Ohio, made the point of order that Mr. Reagan, having already consumed an hour in opening the debate upon the pending bill, was not entitled to another hour to close it.

The Speaker [3] sustained the point of order.

This point of order gave rise to much debate, and was carefully considered by the Speaker, who on January 17 gave his reasons at length, as follows:

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[1] This ruling occurred on February 16, 1848 (first session Thirtieth Congress, Globe, p. 363), the House being in Committee of the Whole House on the state of the Union considering the bill to authorize a loan of not to exceed $18,500,000. The hour of 2 o'clock arrived and the general debate was closed in accordance with previous order. Then Mr. Samuel F. Vinton, of Ohio, who reported the bill from the Committee on Ways and Means, availed himself of the privilege granted under the thirty-fourth rule of closing the debate.

This point first arose January 6, 1848 (first session Thirtieth Congress, Globe, p. 119), while the House was in Committee of the Whole House on the state of the Union (Mr. Caleb B. Smith, of Indiana, in the chair) considering a bill relating to the transportation of mails. The hour which the House had fixed for the closing of debate having arrived, Mr. William L. Goggin, of Virginia, chairman of the Committee on the Post-Office and Post-Roads, who had reported the bill, was on the floor in the midst of his speech. Mr. Jacob Thompson, of Mississippi, made the point that the hour had arrived at which the House had ordered the termination of the debate.

The Chairman said that the gentleman from Virginia [Mr. Goggin], being the chairman of the committee which had reported the resolution, was entitled to one hour after the point of time fixed for the conclusion of the debate.

Mr. C. J. Ingersoll, of Pennsylvania, remarked that the explanation of the Chairman perfectly accorded with the opinion which prevailed in the Committee on Rules when the rule was adopted.

On appeal the question was debated at length, and on January 7 (Globe, p. 127) the Chair was sustained by a vote of 101 to 73.

[2] Second session Forty-fourth Congress, Journal, pp. 201, 202, 250; Record, pp. 544, 708.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

Rule 63 reads as follows:

"No Member shall speak more than once to the same question without leave of the House (April 7, 1789) unless he be the mover, proposer, or introducer of the matter pending; in which case he shall be permitted to speak in reply, but not until every Member choosing to speak shall have spoken (January 14, 1840)."

It appears that this last clause of the present sixty-third rule, adopted January 14, 1840, was intended to restrict debate, as indeed it was so stated at the time.

Rules 29 and 30, as existing at the close of the Twenty-fifth Congress, were as follows, namely:

"Rule 29. No Member shall speak more than twice to the same question without leave of the House, nor more than once until every Member choosing to speak shall have spoken.

"Rule 30. If a question pending be lost by adjournment of the House and revived on the succeeding day, no Member who shall have spoken twice on the preceding day shall be permitted to speak without leave."

These rules were merged, as amended, into what is now the sixty-third rule of the House, in the Twenty-seventh Congress. From the debate it fully appears that it was intended to restrict or curtail debate, and that this was rendered necessary by the dilatory debates of preceding Congresses, especially those in the Twenty-sixth Congress.

In the Twenty-seventh, Twenty-eighth, and Twenty-ninth Congresses it appears that this rule was construed and held to prevent any Member from speaking more than one hour, except where an amendment had been offered, thereby changing the question. The Member entitled to the floor on the pending measure was then entitled to an additional hour. (See House Journal, first session Twenty-eighth Congress, p. 532.)

It was found, however, that this rule was evaded by the practice of offering amendments, and the Committee on Rules in the first session of the Thirtieth Congress reported, on the 14th of December, 1847, the following as a substitute for the thirty-third, or "hour rule," as it was called, namely:

"It shall be in order to entertain a motion when made to limit the time which each Member may occupy in debating any question in the House or committee to a period not less than one hour: *Provided,* That where the House has made an order fixing the time for discharging the committee from the further consideration of any bill, or other matter referred to it (after acting without debate on all amendments pending or that may be offered), debate by any one Member before such order takes effect may be limited to one-quarter of an hour, and thereafter the Member who reported the measure under consideration from any committee may debate the same for one hour; and any Member shall be allowed in committee five minutes to explain the object, nature, and effect of any amendment which he may offer; and all motions made to carry out this rule shall be decided without debate."

And also the following as an alternative proposition:

"No Member shall occupy more than one hour and a half in debate on any question in the House or in committee; but a Member reporting the measure under consideration from a committee may open and close the debate: *Provided,* That where debate is closed by order of the House, any Member shall be allowed in committee five minutes to explain any amendment he may offer."

From the debate which took place on the 18th of December, 1847, when the report was considered, it fully appears that the intent was to further limit or restrict debate, and this is confirmed by the amendment of Mr. Pollock to strike out the words "and a half," so as to limit the debate to one hour, which amendment was adopted without division. In the case cited on the 9th instant by the gentleman from Illinois [Mr. Burchard], the decision by Speaker Cobb in the first session Thirty-first Congress (see House Journal, first session Thirty-first Congress, p. 1056), it was decided that the gentleman who reported the then pending measure was entitled to an hour to close the debate after the main question had been ordered to be put.

In that case—the contested election case of Miller *v.* Thompson, from Iowa—the report was made by Mr. Strong, who opened the debate, which occupied two days, and then, an amendment having been submitted and several gentlemen having spoken in opposition to the resolutions reported by the committee, the Speaker decided that Mr. Strong was entitled to an hour to close the debate, though the main question had been ordered. In that case every Member so desiring had spoken an hour or occupied so much of his hour as he wished. In the present case the gentleman reporting the measure opened the debate, occupied or controlled the floor for one hour, and then it was claimed, the previous question having been sustained, that he had a right to another hour to close.

The Chair believes that any other construction than the one he has given would tend to destroy the equality of privileges which should exist, and which in fact does exist, between Members of the House; and, in addition, the Chair is of opinion that the ruling will expedite and dispatch the public business, while the contrary course would retard and delay it.

The hour rule was adopted in these interests, and as practiced in the courts it gives to the plaintiff and defendant each the same extent of time, but to the plaintiff the privilege to divide his time so as to have the opportunity to open and close his case.

The Chair might give further reasons in support of his decision; but, believing the foregoing to be sufficient, will only refer to a decision made by the Speaker of the last House [Mr. Blaine] which is directly in point, which decision passed unquestioned by the gentlemen who have questioned the correctness of the decision under consideration.

On the 6th of June, 1874, in the first session of the Forty-third Congress, the gentleman from Illinois [Mr. Cannon], from the Committee on the Post-Office and Post-Roads, reported back with amendments House bill No. 3414, to provide for the prepayment of postage on printed matter, and for other purposes. Mr. Cannon took the floor, or, in the language of the rule, "opened the debate" on the said bill, and after replying to various interrogatories propounded, at the end of the hour demanded the previous question. Thereupon Mr. Hawley said he wanted it distinctly understood that if the previous question was to be ordered there could be no more debate. The Speaker said that there could be none, and after the previous question was ordered denied further time, on the ground that the gentleman took his hour before the previous question was ordered.[1]

The Chair believes that a liberal construction should be allowed in case of general debate having occurred over a lengthened period, and in such a case would rule an hour to close debate by the Member reporting a measure, as in case where a bill has been open to amendments; but to give to a Member two consecutive hours in debate is, in the opinion of the Chair, at variance with the spirit of the rule, as well as against equity and propriety. The Committee on Rules have been consulted by the Chair in relation thereto, and are of the opinion, with a single exception [Mr. Banks], that the ruling made by the Chair is the correct one. They have, however, in view further action, so as to submit to the House an amendment to the rules which will make the present rule plainer by the use of more explicit language in relation thereto.[2]

4999. On January 17, 1884,[3] the House had under consideration a bill for immediate improvement of the Mississippi River, and the previous question had been ordered on the passage. Thereupon Mr. Albert S. Willis, of Kentucky, who had called up the bill, said: "I believe that under the rule one hour is allowed for debate."

The Speaker[4] said:

The Chair is in doubt whether, under the rule, there is an hour allowed for debate in this case. This is not a bill reported by the Committee on Rivers and Harbors, of which the gentleman from Kentucky [Mr. Willis] is chairman, but it is a Senate bill, which has been taken from the Speaker's table by action of the House and referred to the Committee of the Whole on the state of the Union, and it was reported back to the House by the gentleman from New York as chairman of the Committee of the Whole on the state of the Union. The Chair thinks that under the rule there is not an hour for debate.

5000. On February 15, 1884,[5] the contested election case of Chalmers *v.* Manning being under consideration, Mr. Henry G. Turner, of Georgia, took the floor and

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[1] On January 10, 1879 (third session Forty-fifth Congress, Record, p. 412), we find Chairman Horatio C. Burchard, of Illinois, allowing an hour to close in Committee of the Whole after the time limit of general debate had expired. But this is not the present practice, and appears to have been an exceptional ruling.

[2] Such a rule does not seem to have been adopted at this session. The rules cited in this opinion were in the revisions of 1880 merged into sections 3 and 6 of Rule XIV. (See sees. 4996 and 4991 of this volume.)

[3] First session Forty-eighth Congress, Journal, pp. 338, 339; Record, p. 466.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Forty-eighth Congress, Record, p. 1167.

announced that at the end of an hour he should demand the previous question, whereupon Mr. John A. Kasson, of Iowa, told him that he must demand it at once. Then arose a controversy as to whether the Member reporting a measure was entitled to an hour after the previous question was ordered.

The Speaker [1] said:

Under the former rules of the House it was well settled that the hour for closing debate could be occupied as well after as before the previous question was ordered; and, indeed, it was the practice to occupy it after the ordering of the previous question. But under the new rules the question is presented, which so far the present incumbent of the chair has not decided, whether the hour can be taken after the previous question is ordered unless it is so understood at the time when it is ordered. * * * The present occupant of the chair is inclined to think the hour can be occupied after as before the previous question is ordered. But the Chair has not yet been called upon to render a decision on this question.

5001. Discussion as to the rights of a contestant who is permitted to address the House to close debate in a contested election case.—On May 6, 1864,[2] a question arose as to the respective rights of a contestant and a sitting Member to close debate in a contested election case, wherein the contestant had received the usual permission to take a seat on the floor and speak to the merits of the case.

The Speakers [3] said:

The Chair would suggest that the proper way would be for the contestant to open, the sitting Member to follow, and the gentleman from New York [Mr. Ganson], representing the majority of the committee, to close the debate. The Chair finds in the case of Barrett against Blair, Mr. Phelps, of Missouri, at that time the father of the House, made this remark:

"During my service in this body in the various cases of contested elections that have arisen, whenever the contestant has been permitted to address the House he has presented his argument and the sitting Member has replied and, so far as those two persons were concerned, there was an end of that argument."

Mr. Phelps, then the oldest Member of the House, proposed that the contestant should open with a speech of one hour, that the sitting Member should then follow with a speech of two hours, and that the contestant should then have one hour for reply, which was adopted by unanimous consent, changing the practice as it had before existed. The Chair has merely stated these facts, hoping that the sitting Member and the contestant will agree as to the order of debate.

Mr. Henry L. Dawes, of Massachusetts, recalled that in the case referred to the position of Mr. Phelps was contested and the principle was enforced that the man who had the affirmative of the case, as every other plaintiff in court, had the right to close. So the contestant in that case was permitted to close after the sitting Member had spoken.

The Speaker, in accordance with suggestions from Members, put to the House the request that the sitting Member should speak first and then that the contestant should occupy the time in closing that the member of the committee in charge of the majority report would be entitled to under the practice. By unanimous consent this request was granted, and the debate was arranged in this way.

5002. A Member rising to a question of personal privilege was not permitted to take from the floor another Member who had been recog-

[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Thirty-eighth Congress, Globe, p. 2166.

[3] Schuyler Colfax, of Indiana, Speaker.

nized for debate.—On May 29, 1906,[1] Mr. Sereno E. Payne, of New York, had the floor on his motion to approve the Journal, when Mr. Arthur P. Murphy, of Missouri, claimed the floor for a question of personal privilege.

The Speaker[2] said:

The gentleman from Missouri rises to a question of the highest personal privilege. The motion before the House is to approve the Journal. The gentleman from New York [Mr. Payne] has the floor. In the opinion of the Chair, the gentleman from Missouri [Mr. Murphy] can raise his question of the highest personal privilege when the gentleman from New York is not upon the floor.

Mr. John W. Gaines, of Tennessee, rising to a parliamentary inquiry, said:

Does the gentleman state that his question of personal privilege grows out of the approval of the Journal?

The Speaker replied:

No; nor has the Chair conceded that it would make any difference if it did, in the time of the gentleman from New York. The gentleman from Missouri can not take the gentleman from New York [Mr. Payne] off of the floor upon a question of personal privilege, in the opinion of the Chair.

5003. Under the rules only the Speaker or Chairman may recognize for debate, but by unanimous consent the time is sometimes controlled by the two Members in charge of the two contentions on the floor.

Under the rules the Speaker recognizes the Members who address the House.

On March 1, 1898,[3] the House being about to consider the bill (H. R. 5359) to amend the postal laws relating to second-class matter, a question arose as to the division of time.

The Speaker[4] said:

Under the rules of the House, unless the House unanimously agrees to the contrary, the Speaker recognizes the Members who address the House, and it has usually been understood that the Speaker will endeavor to see that the debate is fairly conducted. That is a part of the duties of his office.

Sometimes, by unanimous consent, the debate is controlled by Members in charge on the floor.[5]

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[1] First session Fifty-ninth Congress, Record, p. 7622.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 2328.

[4] Thomas B. Reed, of Maine, Speaker.

[5] It is quite common for the House to arrange for the time to be controlled by the two Members in charge, one on either side. But if such arrangement can not be made, the Speaker recognizes. On January 31, 1898 (second session Fifty-fifth Congress, Record, p. 1260), Senate concurrent resolution No. 22, relating to the redemption of bonds in silver, was before the House under a special order which provided for a vote at 5 p. m. that day. An attempt was made to have the distribution of time made by Mr. Dingley, of Maine, on one side, and Mr. Bailey, of Texas, on the other (party leaders, respectively, on Ways and Means Committee, which reported the resolution), but this attempt failed, leaving the control of recognitions with the Speaker. He recognized first the chairman of the Ways and Means Committee (Mr. Dingley), and next Mr. Bailey. This was in accordance with usage, and each was entitled to an hour. So, also, would the other members of the Ways and Means Committee who would come next in order be entitled to an hour each. But with so much pressure for time the leading members of the committee did not attempt to monopolize the time. Mr. Dingley spoke thirty minutes and yielded the rest of the time. Mr. Bailey took even less of his time, yielding the remainder. Other members of the Ways and Means Committee (Messrs. Payne, of New York, and Robertson, of Louisiana) were also recognized, and after using a little time yielded the remainder. Thus the time was appor-

5004. The time of a debate having been divided and assigned to the control of the two sides, it must be assigned to Members in accordance with the rules, no Member being allowed more than one hour.—On May 13, 1896,[1] the House was considering the contested election case of Rinaker v. Downing, and by unanimous consent it had been agreed that the time should be divided between the two sides and controlled by gentlemen representing them. Mr. Edward D. Cooke, of Illinois, who controlled the time on the side of the majority of the committee, having yielded to Mr. James A. Connolly, of Illinois, such time as he might desire, the latter in his remarks exceeded one hour.

Mr. William H. Moody, of Massachusetts, made the point of order that the other side were entitled to the floor.

The Speaker pro tempore[2] said:

> If the gentleman makes the point of order that the time of the gentleman from Illinois has expired, the Chair will so hold. He was about to state why he so held; but if the gentleman from Illinois does not care to hear the reason he need not. The Chair holds that the gentleman's time has expired. * * * The present occupant of the Chair fails to find from the Record that there was an absolute agreement as to unlimited time. There was simply an agreement, not to fix any time, but to allow the time occupied to be controlled on the one side by the gentleman from Illinois [Mr. Cooke] and on the other side by the gentleman from Massachusetts [Mr. Moody]. Under the circumstances, the time occupied by any particular Member would be governed by the rules of the House, and the gentleman from Illinois could have been granted but one hour. He has exceeded that time; therefore his time has expired, and he can not proceed now unless by unanimous consent.

Several parliamentary inquiries having been made as to the right of Mr. Cooke to yield unlimited time to Mr. Connolly, the Speaker,[3] who had resumed the Chair, said:

> Whenever the time is under the control of two gentlemen on opposite sides of the question, it is always understood that it is under such control subject to the rules of the House, and the rule of the House limits any Member to sixty minutes unless by unanimous consent it is changed.

5005. On January 5, 1897,[4] the bill (H. R. 4566) to amend the postal laws relating to second-class matter was under consideration in Committee of the Whole House on the state of the Union, and the time of debate had, by unanimous consent, been placed under the control of Mr. Eugene F. Loud, of California, on the one side, and Mr. Lemuel E. Quigg, of New York, on the other.

Mr. Quigg having taken the floor, and having at the end of an hour been informed that one hour had expired, was proceeding, when the Chairman informed him that he was proceeding by unanimous consent.

Mr. Quigg thereupon made the point that he was proceeding in his own time.

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tioned out by members of the Ways and Means Committee, the Speaker making only the recognitions required by usage. With a longer time for debate the usage generally is to recognize the members of the committee for an hour each, and then, if it is necessary to economize time and there is much pressure, it is customary for the Speaker or Chairman by general consent to recognize members for stipulated periods less than the hour allowed by the rules. In this way more members are allowed to speak than could be accommodated did each Member recognized use the hour allotted him by the rules.

[1] First session Fifty-fourth Congress, Record, p. 5199.

[2] James S. Sherman, of New York, Speaker pro tempore.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-fourth Congress, Record, pp. 462, 465.

The Chairman[1] said:

But the gentleman could not, without the unanimous consent of the committee, which had been given, occupy more than one hour.

On January 7, 1897,[2] the House was in Committee of the Whole House on the state of the Union considering the Pacific Railroad funding bill (H. R. 8189), and it had been arranged by unanimous consent that the time should be controlled by Mr. H. Henry Powers, of Vermont, on the one side, and by Mr. Joel D. Hubbard, of Missouri, on the other.

Mr. Powers having taken the floor, was informed, at the end of one hour, that his time had expired.

Mr. Powers made the point that he had entire control of the time on one side.

The Chairman[3] said:

That is correct; but under the rules of the House, even where unlimited time is within the control of a Member, he is not allowed, except by unanimous consent, to occupy the floor for more than one hour.

5006. A Member desiring to interrupt another in debate should address the Chair for permission of the Member speaking.—On January 5, 1901,[4] during debate on the bill (H. R. 12740) "making an apportionment of Representatives in Congress among the several States under the Twelfth Census," a discussion arose between Messrs. Charles E. Littlefield, of Maine, and Albert J. Hopkins, of Illinois.

The Chair,[5] interrupting, said:

The Chair wants to say that it is utterly out of the question to have an orderly debate in the House unless the rules of the House are observed. The rules of the House require that when a Member rises he shall first address the Chair, and the rules also forbid one Member to address another in the second person. The Chair hopes that Members will conform to the rules of the House.

On January 8,[6] during discussion of the same bill and under similar circumstances, the Speaker[7] said:

The Chair will state that if anyone desires to interrupt the Member who is speaking he must rise and address the Chair, and get permission.

5007. It is entirely within the discretion of the Member occupying the floor in debate to determine when and by whom he shall be interrupted.—On January 15, 1868,[8] the House was considering the bill (H. R. 208) "extending the time for the completion of the Dubuque and Sioux City Railroad," Mr. Benjamin F. Hopkins, of Wisconsin, having the floor.

Mr. Hopkins yielded to Mr. Elihu B. Washburne, for an interruption, and then, having withdrawn his consent to further interruption, yielded the floor to Mr. Rufus P. Spalding, of Ohio.

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[1] James S. Sherman, of New York, Chairman.

[2] Second session Fifty-fourth Congress, Record, p. 559.

[3] John A. T. Hull, of Iowa, Chairman.

[4] Second session Fifty-sixth Congress, Record, p. 593.

[5] John Dalzell, of Pennsylvania, Speaker pro tempore.

[6] Record, p. 710.

[7] David B. Henderson, of Iowa, Speaker.

[8] Second session Fortieth Congress, Journal, p. 191; Globe, p. 541.

Mr. Washburne made the point of order that it was not competent for a Member entitled to the floor to refuse to be interrupted by one Member and then yield to another.

The Speaker,[1] overruled the point of order.

Mr. Washburne having appealed, the decision of the Chair was affirmed, yeas 136, nays 0.

5008. On March 23, 1904,[2] during debate on the post-office appropriation bill in Committee of the Whole House on the state of the Union, Mr. Robert Baker, of New York, interrupted a Member who had declined to yield to him.

Whereupon the Chairman[3] said:

> The gentleman from New York is out of order, and the gentleman has transgressed the rules of orderly procedure of the House of Representatives.

And when Mr. Baker persisted, the Chairman said:

> The gentleman is still out of order. The gentleman from New York [Mr. Baker] has again transgressed the rules of orderly procedure of the House of Representatives.

5009. In the House a Member may yield the floor for a motion to adjourn without losing his right to continue when the subject shall be considered again.—On May 16, 1900,[4] the regular order being demanded, the Speaker directed the call of committees in the morning hour.

The call rested on the Committee on Foreign Affairs, which on the preceding day had presented the bill (S. 2931) "to incorporate the American National Red Cross Association, and for other purposes."

This bill being undisposed of, the Speaker announced that Mr. Frederick H. Gillett, of Massachusetts, who on the previous day had yielded the floor for a motion to adjourn, was recognized for the fifteen minutes remaining of his hour.

Mr. Champ Clark, of Missouri, rising to a parliamentary inquiry, asked if the gentleman from Massachusetts did not on the previous day, by yielding the floor for a motion to adjourn, lose his right to reoccupy it.

The Speaker[5] said:

> The Chair thinks not, as he only yielded for a motion to adjourn.

5010. On January 29, 1861,[6] Speaker pro tempore George A. Briggs, of New York, decided that a Member who in the House yielded the floor for a motion to adjourn, yielded it unconditionally and lost the right to resume it. On appeal this decision was sustained.

5011. A Member who has yielded the floor for a motion to adjourn is entitled to prior recognition after that motion is decided in the negative.—On March 26, 1836,[7] during the consideration of a contested election case from North Carolina, Mr. John Calhoon, of Kentucky, who had the floor in debate,

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Second session Fifty-eighth Congress, Record, p. 3587.

[3] H. S. Boutell, of Illinois, Chairman.

[4] First session Fifty-sixth Congress, Record, p. 5618.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Thirty-sixth Congress, Journal, p. 247; Globe, pp. 628, 629.

[7] First session Twenty-fourth Congress, Debates, p. 2986.

yielded the floor in order that Mr. Henry A. Wise, of Virginia, might move an adjournment.

The motion to adjourn having been made, and decided in the negative on a vote by yeas and nays, Mr. Samuel Cushman, of New Hampshire, arose and addressed the Chair for the purpose of demanding the previous question.

The Speaker[1] decided that Mr. Calhoon was entitled to the floor. To give the gentleman from Kentucky the floor under the circumstances was in conformity with the practice and courtesy of the House.

5012. A Member having the floor in debate in Committee of the Whole may yield for a motion that the committee rise without losing his right to continue at the next sitting.—On February 14, 1850,[2] the House resolved itself into the Committee of the Whole House on the state of the Union, and the Chairman stated that the business before the committee was the consideration of the resolution referring the various subjects of the President's message to the several committees of the House, and that on that question the gentleman from Alabama, Mr. Henry W. Hilliard, who held the floor in continuation of remarks commenced by him on a previous day, was entitled to the floor. Mr. Hilliard had obtained the floor on February 12, and had yielded to a motion that the committee rise.

Mr. Preston King, of New York, moved to lay aside the consideration of the resolutions before the committee, with a view to take up the message of the President concerning California.

The Chairman[3] decided that the gentleman from Alabama [Mr. Hilliard] was entitled to the floor, and that the motion of the gentleman from New York [Mr. King] was not in order.

On appeal the decision of the Chair was sustained.

5013. On February 22, 1851,[4] the House was in Committee of the Whole House on the state of the Union, considering the fortifications appropriation bill. Mr. John W. Houston, of Delaware, had the floor, when he yielded it to Mr. Robert M. McLane, of Maryland, to move that the committee might rise in order to close debate.

Mr. George W. Jones, of Tennessee, raised the point of order that the gentleman from Delaware could not, under the rules and practice of the House, yield the floor, even for an explanation, without the unanimous consent, and that the gentleman from Maryland, having had the floor on this subject, was not entitled to it again.

The Chairman[5] stated that it had been the invariable practice of the House for one Member to yield the floor to another for a motion to rise. It was not, of course, for the Chair to inquire what was the object in moving that the committee rise.

On an appeal by Mr. Jones the decision of the Chair was sustained.

5014. A Member who has yielded the floor to enable the subject to be postponed to a day certain was held to be entitled to prior recognition

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Thirty-first Congress, Globe, pp. 340, 358.

[3] Linn Boyd, of Kentucky, Chairman.

[4] Second session Thirty-first Congress; Globe, p. 645.

[5] James S. Green, of Virginia, Chairman.

when the subject was again considered.—On April 25, 1836,[1] the House was considering resolutions of the legislature of Kentucky relating to the revenue arising from the sale of public lands, and Mr. Albert G. Hawes, of Kentucky, arose to address the House.

Mr. Sherrod Williams, of Kentucky, rose and inquired whether Mr. Hawes, who had yielded the floor on the day when the subject was last under consideration of the House, to another Member to make a motion to postpone the same to a future day, had now the right to the floor on the question pending before the House "until every Member choosing to speak shall have spoken."

The Speaker[2] stated the facts to the House, viz: Mr. Hawes, when the subject was last under discussion, being entitled to the floor, had proceeded to address the House, and before he had concluded his remarks, yielded the floor to a Member to make a motion to postpone the subject to a future day; and the subject was accordingly postponed. Under this state of facts the Speaker took the sense of the House, whether Mr. Hawes was now entitled to the floor.

The House decided in the affirmative, and Mr. Hawes proceeded, concluding his remarks.

5015. A Member who resumes his seat while a paper is being read in his time does not thereby lose his right to proceed.—On May 20, 1830,[3] the House was considering a bill to reduce the duty on salt, and a motion to commit the bill was pending.

Mr. Ralph I. Ingersoll, of Connecticut, moved to amend the motion to commit by adding certain instructions, which he sent to the Clerk's desk to be read.

While the Clerk was reading Mr. Ingersoll resumed his seat.

At the conclusion of the reading Mr. Starling Tucker, of South Carolina, rose and addressed the Chair.

Mr. Ingersoll claimed his right to the floor.

The Speaker[4] decided that he was entitled to proceed in speaking to his motion,

5016. A Member who resumes his seat after being called to order, loses his claim to prior right of recognition.—On February 27, 1810,[5] during the consideration of the bill entitled "An act respecting the commercial intercourse between the United States and Great Britain and France, and for other purposes," Mr. Barent Gardenier, of New York, was called to order by Mr. John W. Eppes, of Virginia, for deviating from the question before the House, which was a motion to refer to a select committee.

The Speaker[6] sustained the point of order.

Mr. Gardenier having sat down, and being about to proceed after another Member had risen and addressed the Chair, the Speaker decided that the Member from 'New York had lost his prior right to the floor.

An appeal being taken, the decision of the Chair was sustained, yeas 77, nays 43.

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[1] First session Twenty-fourth Congress, Journal, p. 749; Debates, p. 3360.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Twenty-first Congress, Journal, p. 987.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] Second session Eleventh Congress, Journal, p. 253 (Gales and Seaton ed.); Annals, p. 1462.

[6] Joseph B. Varnum, of Massachusetts, Speaker.

5017. A Senator who had yielded the floor to a message from the House was held entitled to resume the floor to the exclusion of other business.— On February 25, 1868,[1] in the Senate, Mr. Garrett Davis, of Kentucky, had the floor in debate, when a committee from the House of Representatives appeared at the bar of the Senate to impeach Andrew Johnson, President of the United States.

The President pro tempore[2] said:

The Senator from Kentucky will yield.

Mr. Davis thereupon yielded, and the committee delivered their message and withdrew.

Thereupon Mr. Jacob M. Howard, of Michigan, proposed as a question of privilege a resolution relating to the message just received.

Mr. Davis claimed the floor and declined to yield for the resolution. He said that, according to the universal usage and courtesy between the two Houses, he had yielded for the message, but that as soon as that had been delivered his right to the floor was resumed, and he could not be taken from the floor by a privileged motion or anything else. Mr. George F. Edmunds, of Vermont, argued in support of this contention.

The President pro tempore having submitted the question to the Senate, it was decided that Mr. Davis was entitled to the floor.

5018. According to the later practice a Member having time for debate may yield such portion of it as he may choose to another.—On July 17, 1866,[3] Mr. Rufus P. Spalding, of Ohio, having a few minutes of his hour remaining, proposed to yield the remaining time to Mr. Nathaniel P. Banks, of Massachusetts.

Mr. Charles A. Eldridge, of Wisconsin, raised a question of order as to the right of the gentleman from Ohio to do this.

The Speaker[4] said:

The Chair sustains the right of the gentleman from Ohio to keep the floor and yield it until the end of his hour.[5] The gentleman has fourteen minutes remaining, which he yields to the gentleman from Massachusetts.

5019. On May 27, 1870,[6] Mr. Samuel J. Randall, having three minutes of time remaining, proposed to yield it to another Member.

A question as to his right so to do being raised, Mr. Speaker Blaine said:

When a gentleman has been granted time by the House, he has the control of the disposition of that time.

5020. On March 31, 1870,[7] a question arose as to the right of a Member in debate to yield of his time to another.

Mr. James Brooks, of New York, contended that a Member might yield to another for explanation, but not for general discussion.

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[1] Second session Fortieth Congress, Globe, pp. 1405, 1406.

[2] Benjamin F. Wade, of Ohio, President pro tempore.

[3] First session Thirty-ninth Congress, Globe, p. 3890.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] This is the unquestioned practice of the House at the present time.

[6] Second session Forty-first Congress, Globe, p. 3863.

[7] Second session Forty-first Congress, Globe, pp. 2324, 2325.

The Speaker[1] said that a Member might yield any portion of his time for the discussion of whatever measure might be pending. He only lost his right to the floor when he yielded for an amendment. He also quoted the Journal Clerk,[2] whose service reached back twenty-five years, in support of this as the usage of the House, Mr. Brooks having denied that such had been the practice of the past.

5021. The practice of permitting a Member to yield time within his control for debate to another Member began about 1852, but was questioned even as late as 1879.

The practice of yielding time in debate grew up in the House after the establishment of the hour rule had made it practicable. (Footnote.)

A Member who has the floor in debate may not yield to another Member to offer an amendment without losing control of his time.

On March 29, 1852,[3] Mr. Frederick P. Stanton, of Tennessee, from the Committee on Naval Affairs, to whom was referred a Senate bill (No. 154), "An act to enforce discipline and promote good conduct in the naval service of the United States," the rules having been suspended for that purpose, reported the same with an amendment.

The Speaker stated the question to be on agreeing to the said amendment.

During discussion, Mr. Charles E. Stuart, of Michigan, who was entitled to the floor, yielded the same to Mr. Willard P. Hall, of Missouri.

Mr. George W. Jones, of Tennessee, made the point of order that the gentleman from Missouri [Mr. Hall] was not in order in explaining the bill, it only being competent for him to make a personal explanation.

The Speaker[4] decided that under the uniform practice of the House it was competent for Mr. Hall to pursue the course of remarks in which he was engaged.

On appeal, the Speaker was sustained by a vote of 93 to 30, by tellers.

The record of the debate shows that Mr. Jones, in rising to the question of order, asked if the gentleman from Michigan, Mr. Stuart, could take the floor and "farm it out" to everyone who wished to speak upon the bill.

The Speaker stated that the universal practice of the House had been for a Member having the floor to yield to others for explanation connected with the subject-matter before the House. It was a different case to yield the floor for amendments. That might be objected to. It had been common for gentlemen having the floor for an hour to yield to other gentlemen who might wish to make explanations within that hour.[5]

Mr. Jones, in taking his appeal, said he wished to let the House determine whether gentlemen could take the floor and "farm it out" to others.

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[1] James G. Blaine, of Maine, Speaker.

[2] Mr. Barclay.

[3] First session Thirty-second Congress, Journal, p. 524; Globe, p. 911.

[4] Linn Boyd, of Kentucky, Speaker.

[5] On February 9, 1827 (second session Nineteenth Congress, Debates, p. 1045), before the adoption of the hour rule in debate, Mr. Speaker Taylor decided that a gentleman who yielded the floor had no power to determine who next should have it.

5022. On February 19, 1855,[1] during debate on the veto message relating to the French spoliation claims, Mr. Mordecai Oliver, of Missouri, having the floor, Mr. Louis D. Campbell, of Ohio, asked the gentleman to allow him "to say a word."

Mr. John Wheeler, of New York, objected to "this farming out the floor."

The Speaker[2] said:

The Chair would remark that it is not in order for any gentleman to yield the floor except for the purpose of explanation.

5023. On August 12, 1848,[3] during consideration of a communication from the Commissioner of Indian Affairs, Mr. James J. Faran, of Ohio, having the floor in debate, yielded it to Mr. John D. Cummins, of Ohio.

Mr. Cummins was proceeding to offer some remarks when Mr. William Duer, of New York, raised the question of order that the gentleman could not yield the floor without losing entirely his right to reoccupy it.

The Speaker[4] stated that, by the courtesy of the House, gentlemen had been allowed to yield to others for explanations and still retain the floor; but, by the strict parliamentary law, if it was insisted on, but one gentleman could be entitled to the floor at a time.

5024. On February 22, 1853,[5] Mr. Thomas S. Bocock, of Virginia, as Chairman of the Committee of the Whole House on the state of the Union, held that during debate a gentleman had the right to yield the floor only for explanation. A Member having an hour had announced his disposition to transfer his time to such members of the Indian Affairs Committee as might wish to speak on the bill. The Chairman did not permit this.

5025. On February 14, 1861,[6] Speaker pro tempore William Kellogg, of Illinois, held that a Member having the floor might yield his time to another Member; but the House overruled this decision.

5026. On June 21, 1864[7] Mr. Speaker Colfax informing Mr. Robert C. Schenck, of Ohio, who, after speaking some time, proposed to yield to Mr. Garfield, of Ohio, for a few minutes, that he could not yield the floor unless he yielded it unconditionally.

5027. On May 13, 1879,[8] Mr. Speaker Randall said:

On a recent occasion the Chair decided upon an expressed opinion of the House that a Member had no right to "farm out" to other Members portions of his time. * * * The members of a committee reporting a bill have a right to the preference. The Chair thinks that that preference, under the disposition manifested by the House, should be confined to the time occupied by the Member himself, or they might otherwise take up the whole time allowed for the discussion of a bill, and exclude from participation in debate those who are perhaps as much interested in the subject as members of the committee, and who may not have an opportunity of inducing a member of the committee to give them the time they desired. Now, the Chair thinks that the practice is right, because the responsibility of the disposition of the floor should be in the Chair, and not in Members on the floor of the House.

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[1] Second session Thirty-third Congress, Globe, p. 815.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Thirtieth Congress, Globe, p. 1069.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

[5] Second session Thirty-second Congress, Globe, p. 785.

[6] Second session Thirty-sixth Congress, Journal, p. 318; Globe, pp. 916, 917.

[7] First session Thirty-eighth Congress, Globe, p. 3147.

[8] First session Forty-sixth Congress, Record, p. 1312.

5028. The right of a Member to yield of his time has been modified by the principle that members of the committee reporting the subject are entitled to prior recognition.—On January 22, 1874,[1] during the consideration of the West Virginia election cases, the Speaker[2] said:

The Chair suggests that the rules of the House give to a committee making a report the first right to the floor; and the gentleman from Ohio, Mr. Robinson [who had proposed to yield to one not a member of the Committee on Elections], is clearly entitled to an hour in his own right. But if that gentleman has no disposition to occupy his hour, the Chair suggests that the balance of his time should go to other members of the Committee on Elections before gentlemen who are not members of the committee are heard. That would be in accordance with the groundwork of the rules of the House on this subject.

5029. A Member may control the time allowed him by the rules, yielding time to others for debate, but not for amendment.—On April 9, 1869,[3] during debate on the election case of Myers *v.* Moffet, the Speaker[2] ruled:

The Chair would state that according to the uniform and unbroken usage of the House, where a gentleman rises to debate under the hour rule, if he yields a portion of his time he controls the question of making motions within that hour if he yields for debate only, and it is not the right of any gentleman speaking within his time to make an adverse or hostile motion.

5030. On January 30, 1904,[4] the House was considering the bill (H. R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians. Mr. Charles H. Burke, of South Dakota, having the floor, proposed to yield for an amendment.

The Speaker[5] said:

The Chair will state to the gentleman from South Dakota that the Chair understands the rule to be this: In the hour that the gentleman controls the bill is not subject to amendment, and that so far the amendments have been read for information. Now, if the gentleman yields the floor the bill will be subject to amendment. * * * The amendments reported from the committee are pending. The gentleman from South Dakota can offer an amendment if he sees proper, and then call the previous question. He can test the sense of the House at any time he desires.

5031. A Member who, having the floor in debate, yields to another to offer an amendment loses his right to resume.—On January 29, 1840,[6] the House having before it a proposition relating to the printing of the House, the question was on an amendment submitted by Mr. William J. Graves, of Kentucky, when a motion was made by Mr. Rice Garland, of Louisiana, to amend the same by inserting therein, after the word "same," these words: "And into the expediency of entirely separating the patronage of the Government from the newspaper or public press of the country."

A question of order was raised by Mr. Aaron Vanderpoel, of New York, that the amendment proposed by Mr. Garland was not in order for this—that Mr. Graves, who was entitled to the floor, had no right to yield it to Mr. Garland to offer his amendment, and that, therefore, the amendment of Mr. Garland was not rightfully before the House.

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[1] First session Forty-third Congress, Record, p. 848.

[2] James G. Blaine, of Maine, Speaker.

[3] First session Fifty-first Congress, Globe, p. 683.

[4] Second session Fifty-eighth Congress, Record, p. 1428.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] First session Twenty-sixth Congress, Journal, p. 248; Globe, pp. 153, 154.

The Speaker[1] decided that Mr. Graves had a right to yield the floor to Mr. Garland, but that when he did so he yielded it unconditionally; that any other Member would have been entitled to succeed Mr. Garland who could obtain the floor by rising first; that, consequently, the amendment of Mr. Garland was rightfully before the House.

From this decision Mr. Vanderpoel appealed to the House, and the decision of the Chair was sustained—126 yeas to 71 nays.

5032. When a Member yields of his time for debate, an amendment may not be offered in the yielded time without his consent.—On February 24, 1897,[2] Mr. John P. Tracey, of Missouri, presented a resolution from the Committee on Accounts, and took the floor, yielding time to others with the apparent intention of moving the previous question before the expiration of the hour, thus confining the debate within that time.

Mr. Sereno E. Payne, of New York, to whom a few moments had been yielded by Mr. Tracey, proposed to offer an amendment, asking of the Speaker if it would be in order for him to do so.

The Speaker[3] said:

> The Chair thinks it is not in order without the consent of the gentleman from Missouri. * * * The Chair thinks that when a gentleman yields the floor under such circumstances, retaining control of it, an amendment can not be offered without his consent, because he has a right to test the will of the House by moving the previous question free from the amendment. * * * The proper way is to vote the previous question down if the House desires to consider the amendment.

5033. A Member who receives time in debate from another may yield of it to a third only with the consent of the original possessor.—On February 19, 1897,[4] Mr. Fernando C. Layton, of Ohio, presented a conference report on the bill (S. 3150) granting a pension to Mary Gould Carr.

Mr. G. C. Crowther, of Missouri, having been recognized in his own right, yielded of his time to others. Among them was Mr. Layton, who, as a parliamentary inquiry, asked of the Speaker if in turn he could yield a portion of his time to another Member, his colleague.

The Speaker[3] said:

> The Chair would suppose that the gentleman could yield to his colleague, with the consent of the gentleman from Missouri [Mr. Crowther.]

5034. On February 10, 1898,[5] the House was considering the bill (H. R. 2196) directing the issue of a duplicate lost check.

Mr. George D. Perkins, of Iowa, being recognized, yielded thirty minutes to Mr. Joseph W. Bailey, of Texas, whereupon Mr. Bailey proposed to yield the time so obtained to Mr. Levin I. Handy, of Delaware.

Mr. Perkins made the point of order that Mr. Bailey could not thus yield yielded time.

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[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 2208.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-fourth Congress, Record, p. 1995.

[5] Second session Fifty-fifth Congress, Record, p. 1632.

The Speaker[1] decided that time thus yielded could not be yielded again except by the consent of the Member originally yielding the time.

Mr. Perkins having consented to the transfer of the time to Mr. Handy, the latter proceeded.

5035. Members may not yield time during the five-minute debate.—On May 14, 1890,[2] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 9416) to reduce the revenue and equalize the duty on imports, and for other purposes.

The time of Mr. Mark H. Dunnell, of Minnesota, having expired, the debate being under the five-minute rule, Mr. Richard P. Bland, of Missouri, proposed to be recognized in order to yield time to Mr. Dunnell.

The Chairman[3] said:

> The Chair will follow the ruling of his predecessor in the chair, and will not recognize the right of gentlemen to yield time in the five-minute debate.

Again, on May 16,[4] the same Chairman, in a similar case, said, in response to a suggestion of Mr. David B. Henderson, of Iowa, in regard to yielding time:

> The Chair can not recognize the gentleman's right to yield to anybody; that is the established usage in the Committee.

5036. On March 30, 1897,[5] the House was in Committee of the Whole House on the state of the Union considering the tariff bill (H. R. 379) under the five minute rule. Mr. George W. Steele, of Indiana, having been recognized, proposed to yield a portion of his five minutes to another Member.

The Chairman[6] said:

> The Chair thinks the gentleman must occupy his own time.[7]

5037. On June 13, 1902,[8] the Committee of the Whole House on the state of the Union was considering the bill (S. 3057) "for the reclamation of arid lands by irrigation," when Mr. Frank W. Mondell, of Wyoming, having been recognized for debate under the five-minute rule, proposed to yield four minutes to Mr. James R. Mann, of Illinois.

Mr. James M. Robinson, of Indiana, objected.

The Chairman[9] held that the gentleman from Wyoming was not entitled to yield time.

5038. Before the adoption of rules, while the House was proceeding under general parliamentary law, it was held that a Member having the floor in debate might not yield the floor to another without losing the

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Record, p. 4662.

[3] Charles H. Grosvenor, of Ohio, Chairman.

[4] Record, p. 4776.

[5] First session Fifty-fifth Congress, Record, p. 481.

[6] James S. Sherman, of New York, Chairman.

[7] Time is quite often yielded under the five-minute rule, no one objecting, and in at least one instance with the approval of the Chairman. (See Record, first session Fifty-fourth Congress, p. 2503.)

[8] First session Fifty-seventh Congress, Record, p. 6751.

[9] James A. Tawney, of Minnesota, Chairman.

right to resume.—On January 29, 1890,[1] the House not having adopted rules, and the proceedings being under general parliamentary law, Mr. Charles F. Crisp, of Georgia, took the floor and was proceeding to discuss the ruling of the Speaker in relation to the counting of the quorum present, when Mr. Joseph W. Covert, of New York, requested that the gentleman from Georgia yield to him for a moment.

A question arising as to the right to yield, the Speaker[2] said:

The gentleman from Georgia has the floor and if he yields the floor he must yield it entirely

5039. On February 7, 1890,[3] the House being still conducting its proceedings under general parliamentary law[4] a bill (H. R. 14) for the erection of a monument to the memory of Major-General Knox was under consideration.

Mr. Charles H. Mansur, of Missouri, having the floor, proposed to yield to another Member, when Mr. Richard P. Bland, of Missouri, made the point of order that a Member occupying the floor can not yield it to other Members and still retain the right to the floor.

The Speaker pro tempore[5] sustained the point of order.

5040. On December 23, 1859,[6] before the election of a Speaker or the adoption of rules, the Clerk (Mr. James C. Allen, of Illinois) gave the following opinion in regard to yielding the floor in debate:

The Clerk will state that by the parliamentary law the gentleman, if he yield the floor, will only be entitled to it again as a matter of courtesy.[7] It has been usual, however, when the gentlemen yield the floor for any purpose whatever, with an understanding that they shall resume it, that they are permitted to resume it when the discussion is resumed.

5041. In the Senate a Senator may not take the floor and then yield periods of time to other Senators.—On March 3, 1905,[8] in the Senate, the President[9] pro tempore said:

The Chair does not wish to be misunderstood. The Chair did not rule that a Senator could not yield to a brother Senator. He simply ruled that it is entirely beyond the custom in the United States Senate for a Senator to take the floor and hold it for a quarter of an hour, or half an hour, or an hour, and parcel out the time, as is done sometimes in the other House. The Chair intended to say nothing that would prevent a Senator from yielding to a brother Senator once or more. * * * The Chair never has ruled in relation to that matter before an objection has been made; and, in the opinion of the Chair, when objection is made the Chair will be obliged to rule that the Senator has no right to yield the floor.[10]

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[1] First session Fifty-first Congress, Record, pp. 955, 1010.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, p. 209; Record, p. 1146.

[4] The rules were not adopted until February 14, 1890.

[5] Lewis E. Payson, of Illinois, Speaker pro tempore.

[6] First session Thirty-sixth Congress, Globe, p. 224.

[7] As there is no rule in general parliamentary law limiting the time which a Member may use in debate, the right to yield the floor to another would evidently be subversive of the rights of Members generally.

[8] Third session Fifty-eighth Congress, Record, p. 3945.

[9] William P. Frye, of Maine, President pro tempore.

[10] As the Senate has no rule limiting the time during which a Senator may occupy the floor in debate, the principle of this rule is evidently essential to the fairness of procedure. In the House with the hour rule, it is not necessary.

5042. The Member shall confine himself to the question under debate, avoiding personality.—The final clause of section 1 of Rule XIV[1] provides that the Member "shall confine himself to the question under debate, avoiding personality."

Jefferson's Manual, in Section XVII, also has the still older parliamentary rule:

No one is to speak impertinently or beside the question, superfluous, or tediously. (Scob., 31, 33; 2 Hats., 166, 168; Hale Parl., 133.)

5043. It has always been held, and generally quite strictly, that in the House the Member must confine himself to the subject under debate.

Reference to an early criticism of the rules as too strict in relation to freedom of debate. (Footnote.)

On February 7, 1825,[2] the rules for the government of the coming Presidential election by the House were taken from the Committee of the Whole, and Mr. George McDuffie, of South Carolina, proceeded to continue the debate begun in Committee of the Whole. The question before the House was a motion to strike out a provision allowing the galleries to be cleared on the motion of one State during the election of President. Mr. McDuffie was discussing whether the people had the right to instruct their delegates, this being brought about through discussion of the influence of people in the galleries.

In the midst of the speech Mr. Daniel Webster, of Massachusetts, observed that he rose with great pain, and he hoped the gentleman from South Carolina would do him the justice to believe that nothing but an imperious conviction of duty induced him to interrupt an argument which he knew it would give him pleasure to hear; but he submitted whether it was in order to go into an argument in the House in reply to an argument urged in Committee of the Whole any more than if it had been urged in a select committee.

The Speaker[3] decided that the observations of Mr. McDuffie were not in order, on the ground stated, and that they were not in order for another reason, viz, that the whole scope of the debate was irrelevant to the question actually before the House.

Mr. McDuffie, upon the latter ground, submitted to the decision of the Chair.[4]

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[1] For the form and history of this rule see section 4979 of this volume.

[2] Second session Eighteenth Congress, Debates, p. 510.

[3] Henry Clay, of Kentucky, Speaker.

[4] A commentary on the strictness with which the rule was enforced is afforded at an earlier date than this. On January 19, 1816 (first session Fourteenth Congress, Annals, p. 698), Mr. John Randolph, of Virginia, in debating the rule relating to the previous question, said: "There are other members of those rules which might well content those gentlemen, whatever their appetite might be for despotism. Some that might satisfy the Grand Inquisitor himself," One of these was the "call to order." The Annals say: "On this subject Mr. Randolph was very pointed and powerful. He showed from the rules of the British House of Commons, laid down by Mr. Hatsell, that no instance ever was known in that body of a member's being prevented from discussing any proposition, either immediately sub judice or that he wished to bring before them, and that the only interruption allowable in it was confined to cases where anything touching the royal authority was introduced."

lt was the custom of the earlier Speakers to hold the Member speaking strictly to the question before the House, without waiting for the point to be made on the floor. (See instances in 1828, first session Twentieth Congress, Debates, pp. 927, 928, 933, 937, 947, 965.)

5044. On May 7,1846,[1] a motion was made by Mr. Joshua R. Giddings, of Ohio, to reconsider the vote by which the House on the previous day ordered the message of the President of the United States, in relation to shooting soldiers for desertion, printed.

Mr. Giddings proceeded to debate his motion, and while proceeding therein was called to order by Mr. Armistead Burt, of South Carolina, for irrelevancy.

Mr. Giddings took his seat.

The Speaker[2] decided that the remarks of Mr. Giddings were not in order.

From this decision Mr. Reuben Chapman, of Alabama, appealed, and moved that his appeal be laid upon the table; which motion was agreed to.

And so Mr. Giddings was precluded from debating further his motion to reconsider.

5045. On April 9, 1884,[3] the House having passed a bill requiring the governors of Territories to be residents of the Territories for two years preceding appointment, the question of agreeing to the title of the bill came up.

Pending this, Mr. John D. White, of Kentucky, moved to amend the title by adding thereto the following words, viz, "by restricting the appointing power of the President."

During debate on this amendment Mr. James H. Budd, of California, made the point of order that Mr. White was not in order in discussing the amendment, for the reason that he was not confining himself to the question under debate.

The Speaker[4] sustained the point of order, and held that under the rule Mr. White must confine himself to the question before the House.

5046. On December 2, 1890,[5] the Speaker laid before the House the bill of the Senate (S. 2591) giving the Court of Claims jurisdiction of the claims on account of property of the Chesapeake Female College possessed and used by the United States military authorities.

The House having proceeded to its consideration, and the question being on its third reading, Mr. Joseph Wheeler, of Alabama, obtained the floor and proceeded to address the House upon the subject of the tariff.

Mr. William J. Stone, of Kentucky, made the point of order that Mr. Wheeler was not speaking upon the question before the House, and was therefore not in order.

The Speaker[6] sustained the point of order.

5047. On February 10, 1898,[7] the House was proceeding with the consideration of the bill (H.R. 7559) making Rockland, Me., a subport of entry. Mr. Levin I. Handy, of Delaware, having obtained the floor, was proceeding to discuss a subject relating to a citizen of his own State, when Mr. John Dalzell, of Pennsylvania, called him to order.

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[1] First session Twenty-ninth Congress, Journal, pp. 764, 769.

[2] John W. Davis, of Indiana, Speaker.

[3] First session Forty-eighth Congress, Journal, p. 1014.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Second session Fifty-first Congress, Journal, p. 13; Record, p. 30.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Fifty-fifth Congress, Record, pp. 1632–1635.

The Speaker[1] said:

The Chair has no desire to make any strict enforcement of the rule upon any subject unless it be such as is absolutely necessary for the proper transaction of the public business of this House.

While the custom of the House of Representatives heretofore has allowed a very wide latitude of debate in the Committee of the Whole House on the state of the Union, such latitude has not been allowed—or such has not been the custom—in the House itself. In the House itself a Member addressing himself to a subject under consideration is expected to confine himself to the subject of the debate. If he wanders from that, and it is evident that it is his intention to do so, then he is out of order, and either the Speaker of the House himself, or any Member of the House, can call him to order. That being the case, he must proceed in order under the rules and address himself to the subject-matter of debate—the matter under consideration.

Now, the gentleman from Texas and the gentleman from Delaware [Mr. Handy] both, with the utmost frankness, have stated that the gentleman from Delaware, to whom time was yielded, did not intend to discuss the bill before the House for consideration, but that he did propose to introduce extraneous matter; and the Chair is quite sure that both sides of the House will see that it is not a suitable subject for discussion on a bill of this character.

All sides will agree that it is not suitable that we should adopt here a system by which any matter or subject could be discussed in the consideration of a proposition pending before the House rather than the one actually before it.

The early custom of the House, as the Chair has stated, when there was plenty of time and the House had little to do, comparatively, permitted a very great latitude of debate in Committee of the Whole House on the state of the Union in general debate. But the Chair doubts very much if any such latitude was ever allowed, even in the early days, under the five-minute rule of debate, as has been so frequently exercised here during the present session.

The Chair desires to repeat that it is quite sure that both gentlemen, and all gentlemen on both sides of the Chamber, must feel it to be wise to conform to the parliamentary usages and rules of the body, intended to promote the transaction of the public business, namely, that the Members shall address themselves exclusively to the matter under consideration.

5048. On March 1, 1898,[2] the House having under consideration the bill (H. R. 5359) to amend the postal laws relating to second-class matter, Mr. William W. Kitchin, of North Carolina, proceeded to speak concerning current party politics.

After the Speaker had admonished the gentleman from North Carolina that he should confine himself to the subject under discussion, and after some discussion as to the propriety of invoking the rule, the Speaker[1] said:

The Chair hopes the House will listen to him for one moment. In Committee of the Whole House on the state of the Union, in general debate, it has been somewhat the custom—it was much the custom in earlier days—to discuss any question that a Member saw fit to discuss. But gradually that has been very much lessened, and very little has been done in the way of general discussion. That was owing to the general sentiment and feeling of the House; but the practice of discussing general questions in Committee of the Whole House on the state of the Union seems to have been rather on the increase of late, and now it is proposed that when the House itself has one subject before it, another subject shall be discussed.

It seems to me that every Member of the House must realize that the result of that will be confusion and nothing else. There have been one or two instances this session in which, without interference from anybody, the present occupant of the chair not being in the chair at the time, general debate has been allowed to go on, although the temporary chairman, when appealed to, decided against it. It is very evident from the little discussion we have had that it is really necessary and desirable that the public sentiment of the House should reach that point that Members should not discuss in the House anything but the question before them.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fifth Congress, Record, pp. 2343, 2344.

For that is the plain rule of the House; and while the Chair would not undertake to interfere with a gentleman's method of presenting an argument, yet the difference between addressing the House upon the subject that is before it and the making of a political or other discourse upon a subject not before the House is exceedingly obvious, and so far as there being any different kind of treatment to be administered to either side of the House, the Chair will try to take care of that. The first gentleman who came to me was a gentleman on the Republican side of the House, and the Chair told him very distinctly that so far as he was concerned he should call him to order.

On May 27, 1898,[1] the House had under consideration the bill (S. 1424) granting a pension to Richard P. Seltzer, when Mr. Thomas H. Tongue, of Oregon, having been recognized, proceeded to speak generally upon the subject of pensions and the early struggles for possession of the Oregon Territory.

A point of order having been made by Mr. William L. Greene, of Nebraska, that the gentleman from Oregon was not confining himself to the question under debate, the Speaker pro tempore[2] ruled as follows:

The question before the House is the bill S. 1424, an act granting a pension to Richard P. Seltzer. There is no question before the House as to the expediency or inexpediency of general pension legislation. The remarks of the gentleman from Oregon have related so far simply to pension legislation in general, and the Chair feels constrained, in construing the rule as it has been construed this session, to hold that the gentleman is out of order.

Mr. Joseph G. Cannon, of Illinois, having appealed from the decision, the appeal was laid on the table, and the Chair was sustained by a vote of yeas 104, nays 9, present 36.

5049. On a motion to amend, debate in the House is confined to the amendment and may not include the general merits of the proposition.— On January 19, 1810,[3] the House was considering the bill respecting commercial intercourse between the United States and Great Britain and France.

The pending question was a motion to amend by striking out the twelfth section, which section limited the duration of the proposed act.

During the debate Mr. Philip B. Key, of Maryland, who was addressing the Chair, was called to order by Mr. Daniel Sheffey, of Virginia, who alleged that he thought the gentleman from Maryland out of order, because he says his object is to show that there are features in the bill which ought not to be adopted, and consequently that the bill ought not to be unlimited, and therefore the amendment ought not to prevail.

The Speaker[4] decided the range of argument taken by the gentleman from Maryland to be out of the order of debate upon the question under the consideration of the House.

Mr. Key having appealed, the decision of the Chair was sustained, yeas 68, nays 46.

5050. On December 31, 1827,[5] the House was considering a resolution,

Resolved, That the Committee on Manufactures be vested with the power to send for persons and papers.

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[1] Second session Fifty-fifth Congress, Record, p. 5303.

[2] John Dalzell, of Pennsylvania, Speaker pro tempore.

[3] Second session Eleventh Congress, Journal, p. 183 (Gales and Seaton ed.); Annals, p. 1245.

[4] Joseph B. Varnum, of Massachusetts, Speaker.

[5] First session Twentieth Congress, Debates, pp. 866–869.

Mr. Thomas J. Oakley, of New York, proposed an amendment to add the words, "with a view to ascertain and report to the House such facts as may be useful to guide the judgment of this House in relation to a revision of the tariff duties on imported goods."

Mr. Rollin C. Mallary, of Vermont, was proceeding to debate generally the resolution when Mr. Oakley made the point of order that it was not in order to go into the merits of the resolution itself when an amendment to it only was under consideration.

The Speaker [1] held that the remarks of Mr. Mallary were not strictly in order. Later, on January 8, 1828,[2] the Speaker, in a similar case, said that it was not in order, on a question of amendment, to discuss the general merits of the proposition.

5051. On February 8, 1833,[3] the tariff bill was under consideration in the House, having been reported from the Committee of the Whole House on the state of the Union with certain amendments.

The pending question was on the first amendment, relating to the duty on twist and yarn made of wool.

Mr. John Davis, of Massachusetts, having the floor in debate, spoke of the general features of the bill.

The Speaker [1] said:

> The gentleman must confine his remark to the amendment.

5052. It has been held not in order during debate in the House to answer an argument made in Committee of the Whole.—On January 18, 1828,[4] the House was occupied in discussion of the bill "for the relief of Marigny D'Auterive," which had been reported from the Committee of the Whole on a preceding day. The pending question being on a motion to recommit the bill to the Committee on Claims, Mr. John Leeds Kerr, of Maryland, in the course of debate devoted his remarks to a reply to a speech of "the gentleman from New York," in Committee of the Whole.

Mr. Henry R. Storrs, of New York, made the point of order that it was not in order in the House to answer an argument made in Committee of the Whole.

The Speaker [1] sustained the point of order. Later, in the same debate, he called Mr. Joel B. Sutherland, of Pennsylvania, to order for the same thing, admonishing him "that he could not follow the honorable Member into his debate in committee."

5053. It is not in order in debate to refer to a bill not yet reported from a committee.—On March 10, 1828,[5] Mr. John Taliaferro, of Virginia, in debating resolutions relating to deported slaves, referred to a bill before a committee relating to the same subject.

The Speaker [1] held that it was not in order to refer to a bill now under consideration in a committee of the House, and not reported therefrom.

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] Debates, p. 927.

[3] Second session Twenty-second Congress, Debates, p. 1661.

[4] First session Twentieth Congress, Debates, pp. 1049, 1055.

[5] First session Twentieth Congress, Debates, p. 1830.

5054. On January 20, 1810,[1] the House was considering the bill respecting commercial intercourse between the United States and Great Britain and France, the pending question being the motion "that the said bill be recommitted to a select committee."

That motion being under debate Mr. John W. Eppes, of Virginia, who was addressing the Chair, was called to order by Mr. Daniel Sheffey, of Virginia, for asserting that the gentleman from Pennsylvania [Mr. John Smilie] declared that his friends were determined, if he would not go with them in war measures, they would not go with him in any other, which declaration was out of order, and was so declared. In answer to this Mr. Eppes arose and explained that he was a farmer and all his interests were against war.

The Speaker[2] decided that the range of debate taken by the gentleman from Virginia, Mr. Eppes, was out of order.

On an appeal this decision was sustained.

5055. On an appeal from a decision of the Chair it is not in order to debate the merits of the measure under consideration when the question of order was raised.—On January 4, 1836,[3] Mr. John Quincy Adams, of Massachusetts, presented a memorial from sundry inhabitants of his State praying the abolition of slavery in the District of Columbia.

A question of order being raised, the Chair decided that a motion that the petition be not received was debatable. Mr. Adams having appealed from this decision, a discussion arose, in the course of which Mr. Jesse A. Bynum, of North Carolina, declared that whenever the rights of his constituents to their property was "invaded, it would be settled, not here, but on the battlefield."

The Speaker[4] reminded Mr. Bynum that he could not debate the merits of the main question on an appeal, and must confine himself to the motion before the House.

5056. While the Speakers have entertained appeals from their decisions as to irrelevancy in debate they have held that such appeals were not debatable.—On August 11, 1842,[5] Mr. W. W. Irwin, of Pennsylvania, asked to be excused from serving on the select committee appointed on the Message of the President returning with his objections the bill (H. R. 472) "to provide revenue from imports," etc. Mr. Irwin was giving reasons why he should be excused, saying that the Constitution provided in express terms the mode in which either House of Congress should dispose of the objections made by the Executive to a bill returned by him to it; and considering that the injunction of the Constitution had already been complied with—namely, by spreading those objections on the Journal and making them a matter of record—he believed that neither House of Congress had any power, by any rule or regulation of its own, to depart from the mode of procedure prescribed by that instrument. Therefore he considered that the reference of the message was unconstitutional.

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[1] Second session Eleventh Congress, Journal, p. 188 (Gales & Seaton ed.).

[2] Joseph B. Varnum, of Massachusetts, Speaker.

[3] First session Twenty-fourth Congress, Debates, p. 2131.

[4] James K. Polk, of Tennessee, Speaker.

[5] Second session Twenty-seventh Congress, Journal, p. 1265; Globe, p. 882.

The Speaker[1] here called Mr. Irwin to order for irrelevancy.

Mr. Irwin appealed to the House from the decision of the Speaker.

This appeal was laid on the table, yeas 78, nays 74.

5057. On January 21, 1851,[2] the House was considering the bill (S. 12) "allowing exchanges of and granting additional school lands in the several States which contain public lands, and for other purposes," the pending question being on a motion to recommit the bill with instructions to amend so as to give an equal share of the public lands to all the schools in the United States.

Mr. Richard K. Meade, of Virginia, had the floor in debate, when Mr. William Strong, of Pennsylvania, submitted as a point of order that it was not in order for the gentleman from Virginia, on the pending motion, to discuss the general policy of the Government in reference to the disposition of the public lands.

The Speaker[3] decided that it was not competent for the gentleman from Virginia to take so wide a range, and that in doing so he was clearly out of order. He must confine his remarks to the question of the disposition of the public lands in reference to the public schools.

Mr. Meade having appealed, the decision of the Chair was sustained.

5058. On February 1, 1847,[4] the House was considering the bill (H. R. 637) "to regulate the carriage of passengers in merchant vessels," when Mr. Lewis C. Levin, of Pennsylvania, who had the floor, was called to order by Mr. George W. Hopkins, of Virginia, for irrelevancy.

The Speaker pro tempore decided that Mr. Levin was not in order in discussing the subject of the late election while this bill was under consideration.

Mr. Levin called on Mr. Hopkins to reduce the objectionable words to writing.

The Speaker pro tempore[5] decided that Mr. Levin could not, under the rules of the House, require Mr. Hopkins to reduce the objectionable words to writing.

Mr. Robert C. Schenck, of Ohio, having appealed, the decision of the Chair was sustained.

5059. On January 4, 1842,[6] the House was considering a motion to reconsider the vote whereby the appointment of three select committees had been authorized, when Mr. Thomas D. Arnold, of Tennessee, proceeded to make a reply to a Member who had charged in debate that some of the constituents of Mr. Brown could not read or write.

Mr. Samuel S. Bowne, of New York, called Mr. Arnold to order for not discussing the question before the House.

The Speaker[1] said that strictly the debate was not in order. Nor had much of the debate on the question been in order. But as the debate had widened out by degrees, he did not feel at liberty to arrest it now. Therefore he should allow the gentleman from Tennessee to proceed.

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[1] John White, of Kentucky, Speaker.

[2] Second session Thirty-first Congress, Journal, p. 171; Globe, p. 292.

[3] Howell Cobb, of Georgia, Speaker.

[4] Second session Twenty-ninth Congress, Journal, pp. 289, 290.

[5] Howell Cobb, of Georgia, Speaker pro tempore.

[6] Second session Twenty-seventh Congress, Journal, pp. 120, 123; Globe, pp. 92, 95.

From this decision Mr. Bowne appealed, and on the succeeding day the decision of the Speaker was reversed, yeas 67, nays 89.

During the consideration of this appeal on January 5, the Speaker decided that appeals on questions of irrelevancy and personality were not debatable.

5060. On August 11, 1842,[1] Mr. Speaker John White ruled that a Member was not confining himself to the subject under debate. The Member appealed, and attempted to debate the appeal, but the Speaker held that the appeal was not debatable.

5061. On September 4, 1850,[2] Mr. Speaker Cobb held:

When a Member is called to order in debate, all questions arising out of the point of order, whether upon appeal or otherwise, must be decided without debate.

5062. On January 15, 1816,[3] Mr. John Randolph, of Virginia, was called to order by the Speaker for not confining himself, in his remarks, to the question under debate.

From which an appeal was taken to the House by Mr. Alexander C. Hanson, of Maryland.

And on the question the decision of the Chair was sustained, yeas 79, nays 59.[4]

5063. On March 3, 1849,[5] a Member being called to order for irrelevancy, Mr. Speaker Winthrop decided that he was in order and might proceed. An appeal was taken, and the Speaker was overruled, and thus the Member was not allowed to proceed.

5064. Personal explanations are allowed only by unanimous consent.— On April 27, 1846,[6] Mr. C. J. Ingersoll, of Pennsylvania, rose and asked leave to make a brief personal explanation. Mr. Hugh A. Haralson, of Georgia, said that if the application related to personal matters between the gentleman from Pennsylvania, Mr. Ingersoll, and the gentleman from Massachusetts, Mr. Webster,[7] he should object. The time of the country was too precious to be wasted in personal criminations and recriminations.

Mr. Ingersoll then proposed a motion to suspend the rules to enable him to make the statement, whereupon Mr. Thomas J. Henley, of Indiana, asked the Speaker what rule it was necessary to suspend in order that a gentleman might make a personal explanation.

The Speaker[8] said that there was no such thing in matters of legislation as a personal explanation. Such things were constantly tolerated by unanimous consent. No personal explanation could be made within any strict technical rule of the House, and, if tolerated at all, it must be either by unanimous consent or by a suspension of all rules relating to the order of business.

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[1] Second session Twenty-seventh Congress, Globe, p. 882.

[2] First session Thirty-first Congress, Globe, p. 1747.

[3] First session Fourteenth Congress, Journal, p. 165 (Davis ed.); Annals, pp. 677, 678.

[4] Instance of an appeal from a decision of the Speaker as to whether or not a Member was taking too wide a latitude in debate. (January 28, 1828, first session Twentieth Congress, Journal, p. 1037; Debates, p. 1222.)

[5] Second session Thirtieth Congress, Journal, p. 645.

[6] First session Twenty-ninth Congress, Globe, p. 729.

[7] Daniel Webster was at this time a Senator.

[8] John W. Davis, of Indiana, Speaker.

5065. Unanimous consent having been given for a personal explanation, the Member may not be interrupted by a single objection.—On April 20, 1864,[1] Mr. Francis W. Kellogg, of Michigan, moved to reconsider the vote by which the Raritan and Delaware Railroad bill was postponed for two weeks. Over this motion a desultory debate arose as to whether an arrangement made did not require that the bill should not be considered before the expiration of the two weeks. A motion was made for a call of the House, but was negatived. Mr. Charles A. Eldridge, of Wisconsin, objected to further debate. Air. Henry L. Dawes, of Massachusetts, inquired whether, after unanimous consent had been given, a discussion could be stopped.

The Speaker[2] said:

When a Member has unanimous consent given to make a speech or personal explanation he can not be stopped by a single objection. But when, in the absence of a quorum, a desultory debate is progressing by general consent, any Member can arrest it by demanding the enforcement of the rules.

5066. A Member having the floor to make a personal explanation may not be interrupted while he keeps within parliamentary bounds.—On February 28, 1867,[3] Mr. Francis C. Le Blond, having obtained unanimous consent to make a personal explanation, proceeded to comment on the recent action of certain State legislatures in regard to a pending constitutional amendment.

Mr. Hamilton Ward, of New York, raised the point of order that the gentleman from Ohio [Mr. Le Blond] had been granted leave to make a personal explanation.

The Speaker[2] said:

As the point of order has been raised, although the gentleman from Ohio [Mr. Le Blond] has taken his seat, the Chair will rule upon the point of order. When the House grants unanimous consent to any Member to make a personal explanation, the rulings of all Speakers, whose decisions the Chair has examined, is that the Chair can not interrupt the Member while he keeps within parliamentary practice.

5067. In the earlier practice of the House a Member having the floor for a personal explanation was allowed the largest latitude in debate.— On February 11, 1846,[4] Mr. Thomas Butler King, of Georgia, asked and obtained the unanimous consent of the House to make an explanation, personal to himself, and while proceeding with such explanation, Mr. George Rathbun, of New York, objected to his proceeding on the ground that his remarks were taking a wider range than leave to make a mere personal explanation allowed.

The Speaker[5] then put the question, "Shall Mr. King have leave to proceed?" and it was decided in the affirmative, yeas 86, nays 63.

Mr. King then proceeded and concluded his remarks.

5068. On April 27, 1846,[6] the House, by vote, suspended the rules to enable Mr. George Ashmun, of Massachusetts, to reply to the remarks of Mr. Charles J.

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[1] Globe, first session Thirty-eighth Congress, p. 1762.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Congressional Globe, second session Thirty-ninth Congress, p. 1651.

[4] First session Twenty-ninth Congress, Journal, p. 382; Globe, pp. 357, 358.

[5] JohnW. Davis, of Indiana, Speaker.

[6] First session Twenty-ninth Congress, Journal, pp. 720, 721; Globe, p. 732.

Ingersoll, of Pennsylvania, who had criticised the official acts of Daniel Webster as Secretary of State.

Mr. Ashmun proceeded with his reply, and was remarking upon the course of Mr. Ingersoll when he held the office of district attorney of the United States in the eastern district of Pennsylvania.

Mr. George W. Hopkins, of Virginia, raised the question of order that it was not in order, under the leave granted to Mr. Ashmun, to go into a history of the course of Mr. Ingersoll while district attorney, that having no relation to the remarks of Mr. Ingersoll, to which he was replying.

The Speaker[1] decided Mr. Ashmun to be in order, there being no particular subject under debate, and therefore the question of irrelevancy of remarks could not apply.

Mr. Hopkins having appealed, the appeal was laid on the table, yeas 90, nays 67.

5069. On February 2, 1848,[2] Mr. Robert Barnwell Rhett, of South Carolina, by the unanimous consent of the House, proceeded to make an explanation personal to himself.

While he was so doing, Mr. Caleb B. Smith, of Indiana, raised the question of order, that the House, by unanimous consent, permitted the gentleman from South Carolina to make a personal explanation, and that he, abusing the courtesy of the House, was reaffirming his former positions, and supporting those positions by arguments; whereas a personal explanation could alone consist in correcting a misstatement of fact, which impute motives, or argument, or positions to a gentleman which, not being corrected, would be injurious to his standing as a gentleman or his character as a public man.

The Speaker[3] said that the gentleman was speaking by the unanimous consent of the House; there was no question before the House, and the remarks of the gentleman could hardly be objected to on the score of irrelevancy. The gentleman from South Carolina had received permission to say whatever he might deem necessary to an explanation of his personal course; and as long as he confined himself to the general subject of the charges which had been brought against him, and avoided personalities, the Chair could perceive no grounds for arresting his remarks. Permissions to make personal explanations had always been subject to abuse, and the only remedy would be for the House to make some specific rule in regard to them. It had been uniformly decided by his predecessors that the Chair could not undertake to decide as to what any gentleman might think necessary to a personal explanation. The Speaker, therefore, overruled the point of order.

Mr. Smith having appealed, the appeal was laid on the table.

5070. On December 15, 1851,[4] on motion of Mr. Fayette McMullin, of Virginia, the rules having been suspended for that purpose, leave was granted to Mr. William R. Smith, of Alabama, to make a personal explanation.

Mr. Smith was proceeding with his remarks when Mr. Charles Skelton, of New Jersey, made the point of order that it was not competent for the gentleman from

[1] John W. Davis, of Indiana, Speaker.

[2] First session Thirtieth Congress, Journal, p. 343; Globe, pp. 285, 286.

[3] Robert C. Winthrop, of Massachusetts, Speaker.

[4] First session Thirty-second Congress, Journal, p. 91; Globe, pp. 97, 98.

Alabama to discuss the general policy of the Government in regard to Kossuth. The House had only given him the privilege of making a personal explanation, and it was not in order for him to discuss such matters, especially when the previous question deprived other Members of an opportunity to answer.

The Speaker[1] overruled the point of order on the ground that under the uniform practice of the House, whenever a Member was allowed to make a personal explanation, much latitude was allowed. It was not in the power of the Chair to anticipate the application which the gentleman from Alabama might make of the course of remarks he was now pursuing.

Mr. David K. Cartter, of Ohio, having appealed, the appeal was laid on the table.

5071. In 1861 the House, overruling the Speaker, established the new rule that a Member making a personal explanation should confine his remarks to that which was personal to himself.—On July 18, 1861,[2] the House was considering a report from the Committee on the Judiciary in relation to charges that Hon. Henry May, of Maryland, a Member of the House, had been holding intercourse and correspondence with persons in armed rebellion against the Government of the United States.

Leave having been granted to Mr. May to make a personal explanation, Mr. May was proceeding with his remarks, when Mr. Thaddeus Stevens, of Pennsylvania, called him to order on the ground that he was abusing the privilege granted him by the House.

The Speaker[3] decided that under the usage, the House having granted unanimous consent for a personal explanation, he had no power to control the line of remarks to be pursued by Mr. May.

Mr. Stevens having appealed from this decision, Mr. Clement L. Vallandigham, of Ohio, moved that the appeal be laid on the table. This motion was decided in the negative, yeas 53, nays 82.

Then, the question being taken, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the negative.

Then, on motion of Mr. Henry L. Dawes, of Massachusetts, it was

Ordered, That leave be granted to Mr. May to proceed in order.

5072. On March 15, 1866,[4] Mr. Green Clay Smith, of Kentucky, was addressing the House, having obtained the floor for a personal explanation.

A question arose as to whether or not Mr. Smith was confining himself to the subject, and Mr. Nathaniel P. Banks, of Massachusetts, expressed the opinion that leave for a personal explanation gave the Member having it freedom to discuss whatever he considered necessary to his explanation.

The Speaker[5] said:

The Chair will state, as the gentleman from Massachusetts has alluded to the subject, that the present occupant of the chair since he has filled the position, has always held that in a personal explana-

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[1] Linn Boyd, of Kentucky, Speaker.

[2] First session Thirty-seventh Congress, Journal, pp. 105, 106; Globe, pp. 196, 197.

[3] Galusha A. Grow, of Pennsylvania, Speaker.

[4] First session Thirty-ninth Congress, Globe, p. 1423.

[5] Schuyler Colfax, of Indiana, Speaker.

tion a gentleman may state any ground on which he considers himself aggrieved, connecting his remarks in some way with the subject, directly or indirectly. The Chair thinks that the gentleman from Kentucky, in vindicating himself against what he deems an unjust attack upon him in a newspaper article for having introduced a resolution to admit upon this floor a gentleman claiming a seat as a Representative, has the right to vindicate himself by reference both to the gentleman to whom the resolution referred and also to his own position.

5073. On March 13, 1879,[1] Mr. Speaker Randall sustained the principle that a Member having the floor for a personal explanation must in his remarks confine himself to that which is personal to himself.

5074. A Member in making a personal explanation has the largest latitude, but must confine himself to the point on which he has been criticized, and may not yield time for debate to another.—On January 30, 1865,[2] Mr. John F. Farnsworth, of Illinois, asked unanimous consent to make a personal explanation. Leave having been granted, he proceeded to have read an article from a newspaper commenting upon his attitude on the duty on paper, and then continued with his personal explanation.

After a time Mr. Robert Mallory, of Kentucky, made the point of order that the gentleman was not making a personal explanation, but was arguing at length the tariff question.

The Speaker[3] said:

The Chair, in deciding the point of order, would state that if the gentleman from Illinois had submitted this matter as a question of privilege, the Chair would have ruled that this debate was not in order, as the gentleman, in proceeding in this line of remarks, would be debating a proposition which the House had determined, by sustaining the previous question, should not be debated. It has always been held that when the House grants unanimous consent to a gentleman to make a personal explanation the largest latitude of debate is given. The Chair, therefore, can not attempt to control the line of the gentleman's remarks so long as he confines himself to the point upon which he has been criticized and in regard to which he has asked consent to make a personal explanation. The House having, by unanimous consent, granted him that privilege, the Chair can not arrest the gentleman's remarks.

Later, in the course of his remarks, Mr. Farnsworth proposed to yield to Mr. Spalding, who asked time to make some remarks.

The Speaker said:

Permission to make a personal explanation is not a transferable right, as is a transfer of the floor under the hour rule for general debate.

5075. While a Member rising to a question of personal privilege may be allowed some latitude in developing the case, yet the rule requiring the Member to confine himself to the subject holds in this as in other cases.— On August 26, 1890,[4] Mr. Joseph G. Cannon, of Illinois, submitted a preamble and resolution reciting that certain Members, specified by name, had not answered to their names, and that certain others were absent, thus interrupting business for want of a quorum, and directing the Sergeant-at-Arms to notify absent Members to return.

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[1] First session Forty-sixth Congress, Record, p. 1297.

[2] Congressional Globe, second session Thirty-eighth Congress, p. 503.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] First session Fifty-first Congress, Journal, p. 992; Record, pp. 9189, 9191.

Mr. William H. Crain, of Texas, claiming the floor on a question of personal privilege, called to attention that he was among those whose names were on the list, and proceeded to speak of his responsibility to his constituents alone for his acts.

Mr. David B. Henderson, of Iowa, made the point of order that Mr. Crain had not presented a case of personal privilege.

The Speaker pro tempore [1] held:

When a Member of the House rises to a question of privilege great latitude is allowed to him in developing the question of privilege as he understands it, and the Chair would not undertake at this point of time to say that the gentleman from Texas is not in order, he asserting that there is an implied censure upon himself in the terms of the pending resolution.

A little later, Mr. Charles H. Turner, of New York, having also claimed the floor on a question of personal privilege, was discussing the right of the majority of the Members to rule, when Mr. Benjamin Butterworth, of Ohio, made the point of order that he was not addressing the House on the question of privilege.

The Speaker pro tempore said:

The Chair sustains the point of order, and the gentleman will confine himself to the question of personal privilege.

5076. On September 4, 1890,[2] Mr. Amos J. Cummings, of New York, claimed the floor on a question of personal privilege, and was proceeding with criticisms of the Committee on Rules, when Mr. Daniel Kerr, of Iowa, and Mr. Jonathan H. Rowell, of Illinois, made the points of order that Mr. Cummings was not confining himself to the question on which he claimed the floor, and that no question of personal privilege had been presented or was involved.

The Speaker pro tempore [3] sustained the points of order and stated that Mr. Cummings must proceed in order under the rules.

5077. In presenting a case of personal privilege, arising out of charges made against him, the Member must confine himself to the charges.—On May 19, 1898,[4] Mr. Thomas H. Tongue, of Oregon, rising to a question of personal privilege, presented a circular, purporting to be a certified extract from the Congressional Record, making certain charges against himself. While Mr. Tongue was speaking Mr. Charles F. Cochran, of Missouri, rose to a point of order.

The Speaker [5] said:

The gentleman must confine himself to the charges made against him.

5078. A Member making a statement in a matter of personal privilege should confine his remarks to the matter which concerns himself personally.—On April 12, 1892,[6] Mr. George W. Cooper, of Indiana, as a matter of personal privilege, announced that in the course of the pending investigation before a committee of the House charges had been made by a witness reflecting on

[1] Lewis E. Payson, of Illinois, Speaker pro tempore.

[2] First session Fifty-first Congress, Journal, p. 1013; Record, p. 9676.

[3] Julius C. Burrows, of Michigan, Speaker pro tempore.

[4] Second session Fifty-fifth Congress, Record, p. 5056.

[5] Thomas B. Reed, of Maine, Speaker.

[6] First session Fifty-second Congress, Journal, p. 142; Record, p. 3213.

himself, which charges had been extensively published, and thereupon proceeded to make a statement in reply to the charges.

During the remarks of Mr. Cooper Mr. Julius C. Burrows, of Michigan, Mr. John Lind, of Minnesota, and Mr. Albert J. Hopkins, of Illinois, presented the question of order, whether it was in order to make a statement severely reflecting on others by way of a personal explanation and as a matter of privilege.

The Speaker,[1] in response to the question of order, stated that it was difficult to determine precisely what was or what was not in order on a question of this character, but admonished Mr. Cooper to confine his remarks to the matter which concerned himself personally.

5079. As part of a personal explanation relating to matter excluded from the Congressional Record as out of order a Member may read the matter, subject, however, to a point of order if the reading should develop anything in violation of the rules of debate.—On August 5, 1886,[2] Mr. Charles S. Baker, of New York, having obtained unanimous consent to make a personal explanation, proceeded with his remarks and asked to have read certain resolutions which had been offered on a previous occasion and had been denied insertion in the Congressional Record, objection having been made that they were "indecent and disrespectful." Mr. Baker said that it was far from his purpose to propose to the House anything disrespectful or lacking in decency, and therefore proposed to have the resolutions read as part of his remarks, in order that Members might know whether or not the objections had been justified.

Mr. William M. Springer, of Illinois, made the point of order that, the House having previously refused to receive this resolution or allow it to be printed in the Record, it was not in order now, under the form of a personal explanation, to insert matter which the House had already excluded from the Record.

The Speaker[3] said:

> The gentleman from Illinois, [Mr. Springer] will remember that during the Forty-eighth Congress this precise question arose in the case of a matter presented by Mr. White, of Kentucky. The paper was not printed in the Record, and afterwards the gentleman from Kentucky rose to a personal explanation and claimed the right to read as a part of his remarks the matter which the House had refused to allow to go into the Record, and after considerable discussion the Chair decided that the gentleman had the right to read it as a part of his remarks. Of course if the matter itself is personal, is offensive, is a violation of the privileges of the House, a point of order can be made against it as the reading proceeds, just as the point of order can be made against remarks of the same character while they are being made.

The resolutions, having been read, were printed in the Record:

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Forty-ninth Congress, Record, pp. 8031, 8032; Journal, pp. 2547, 2548.

[3] John G. Carlisle, of Kentucky, Speaker.

Chapter CXIII.

REFERENCES IN DEBATE TO COMMITTEES, THE PRESIDENT OR THE OTHER HOUSE.

1. **Proceedings of committee not to be discussed unless reported. Sections 5080–5085.**[1]
2. **Discussion as to the President. Sections 5086–5094.**
3. **References to proceedings and debate in the other House. Sections 5095–5106.**[2]
4. **Quotations from record of debate in the other House. Sections 5107–5113.**
5. **Proper and improper references to the other House. Sections 5114–5120.**[3]
6. **Expressions offensive to Members of the other House. Sections 5121–5130.**

5080. It is not in order in debate to refer to the proceedings of a committee unless the committee have formally reported their proceedings to the House.—On February 19, 1840,[4] the House was considering the report of the Committee on Elections in the New Jersey contested cases, when Mr. David Petrikin, of Pennsylvania, submitted the following as a question of order:

> That neither the chairman of a committee, nor any other member of the committee or of the House, can be permitted to allude, on the floor, to anything which has taken place in committee, or in any way relate, in debate, what was done by said committee or by the individual members of that committee, except it is done by a written report made to the House, by authority of a majority of the committee.[5]

The Chair decided generally that the point of order was well taken.

The debate proceeding, Mr. Millard Fillmore, of New York, made allusions to the proceedings in the Committee on Elections, and, while reading a resolution which had been adopted in that committee, was called to order by the Speaker[6] on the ground that a Member had no right to read papers containing the proceedings of the committee (not reported by the committee), although the amendment under consideration proposed to print their proceedings.

Mr. Fillmore then took his seat.

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[1] Instance wherein the proceedings of a committee were reported and discussed. (Sec. 817 of Vol. 1.)

[2] See also section 6406 of this volume.

[3] See also section 7017 of this volume.

[4] First session Twenty-sixth Congress, Journal, pp. 418, 423; Globe, p. 213.

[5] Committees have frequently submitted the journals of their proceedings as parts of their reports. A notable instance is afforded in the report of the committee which investigated the United States Bank, and later the Joint Committee on the Conduct of the War. (See secs. 1731–1733 of Vol. III of this work.)

[6] Robert M. T. Hunter, of Virginia, Speaker.

Mr. John Quincy Adams, of Massachusetts, appealed from the decision of the Chair, in its calling of Mr. Fillmore to order, on the ground that the proposition of the Committee on Elections to authorize that committee to have papers printed necessarily brought all such papers before the House. Furthermore, any Member of the House had the right to call for the reading of papers which it was proposed to print. The rules were already too rigid for the rights of Members.

Mr. Petrikin maintained that a committee was a distinct body of individuals and that it was entirely out of order to read papers and arraign its proceedings before the House. Mr. John Pope, of Kentucky, thought they should not discuss any papers and proceedings of a committee until they were reported to the House. Mr. Linn Banks,[1] of Virginia, spoke of the importance of the precedent. He favored preserving the rights of the minority, but this case involved rather the integrity of committee proceedings. If it were allowable to go into committee and drag forth their records to be commented on in the House, jealousy would be engendered and the usefulness of committees impaired. The consequences of reversing the settled practice of the House should be looked to rather than the particular case before them.

The decision of the Chair was sustained by a vote of 98 yeas to 84 nays.

5081. On January 23, 1850,[2] the House was considering a resolution reported from the Committee on Elections, authorizing the taking of testimony by the parties to the contest from the First Congressional district of Iowa.

During the debate Mr. George Ashmun, of Massachusetts, and William S. Ashe, of North Carolina, were proceeding to discuss and refer to certain matters which had occurred before the Committee on Elections, but which had not been reported upon to the House.

Mr. Frederick P. Stanton, of Tennessee, raised the point of order that it was not in order in the House to refer to matters that had transpired before the committee and not been reported upon to the House.

The Speaker[3] sustained the point of order, and decided that such reference was not in order except when the committee made its report. It had always been regarded as improper in the House to refer to proceedings that had taken place in committee.

Mr. Robert C. Schenck, of Ohio, having appealed, the decision of the Chair was sustained.

There being still further discussion as to whether or not the committee had in its possession certain official returns, the Speaker interposed and said that the debate showed the correctness of the rule, which had always been recognized, that matters which had occurred before a committee ought not to be referred to in the House until these matters had been reported upon and came regularly before the House.

5082. On May 26, 1906,[4] the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union,

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[1] Mr. Banks, before his election to Congress, had served twenty successive years as speaker of the Virginia house of delegates. His biographer says: "An office for which he was so peculiarly qualified that he was selected to fill it in all the mutations of party."

[2] First session Thirty-first Congress, Journal, p. 393; Globe, p. 214.

[3] Howell Cobb, of Georgia, Speaker.

[4] First session Fifty-ninth Congress, Record, p. 7468.

when Mr. William W. Rucker, of Missouri, having the floor in general debate, spoke as follows in regard to proceedings as to a certain bill in the Committee on Election of President, Vice-President, and Representatives in Congress:

Believing that H.R. 19078 would give practical and substantial publicity and therefore merit public approval, I sought earnestly to secure its favorable report. When the committee agreed to take a final vote on this bill at noon on May 12, I confess I was elated. At the time fixed, Mr. Watkins, one of the minority members, moved "that following the special order heretofore made, the hour of 12 o'clock meridian having arrived, the committee report favorably H. R. 19078 as amended."

The roll was called, and those voting in favor of reporting the bill, H. R. 19078 were Messrs. Rucker, Gillespie, Hardwick, Ellerbe, and Watkins—5.

Those voting in the negative were Messrs. Gaines, of West Virginia, Sulloway, Hermann, Norris, Brooks, of Colorado, Dunwell, Campbell, of Ohio, and Burke, of Pennsylvania—8.

Mr. Marlin E. Olmsted, of Pennsylvania, raised a question of order as to the propriety of relating the proceedings of the committee on the floor.

The Chairman,[1] referring to section 713 of Parliamentary Precedents, held that it was not in order in the House to refer to the proceedings of a committee, or to read from the records thereof, except by the authority of the committee.

5083. On February 25, 1903,[2] the House was considering the conference report on the bill (S. 4825) to provide for a union railroad station in the District of Columbia, etc., when Mr. Thetus W. Sims, of Tennessee, proceeded in debate to speak of the actions of members in the District of Columbia Committee when the bill was pending there.

Mr. Marlin E. Olmsted, of Pennsylvania, raised a question of order.

The Speaker[3] said:

The point of order is well taken, and there never was a better illustration of it than we have now. The Chair is not speaking alone of the gentleman, but this morning we have had evidence of that very difficulty. Allusion has been made to what occurred in the committee. That is something with which the House has nothing to do. It has to do only with the results.

On February 26, 1903,[4] during consideration of the contested-election case of Wagoner *v.* Butler, Mr. Marlin E. Olmsted said in debate:

Now, when we came to the meeting of the committee, the minority sat with us until the day was fixed for the final disposition of the case by the committee. The ranking member of the minority, Monday evening of this week, asked me my views, and I told him very frankly that I had concluded, speaking for myself, as to what result ought to be brought about, but could not say until the committee met what the other members would do. The minority members of the committee absented themselves from the meeting held the next morning to consider the case judicially. Not only that, but one of them, by an attempt to pair with a Republican member, sought to break a quorum.

Mr. Charles L. Bartlett, of Georgia, having raised a question of order, the Speaker[3] held that the reference was not in order.

5084. Even where the action of a committee is called in question its records may not be produced in the House.—On December 18, 1890,[5] Mr.

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[1] Charles Curtis, of Kansas, Chairman.

[2] Second session Fifty-seventh Congress, Record, p. 2655.

[3] David B. Henderson, of Iowa, Speaker.

[4] Record, p. 2716.

[5] Second session Fifty-first Congress, Journal, p. 67; Record, p. 647.

John M. Farquhar, of New York, moved, under section 5 of Rule XXIV,[1] that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill of the Senate (S. 3738) to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations and the substitute therefor offered by the Committee on Merchant Marine and Fisheries.

Mr. William M. Springer, of Illinois, made the point of order that the committee had not authorized this report to be considered at this time or authorized this motion to be made.

After debate, Mr. Farquhar having proposed to read the minutes of the Committee on Merchant Marine and Fisheries with respect to its action on the bill, the Speaker[2] held that it was not in order for the minutes of a committee to be produced in the House and made public, but further held that Mr. Farquhar, as the chairman or the authorized organ of the committee, was at liberty to make a statement of fact in regard to any action taken by the committee in regard to the bill.

Mr. Farquhar thereupon made a statement to the effect that the committee had authorized him to ask for a special order for the consideration of the bill.

The Speaker ruled, upon the statement so made, that Mr. Farquhar had not been authorized to make the motion.

5085. On January 23, 1891,[3] the House was considering a question of privilege raised by Mr. George W. Cooper, of Indiana, as to the alleged failure of the Committee on Charges against the Commissioner of Pensions to report, and in the course of his remarks Mr. Cooper stated that the Committee, on the 11th of September last, had directed its chairman to report to the House for proper reference under the rules, which instructions had not been complied with. This fact he proposed to establish by reading from the minutes of the committee.

The Speaker[2] ruled that it was not in order to read the minutes or quote from the record of the committee.

5086. The law of Parliament, evidently inapplicable to the House of Representatives, forbids the Member from speaking "irreverently or seditiously against the King."—Chapter XVII of Jefferson's Manual provides:

> In Parliament to speak irreverently or seditiously against the King is against order.[4] (Smyth's Comw., L. 2, c. 3; 2 Hats., 170.)

5087. It is in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that

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[1] See section 3134 of Vol. IV of this work.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 174; Record, pp. 1787, 1788.

[4] This is given merely to show the usage of Parliament and is evidently inapplicable in a government like that of the United States, wherein the Congress is an independent, coordinate power in the Government and not even in theory dependent in any degree on the Executive will. While under the English constitution the Parliament is really the governing power of the nation, yet the House of Commons is summoned on the writ of the King, and the speaker after his election goes through the form of receiving the royal approbation. The Member of the House of Representatives is evidently restrained only by the ordinary rules of decorum in debate and his own sense of propriety in his references to the President of the United States.

such references be relevant to the subject under discussion and otherwise conformable to the rules of the House.—On January 5, 1809,[1] the House was considering the bill "to enforce and make more effectual an act entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto,'" During the debate Mr. John G. Jackson, of Virginia, suggested that Mr. James Elliot, of Vermont, in debating the merits of the bill had departed from decorum and order by introducing into the discussion insinuations against the Executive of the United States for not communicating to this House, in due time, certain information alleged to have been received from our minister plenipotentiary at Paris, antecedent to March 22, 1808.

The Speaker[2] thereupon decided that the said insinuations were not in order and irrelevant to the question under consideration of the House.

Mr. Barent Gardenier, of New York, having appealed, the decision of the Chair was sustained, yeas 71, nays 28.

5088. On December 7, 1809, Mr. Ezekiel Bacon, of Massachusetts, proposed a rule against a Member using "opprobrious or vilifying language with respect to any Member, or call into question the integrity of his motives, or those of either branch of the Government in relation to the discharge of his official duties, except on a motion for impeachment, or for other interposition of the constitutional power of this House—or apply to either indecorous or reproachful expressions—it shall be deemed a breach of the orders of this House."

This rule was not adopted.[3]

5089. On February 5, 1827,[4] on a motion to refer a message of the President, Mr. John Forsyth, of Georgia, said that he could not, as a Representative of Georgia, consent to sit and quietly hear the charges brought forward in this communication against the authorities of that State. They had done nothing which violated the Constitution of their country. He would say this in the face of the Executive.

A Member having called Mr. Forsyth to order, the Speaker[5] decided that he was not out of order.

5090. On July 5, 1832,[6] the House was considering a joint resolution from the Senate authorizing a request that the President of the United States appoint a public fast day.

In the course of the debate, Mr. Tristam Burges, of Rhode Island, referring to a letter from the President of the United States relating to the appointment of a fast day, which had been read in a previous debate on this resolution and which had been published in the newspapers, was called to order for such reference by Mr. Lewis Williams, of North Carolina. Mr. Williams urged that it was not consistent with the usages of the House to refer to any opinion of the President, unless officially communicated with a view to influence the action of the House.

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[1] Second session Tenth Congress, Journal, p. 445 (Gales and Seaton ed.); Annals, p. 994.

[2] Joseph B. Varnum, of Massachusetts, Speaker.

[3] Second session Eleventh Congress, Journal, pp. 121, 124 (Gales and Seaton ed.); Annal, pp. 702, 706.

[4] Second session Nineteenth Congress, Debates, p. 935.

[5] John W. Taylor, of New York, Speaker.

[6] First session Twenty-second Congress, Journal, p. 1095; Debates, p. 3866.

The Speaker pro tempore[1] decided that he could not so limit the debate as to exclude such reference as the gentleman from Rhode Island had made to the letter of the President, which had appeared in the public papers. He had often heard letters quoted in the House over the signature of individuals, and the practice had never been declared out of order.

Mr. John Quincy Adams, of Massachusetts, appealed from this decision.

On July 9,[2] when the question was resumed, the Speaker,[3] in stating the appeal, said that his own opinion concurred with that of the gentleman occupying the chair in his absence. Had the question of order been raised when the letter was first introduced, he should probably have allowed it to be read. As it was the question of order seemed to have been raised too late.

In the debate on the appeal Mr. Adams characterized as extremely dangerous the practice of allowing a letter from the President[4] to be read for the purpose of influencing the decision of the House on a pending question. The practice of the British Parliament was firmly established to the contrary. The President was in constant official intercourse with the House; but it should not be permitted to use his private letters, conversations, rumors of his opinions, to influence the House. Mr. William Stanberry, of Ohio, recalled a precedent of a former Congress, when Mr. Speaker Macon had called Mr. Burwell to order for using the name of the President.

On the other hand, it was urged by Mr. Richard Coulter, of Pennsylvania, that there was a great distinction between a King of England, from his position naturally antagonistic to the Commons, and a President of the United States, an officer of the people.

Mr. Adams finally withdrew his appeal.

5091. On December 9, 1868,[5] during the discussion of the message of the President, Mr. Elihu B. Washburne, of Illinois, said of the message:

> I wish to take the earliest opportunity to enter my emphatic protest against it, and to denounce it as a disgrace to the country and to the Chief Magistrate who has sent this message.

Mr. Fernando Wood, of New York, made the point of order that such reference to the message was unparliamentary.

The Speaker[6] said:

> The gentleman from New York raises the point that it is not in order for the gentleman from Illinois to characterize the message of the President of the United States in the language he has. This being a country of free speech, the Chair thinks that Members who have been elected to represent the people of the United States have the right to criticize the official conduct of those who are clothed with public trust, provided that it is done in language not indecorous or personally offensive—a right exercised in this message in referring to Congress.

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[1] James K. Polk, of Tennessee, Speaker pro tempore.

[2] Journal, p. 1110; Debates, pp. 3867–3878.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] This letter was in reply to an application for the appointment of a fast day made by the Synod of the Reformed Dutch Church.

[5] Third session Fortieth Congress, Globe, pp. 33, 34.

[6] Schuyler Colfax, of Indiana, Speaker.

5092. A reference in debate to the probable action of the President of the United States was held to involve no breach of order.—On March 28, 1902,[1] while the Committee of the Whole House was considering the bill (H. R. 3379) "to correct the military record of Calvin A. Rice," Mr. James R. Mann, of Illinois, said in debate:

> To say that the House can not control an officer or cause to be removed a charge of desertion or correct the military record of one of its old soldiers. The only way that Congress can direct it is by the enactment of a law, and you can not enact a law without giving the President the right to sign the bill or to veto it, and the President's right is a coordinate right with that of Congress. He has the same right to veto that we have to propose, and when we know that he will reject a certain form it seems to me the policy of wisdom and proper legislation to propose a form which he will agree to, when there is, in my opinion, no great difference in the substance.

Mr. William B. Shattuc, of Ohio, made the point of order that it was not proper to refer to the probable action of the President with a view to influencing the action of this House.

The Chairman[2] overruled the point of order, saying that he had not observed any breach of propriety in this regard.

5093. In debating a proposition to impeach the President of the United States a wide latitude was permitted to a Member in preferring charges.— On January 14, 1867,[3] the Speaker announced as the business next in order the resolution submitted on Monday last by Mr. John R. Kelso, of Missouri, in regard to the impeachment of the President, the pending question being on the demand for the previous question.

Mr. Kelso having withdrawn the demand, Mr. Benjamin F. Loan, of Missouri, proceeded to debate the resolution; when Mr. Robert S. Hale, of New York, called him to order for the following words spoken in debate, viz:

> The crime was committed. The way was made clear for the succession. An assassin's bullet, wielded and directed by rebel hand and paid by rebel gold, made Andrew Johnson President of the United States of America. The price that he was to pay for his promotion was treachery to the Republic and fidelity to the party of treason and rebellion.

Mr. Hale gave as his reasons for his point of order, that the President of the United States could not be put on trial before the House except by solemn form of impeachment, and that under a resolution declaring simply the duty of the House to inaugurate such proceedings as would lead to the impeachment, these charges could not be made.

The Speaker[4] stated that inasmuch as the Constitution authorizes the removal from office of the President "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors," and also provides that articles of impeachment must be found by the House, and as the pending resolution contained a general charge against the President of crimes and misdemeanors, for which it was declared he should be impeached, it was competent in the discussion of the resolution for the gentleman from Missouri (Mr. Benjamin F. Loan) to specify any of such charges. He therefore overruled the point of order.

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[1] First session Fifty-seventh Congress, Record, p. 3371.

[2] Adin B. Capron, of Rhode Island, Chairman.

[3] Second session Thirty-ninth Congress, Journal, p. 163; Globe, p. 444.

[4] Schuyler Colfax, of Indiana, Speaker.

Mr. Henry D. Washburn, of Indiana, appealed from this decision. The appeal was laid on the table.

5094. Mr. Speaker Colfax held that a Member, in debating a proposition to impeach the President, should abstain from language personally offensive.—On March 7, 1867,[1] during consideration of a resolution directing an investigation of the conduct of Andrew Johnson, President of the United States, with a view to his impeachment, Mr. James M. Ashley, of Ohio, having the floor, said:

> They [the nation] demand that the loathing incubus which has blotted our country's history with its foulest blot shall be removed. In the name of loyalty betrayed, of law violated, of the Constitution trampled upon, the nation demands the impeachment of Andrew Johnson.

The Speaker,[2] interposing, said:

> The gentleman from Ohio knows there is a large license allowed in debate in regard to impeachment, but the Chair is of opinion the gentleman is proceeding beyond that. * * * The gentleman must abstain from language which will be regarded as personally offensive. He has the right under the Constitution to charge crimes and misdemeanors.

5095. It is a breach of order in debate to refer to debate or votes on the same subject in the other House.

Neither House may exercise any authority over a Member or officer of the other, but may complain to the other House.

It is the duty of the House, and particularly of the Speaker, to suppress in debate expressions which may give ground of complaint to the other House.

Jefferson's Manual, in Section XVII, provides:

> It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there, because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. (8 Grey, 22.)
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> Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words), for the security of Members.[3] Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. (3 Hats., 51.)

5096. On June 10, 1886,[4] in the Senate a discussion occurred as to whether or not it was in order, when a private bill was under consideration, to refer to a report or read a report on the same subject made in the other branch. The subject was referred to the Committee on Rules.

The committee does not appear to have reported.

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[1] First session Fortieth Congress, Globe, p. 19.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] It should be observed that while this was true of Parliament, it is not applicable to Congress, which publishes daily a verbatim report of its proceedings.

[4] First session Forty-ninth Congress, Record, p. 5493.

5097. On June 25, 1902,[1] the House was considering the Senate amendments to the army appropriation bill, when, in debate, Mr. James Hay, of Virginia, referred to a statement said to have been made by Senator Cockrell in relation to the pending bill.

The Speaker 2 interrupting Mr. Hay, said:

The Chair will call the attention of the gentleman from Virginia to the parliamentary rule that Members of the other House cannot be named in debate. * * * The Chair will state to the gentleman that when a Member uses the name of a Member of the other House the Chair will promptly call him to order. The Chair knows that the gentleman will be glad to comply with the rule.

5098. Interpretation of the rule prohibiting reference in debate to what has been said on the subject in the other House.—On May 27, 1902,[3] the Senate was discussing a message of the House conveying certain instructions to the committee of conference appointed by the House on the disagreeing votes of the two Houses on the army appropriation bill.

In the course of the debate Mr. Jacob H. Gallinger, of New Hampshire, said:

Mr. President, if you will go back to the debates in the House you will find that a very distinguished Member of that body used these words:

"Now, let the House——"

Thereupon Mr. Edmund W. Pettus, of Alabama, raised the question of order that the Senator was discussing what occurred in the other House, and about that the Senate knew officially only what had been transmitted in the message.

The Presiding Officer[4] said:

If the Chair may be permitted, there is no formal rule of the Senate relating to the point of order just raised by the Senator from Alabama [Mr. Pettus]. There is, however, in Jefferson's Manual a parliamentary suggestion that it is a breach of order in debate to notice what has been said on the same subject in the other House, or to refer to the particular vote or majority on it there. The Chair understands the entire effect of the rule to be that reference should not be made to what has been said on the same subject in the other House—and the Chair supposes that refers to the present session—or to notice the votes or majorities on it in the other House. * * * The Chair does not think that Jefferson's Manual prevents a Senator from discussing action which has been taken in the other House.

5099. It is permissible in debate to refer to proceedings of the other House, provided such reference be within the prohibitions of the rules.— On March 18, 1880,[5] the House was in Committee of the Whole on the state of the Union, and during the debate Mr. Charles O'Neill, of Pennsylvania, referred to secret sessions of the Senate, stating that the appointment of a certain official was confirmed unanimously, and giving as his authority for knowing this the fact that Members of the House knew of all that occurred in executive sessions of the Senate relative to confirmations.

Mr. William M. Springer, of Illinois, made the point of order that the gentleman had no right to refer to proceedings of the Senate, and especially to proceedings of the Senate in executive session, which were secret.

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[1] First session Fifty-seventh Congress, Record, p. 7389.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Fifty-seventh Congress, Record, p. 5957.

[4] Orville H. Platt, of Connecticut, President pro tempore.

[5] Second session Forty-sixth Congress, Record, p. 1681.

The Chairman [1] ruled:

The Chair does not understand there is any rule of the House or any rule of parliamentary law which prevents the gentleman from referring to proceedings at the other end of the Capitol; although he is prevented from criticising or calling in question the proceedings there or alluding by name to the gentlemen who participated in those proceedings. The proceedings of the other branch are constantly alluded to in this House.

5100. In the Senate a reference to methods of procedure in the House, made for the purpose of influencing the action of the Senate, was ruled out of order.—In the Senate on May 8, 1884,[2] a bill relating to the shipping interests was about to be sent to the House, and a question arose whether or not it should be accompanied by a request for a conference. In the course of his remarks, Mr. William P. Frye, of Maine, said:

If this bill goes over without a request for a conference, the point of order is made to it promptly; no bill can possibly pass the Senate that some Member of the House will not be opposed——

At this point the President pro tempore interposed and said that "any allusion to the proceedings of the House of Representatives is not in order."

Thereupon Mr. Frye proceeded:

Then I will suppose a case. A point of order may be made against it in another place. If the point of order should be made against it in another place, that might carry it to the Committee of the Whole, and if it did carry it to the Committee of the Whole it could be buried so that it would not be reached in the next four——

The President pro tempore [3] again interrupted:

The Chair must interrupt the Senator from Maine. The Chair thinks that that does not bring his observation within the rule.

5101. It is not in order in debate to refer to the actual or probable action of the Senate.—On January 22, 1834,[4] in discussing a disagreement between the two Houses on an appropriation bill, Mr. Samuel A. Foot, of Connecticut, said:

The gentleman from Tennessee supposes that the Senate will recede, but the record of their proceedings in regard to the matter does not encourage the supposition. Look at the vote on the question——

The Chair [5] interposed, and sated that it was not in order to refer to a vote of the Senate.

5102. On April 18, 1828,[6] in the Senate, Vice-President Calhoun called a Senator to order for stating—

that it was a fact, well known to him, in common with the country at large, that the other House had, without a division, rejected a resolution of inquiry into the expediency of repealing the duty.

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[1] John G. Carlisle, Kentucky, Chairman.

[2] First session Forty-eight Congress, Record, p. 3976.

[3] George F. Edmunds, of Vermont, President pro tempore.

[4] First session Twenty-third Congress, Debates, p. 2494.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] First session Twentieth Congress, Debates, p. 670.

5103. On January 16, 1807,[1] Mr. John Randolph, of Virginia, while speaking in relation to the alleged "Burr conspiracy," said:

Sir, this subject offers strong arguments, in addition to numerous reasons presented during the present session of Congress, to justify the policy avowed by certain gentlemen during the last session, so highly condemned; and if I am correctly informed, the other branch of the Legislature are now acting on that policy so condemned and despised.

The Speaker[2] here said that it was not in order to allude to the proceedings of the Senate.

5104. On January 31, 1826,[3] during consideration of a resolution relating to the proposed Congress at Panama, Mr. James C. Mitchell, of Tennessee, having the floor in debate, referred to measures under consideration in the Senate, stating that the subject before the House was also before the Senate.

The Speaker[4] decided that it was not in order to reflect upon the proceedings of the other branch.

5105. On January 22, 1836,[5] while discussing a proposed investigation into the failure of the fortifications appropriation bill to become a law at the last session of the preceding Congress, Mr. John Quincy Adams, of Massachusetts, said in debate:

I have offered the resolution for the appointment of a committee with instructions to inquire into and report the facts relating to the loss of this bill, principally in consequence of what has occurred in another place on this same subject, in which not only the facts stated by the President in this part of his message have been denied to be true——

The Speaker,[6] interrupting Mr. Adams, said that allusions to the proceedings of the Senate were not in order. It was indispensable that this rule should be observed, in order to preserve harmony between the two branches of the Legislature.

5106. It is not in order in debate to criticise words spoken in the Senate, even by one not a member of that body and during an impeachment trial.—On May 6, 1868,[7] Mr. Thaddeus Stevens, of Pennsylvania, having the floor for a personal explanation, made certain criticisms of words spoken during the impeachment trial by Mr. Nelson, one of the counsel for the President and not a member of either branch of Congress.

A question of order was raised and it was urged that as the remarks of Mr. Nelson had been made in the presence of the two Houses, and as he was not a member of the Senate but counsel for the President, it was in order to refer to them in the House.

The Speaker[8] held:

The Chair would state to the gentleman from Pennsylvania that parliamentary rules prohibit unfavorable discussion in regard to what transpires in the other chamber—the Senate Chamber. * * * The Senate are sitting under their constitutional power as a court to try the pending impeachment. It is the Senate of the United States with a presiding officer called in, because the President himself

[1] Second session Ninth Congress, Annals, p. 335.

[2] Nathaniel Macon, of North Carolina, Speaker.

[3] First session Nineteenth Congress, Journal, p. 794; Debates, p. 1208.

[4] John W. Taylor, of New York, Speaker.

[5] First session Twenty-fourth Congress, Debates, p. 2264.

[6] James K. Polk, of Tennessee, Speaker.

[7] Second session Fortieth Congress, Globe, p. 2366.

[8] Schuyler Colfax, of Indiana, Speaker.

is on trial. But as was held by the managers during the trial, and correctly in the opinion of the Chair, it is "still the Senate of the United States," though engaged in trying the President.

5107. A Member may not, in debate in the House, read the record of speeches or votes of Senators in such connection of comment or criticism as might be expected to lead to recriminations.

Discussion as to the extent to which the proceedings of one House may be read in the other.

On May 4, 1896,[1] Mr. Charles A. Boutelle, of Maine, called up the naval appropriation bill, which had been returned from the Senate with amendments, and proceeded to quote the utterances of certain Senators in the Senate, and to say that if it were parliamentary he might contrast these with the votes of the same Senators, which he proceeded to specify.

Mr. Lemuel E. Quigg, of New York, made the point of order that the gentleman's remarks were obnoxious to the rule.

During the debate, Mr. Galusha A. Grow,[2] of Pennsylvania, said:

Mr. Speaker, if I am correct in my view, the Members of one House can not refer to proceedings pending between the two Houses in a way of comment. Proceedings, however, of either House as printed in the Record become history, and any Member may refer to them as history, but without commenting upon them or discussing the reasons why a Member of the other body uttered certain sentiments at one time and certain other sentiments at another. The record is history and may be referred to; but comments upon it are, I think, excluded by parliamentary law.

The Speaker[3] in ruling quoted the provisions of Jefferson's Manual,[4] and said:

If the Chair understood the remarks of the gentleman from Maine, they were, in addition to the reading of matters in the Record, criticisms with regard to the personal action of Members of the other House and in regard to their votes. * * * The thing to be kept in mind by the House and by gentlemen in addressing this body, not for our own sakes particularly, but for the sake of orderly proceedings in public bodies, is that principle which is laid down in this manual—the principle that there should be in such bodies no such criticism or reference to the members of another and a coordinate body as would be liable to lead to recriminations or disputes.

The reason for this is simple and plain on reflection. It is that all legislation, in order to become law, must receive the sanction of both Houses. Anything, therefore, which means misunderstanding between the two Houses—like criticism of the person or manner by the Members of either branch of those of the other—would be likely to create friction and have a very bad effect upon public legislation. At least that is the theory on which the rule and the construction of the rule to which attention is called is based. And I think everybody will see the soundness and wisdom of it.

The Chair has the impression that the rule certainly goes as far as stated by the gentleman from Pennsylvania, a former Speaker of this House [Mr. Grow], and possibly it goes even further under the usages of the House. So far as my personal recollection is concerned, my impression is that allusion to the acts, and especially to the motives, of Members, or the criticism of Members of the other House, is not permissible here, nor is a criticism of us permitted over there, and the purpose of it is that we may avoid unnecessary ill feeling between the two bodies in the interest of the country and the advancement of legislation. Because where criticism is made of a man where he can not reply it is more irritating than criticism of a man where he can reply. And so the motive for establishing a proper rule to govern our relations with the other body is even stronger than it is for establishing proper relations among ourselves. Now, I have no doubt that the gentleman from Maine will proceed in order. But I think that the remark which came to the attention of the Chair was not strictly in order.

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[1] First session Fifty-fourth Congress, Record, pp. 4801, 4802; Journal, pp. 451–452.

[2] Speaker of the Thirty-seventh Congress, 1861–1863.

[3] Thomas B. Reed, of Maine, Speaker.

[4] See section 5095.

5108. On June 1, 1897,[1] Mr. Jerry Simpson, of Kansas, having the floor, was proceeding to read from the Congressional Record of the 29th instant, a speech made by a Senator and alleged by Mr. Simpson to be an attack upon the House.

The Speaker[2] called the gentleman from Kansas to order, saying:

The Chair rules that it is not in order in one branch of a legislative body to refer to or comment upon a debate in the other branch, because such references necessarily lead to disputes, and would interfere with the harmony which ought always to exist between the two branches. The Chair hopes the gentleman will not pursue that line of discussion.

5109. On January 25, 1899,[3] the Committee of the Whole House on the state of the Union were considering the bill (H. R. 11022) for the reorganization of the Army of the United States, Mr. John J. Lentz, of Ohio, having the floor. In the course of his remarks Mr. Lentz proceeded to read from the Record of a debate in the Senate on the 7th of the preceding April, quoting from the speech made by a certain Senator at that time and commenting thereon.

The Chairman[4] called him to order, saying:

The gentleman will be in order. It is not in order to comment in the House upon what has been said in the Senate. * * * It is not in order to allude to it or read it in the House. * * * It has been held time and again that it could not be done in the House, and that no Member of either House can comment upon what has taken place in the other. * * * The Chair makes the point of order. The rule makes it the duty of the Chair, when a Member is out of order, to call his attention to it. * * * Under a general rule of parliamentary law found in the Manual. The Chair will read for the information of the gentleman from Ohio:

"It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other."

There is more upon the same subject, but that is sufficient.

The gentleman from Ohio states that the gentleman from Iowa made certain assertions with regard to his allusions to the President, and he proposes to disprove that statement, and prove that others were made in the Senate, by reading from the proceedings of the Senate. Now, that is referring to the proceedings in the Senate. Not only that, but it is reading the record of the proceedings in the Senate upon that matter.

Mr. Richard P. Bland, of Missouri, made the point that the rule precluded only reference to what had been said on the "same subject," and did not apply to "ancient history."

The Chairman said:

It can not be done in that way. The rule is to prevent the reading of what any Senator has said, and to prevent a misunderstanding between the two Houses, or to quote from any Member of the House. * * * The subject-matter, and the matter, the gentleman states, is to disprove what was said by the gentleman from Iowa, and is right on that subject-matter. * * * This is not new. It has been ruled on a good many times during the time that the gentleman from Missouri and the Chair have been Members of the House. * * * The object of the rule is to prevent misunderstanding between the two Houses. * * * The Chair is very clear that the gentleman from Ohio can not read from that speech under the rules of the House. * * * The gentleman from Ohio himself stated that he read from what a certain Senator said in the Senate, and did it for the purpose of disproving the remarks of the gentleman from Iowa. In fact, he said the gentleman from Ohio had been the only man who had made any such reflection.

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[1] First session Fifty-fifth Congress, Record, p. 1393.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Third session Fifty-fifth Congress, Record, Appendix, pp. 38, 39.

[4] Sereno E. Payne, of New York, Chairman.

5110. On June 18, 1879,[1] the army appropriation bill was under consideration in the Senate, when Mr. James B. Beck, of Kentucky, proceeded to quote from a speech made on this same bill in the House by Mr. James A. Garfield, of Ohio.

Mr. Matt. S. Carpenter, of Wisconsin, made the point of order that this was not in order.

The Presiding Officer[2] said:

In the opinion of the present occupant of the chair the point of order is well taken. The Chair thinks that the Senator from Kentucky ought not to allude by name to language used by a Member of the other branch during the present Congress.[3]

5111. On the calendar day of Sunday, March 3, 1901,[4] but the legislative day of March 1, the House was considering a joint resolution to provide for the appointment of a commission to visit Porto Rico, the Philippines, and Cuba, and Mr. Henry A. Cooper, of Wisconsin, having the floor in debate, proceeded to read the following remarks of Senator John C. Spooner, in the Senate:

I should say that we will not be ready to legislate for the Philippines until we shall have sent a joint committee from both Houses over there to investigate thoroughly the situation there, the people, the form of government which would be adapted to them. That we have not done.

Mr. TELLER. Are we likely to do it?

Mr. SPOONER. I hope we will do it.

Mr. TELLER. When?

Mr. SPOONER. I hope we will provide for it before this session comes to an end.

Mr. TELLER. I see no signs of it.

Mr. SPOONER. I have intended to propose a resolution of that kind, and I shall endeavor to do so.

Mr. HALE. It ought to be done.

Mr. SPOONER. Of course it ought to be done. Congress ought to know the exact situation in the Philippines in every aspect, and it seems to me to be one of the first duties of Congress to provide itself with information upon which can be adopted a reasonable and sensible legislative policy of some kind as to government in the Philippines.

The Speaker[5] said:

The Chair feels it to be his duty to state to the gentleman from Wisconsin that this treatment of the action of the Senate in discussion is beyond the realm of parliamentary law. * * * That is exactly what is prohibited. Each House must have its own freedom of debate.

5112. The quotation of personal views of a Senator, not uttered in the Senate, was held to be in order in the House.—On April 10, 1900,[6] the House was considering a bill relating to the Sioux City and Pacific Railroad, and Mr. John C. Bell, of Colorado, had the floor. In the course of his remarks, Mr. Bell sent to the desk to have read as a part of his remarks a letter from a Senator of the United States, giving individual views of the latter upon the question presented by the bill.

Mr. H. Henry Powers, of Vermont, made a point of order against the presentation of the views of a Member of the other body.

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[1] First session Forty-sixth Congress, Record, p. 2106.

[2] William W. Eaton, of Connecticut.

[3] On August 4, 1890, the extent to which it is allowable in debate to refer to the proceedings of the other body was the subject of debate in the Senate. (First session Fifty-first Congress, Record, p. 8077.)

[4] Second session Fifty-sixth Congress, Record, p. 3568,

[5] David B. Henderson, of Iowa, Speaker.

[6] First session Fifty-sixth Congress, Record, pp. 3977, 3978.

Mr. Bell having stated that the letter had no connection with the Senator's action in the Senate, but was a personal letter sent in response to an inquiry, the Speaker[1] held:

The gentleman may proceed, on his statement that this language was not uttered in the Senate.

5113. A Member of the House was permitted to read in debate a speech made in the Senate by one no longer a member of that body.—On February 8, 1831,[2] during debate in the House over the mission to Russia, Mr. Thomas T. Bouldin, of Virginia, in the course of debate, animadverted on a recent ruling whereby a Member of the House had been held to be in order when he read a speech made in the Senate, and proclaimed that such a speech could be made by no gentleman.

The Speaker[3] explained that if the Senator who made that speech were still a Member of the Senate the matter would not be in order.

5114. While the Senate may be referred to properly in debate it is not in order to discuss its functions or criticise its acts.—On March 22, 1869,[4] the House was considering a resolution relating to the adjournment of the Congress sine die, when Mr. William Lawrence, of Ohio, having the floor, urged that the Congress should stay in session long enough for Congress to exercise legislative power over an Indian treaty then pending in the Senate, and proceeded to speak of the action of the Senate in regard to treaties.

Messrs. John F. Farnsworth, of Illinois, and Horace Maynard, of Tennessee, objected to the remarks of the gentleman.

The Speaker[5] said:

So far as the language is a reflection on the Senate it is not in order; so far as it is an attempt to show why Congress should remain in session, it is in order. * * * The Chair is compelled to remind the gentleman from Ohio that this course of argument is not parliamentary, and not in order. It involves a reflection on what may be done and what has been done by the Senate.

5115. On February 2, 1826,[6] the House was considering a resolution calling on the President of the United States for copies of the invitations given to this Government to send ministers to the Congress at Panama.

Mr. Silas Wood, of New York, having the floor, used in debate these words:

The President, and none but the President, is the organ of communication with foreign powers. He plans the treaties; he nominates the men who are to negotiate them; and the only right of the Senate on the subject is to refuse to consent to their appointment on the ground of unfitness, etc.

The Speaker[7] called Mr. Wood to order, explaining later that he did so not expressly to pronounce him out of order, but to suggest to him the inexpediency of discussing the relative powers of this House and of the Senate.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Twenty-first Congress, Debates, p. 640.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] First session Forty-first Congress, Globe, p. 201.

[5] James G. Blaine, of Maine, Speaker.

[6] First session Nineteenth Congress, Debates, pp. 1238, 1240.

[7] John W. Taylor, of New York, Speaker.

5116. On February 4, 1869,[1] during debate, Mr. Sidney W. Clarke, of Kansas, said:

To my mind the abuse of the treaty-making power at the other end of the Capitol is one of the reasons why this system—

The Speaker[2] here interposed, saying:

The remark is clearly out of order. The Manual and Digest both speak in reprobation of any remarks reflecting upon the other branch of Congress.

5117. On February 7, 1835,[3] the House was considering certain resolutions reported from the Committee on Foreign Affairs, and relating to the relations of the United States with France, when Mr. John Quincy Adams, of Massachusetts, having the floor in debate, said:

Might not the House come to a like conclusion, and dodge the question, as the Senate had done?

The Speaker[4] called Mr. Adams to order, and reminded him that it was not permitted to speak disrespectfully of any act of the other branch of the Legislature.

5118. On March 1, 1899,[5] the House was considering the bill (S. 5260) for the reimbursement to States for war expenses.

During the debate Mr. Eugene F. Loud, of California, said:

The fact that it has passed the Senate does not give it much standing.

The Speaker[6] said:

Gentlemen in the House must not comment on the proceedings of any other body. * * *It is not permissible in the House to comment upon the action of another body.

On the same day, during the consideration of the bill (S. 5578) for the reorganization of the Army, Mr. George W. Steele, of Indiana, during debate, said:

Mr. Speaker, the House recently passed what it considered to be a sensible Army reorganization bill and sent it to the Senate of the United States. That body carefully considered the measure sent to it, and one Senator was led to say in the course of his remarks that the House bill as amended—a bill entirely different from this—

Mr. Freeman Knowles, of South Dakota, made the point of order that it was not in order to repeat what had been said in the other body.

The Speaker said:

It is not in order to comment on what is said in the Senate.

Mr. Steele, continuing, said:

That the bill that was amended by the Military Committee of the Senate was right as between God and man. And the press of the country informs us that another Senator said: "You will take the bill now under consideration or no bill, or we will have an extraordinary session." Now, the question is, Shall one man in this country hold us up?

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[1] Third session Fortieth Congress, Globe, p. 882.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Second session Twenty-third Congress, Debates, p. 1233.

[4] John Bell, of Tennessee, Speaker.

[5] Third session Fifty-fifth Congress, Record, pp. 2669, 2685.

[6] Thomas B. Reed, of Maine, Speaker.

The Speaker said:

The Chair hopes the gentleman will not allude to what has taken place in the other body. * * * The comity between two legislative bodies requires that anything that would have a tendency to lead to irritation between the two should be suppressed.

5119. On March 1, 1901,[1] during consideration of the Senate amendments to the Army appropriation bill, Mr. William P. Hepburn, of Iowa, having the floor in debate, said:

All through the weeks past we have heard declarations, loud, vigorous, and continuing, that this bill, with its political amendments relating to Cuba and the Philippines—the sum of all infamies, as we were told here and in the other Chamber—could not pass; that there were Senators there that had the power to put a veto upon it; that they intended to exercise that power. All the newspapers have been replete with their declarations of the endurance they would manifest, and the certainty that they in the end would prevent, by the methods we all know they command, the passage of this objectionable bill—

At this point the Speaker[2] said:

It is the duty of the Chair to remind the gentleman from Iowa that commenting upon the action of Members of the other House is entirely out of order.

5120. On the calendar day of March 3, 1901,[3] but the legislative day of March 1, the House was considering the Senate amendments to the sundry civil appropriation bill, when Mr. Joseph G. Cannon, of Illinois, having the floor in debate, said:

Then they bring two propositions that never passed Congress, one for Buffalo and one for Charleston, S. C. Three separate amendments? No; one amendment that you can not divide, so that when the preferential motion comes, it must come to recede and concur with the Senate. What for? For the purpose of placing it, or claiming to place it, in the hands of one Senator, so that he can, under the Senate rules, hold it up.

Mr. Theodore F. Kluttz, of North Carolina, made a point of order against this reference to a Senator.

The Speaker[3] said:

The Chair is of the opinion that the gentleman ought not to allude to the proceedings and votes of the other body. * * * The Chair sustains the point of order.[4]

5121. It is not in order in debate to refer to a Senator in terms of personal criticism.—On January 24, 1906,[5] the House was considering a resolution from the Committee on Rules, relating to the consideration of the bill (H. R. 12707) providing Statehood for the Territories of Oklahoma, New Mexico, and Arizona, when Mr. J. Adam Bede, of Minnesota, replying to Mr. Sereno E. Payne, of New York, said:

The gentleman speaks of the Senators from New York. Most people are trying to forget them. [Great and long-continued laughter.]

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[1] Second session Fifty-sixth Congress, Record, p. 3383.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fifty-sixth Congress, Record, p. 3576.

[4] On March 5, 1903 (extraordinary session of Senate Fifty-eighth Congress, Record, pp. 3–12), in the Senate, a question was raised as to a speech made in the House on March 4 (legislative day of February 26) by Mr. Joseph G. Cannon, of Illinois, and alleged to contain reflections on the Senate. The parliamentary law was discussed somewhat in this connection.

[5] First session Fifty-ninth Congress, Record, p. 1502.

The Speaker[1] interposed, saying:

The gentleman will suspend. The gentleman from Minnesota does know, or ought to know, that his remark is against the rule of the House and is against all parliamentary usage.

5122. On March 3, 1887,[2] Mr. George F. Hoar, of Massachusetts, in the Senate, referred to the Speaker of the House, making what was a virtual arraignment of his course as Speaker. This arraignment was very thinly veiled, but upon a point of order being made, the President pro tempore decided that the language was within the usage.

5123. A Member whose motives have been impugned in the Senate may refer to proceedings in that body sufficiently to explain his own motives; but may not under the rights of privilege bring into discussion the whole merits of the controversy.—On August 3, 1892,[3] Mr. Jerry Simpson, of Kansas, presented, as involving a question of personal privilege, certain remarks reflecting on himself made in the Senate and printed in the Congressional Record, as follows:

I am not personally acquainted with the writer of that communication and know nothing of his character, but it is addressed to Mr. Simpson, who has the honor of representing one of the districts of Kansas in Congress, and he is probably some political follower of his. Why this communication, which indulges in falsehood and in malicious insinuations as to one of the most honorable and faithful officers in the public service, should have been given to the public and to the press for publication I can not comprehend.

Since its publication I have seen Secretary Noble and conferred with him. He says that he does not know of the existence of the man who is spoken of in that communication by the name of Guthrie, and he has no knowledge of him whatever; knows nothing of his avocation or calling, and never had any correspondence or conversation with him. To give to the public a communication of this character, indulging in the insinuations and accusations that the communication indulges in as to a capable, honorable, and faithful officer, makes it, in my judgment, deserving of notice and condemnation. As I stated, he does not know the existence of this man who is spoken of, and I am thoroughly convinced that there is no foundation for it in fact; and believing as I do that it was instigated for political reasons and to slander an honorable and capable officer, I have felt called upon to denounce it in the Senate Chamber.

Mr. Edward H. Funston, of Kansas, having made the point of order that it was not in order in the House to refer to debates and proceedings in the Senate, and that therefore the remarks made by Senator Perkins on the floor of the Senate should not be discussed in this House,[4] the subject went over until August 5, when the Speaker[5] overruled the point of order, holding—

If language has been used reflecting upon the integrity of the motives or purposes of the gentleman from Kansas, the gentleman must be entitled to set himself right. Of course that right is limited in this way: That the rule of the House as to reflections upon members of another body can not be violated. But it is the right of a Representative, as the Chair thinks, to set himself right if his motives have been impugned.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Forty-ninth Congress, Record, p. 2609.

[3] First session Fifty-second Congress, Journal, p. 354.

[4] In the debate reference was made to a ruling of Mr. Speaker Blaine in a case wherein Mr. James P. Beck, of Kentucky, was attacked by a Senator (Brownlow) in a speech delivered in the Senate.

[5] Charles F. Crisp, of Georgia, Speaker.

Mr. Simpson proceeded to address the House in reply to the remarks made in the Senate.

Mr. Funston made the point of order that Mr. Simpson was discussing the merits of a controversy with the Secretary of the Interior, and that his remarks were out of order.

The Speaker held:

The right to rise to a question of personal privilege—one of the highest rights belonging to a Member—is only granted under certain circumstances. In this case the Chair thought the gentleman ought to have this right to the extent of being permitted to deny any improper motives that may have been imputed to him in giving to the public, through the Congressional Record, a communication from his constituent. But the Chair does not think that in order to vindicate the gentleman from Kansas it is necessary for him to demonstrate that all the statements in the letter were true. It seems to the Chair that the gentleman might be vindicated by a statement that the letter was from a gentleman of high character, whom the Member regarded with confidence and esteem, so that in presenting his letter he presented it as coming from one of his constituents entitled to credence anywhere. But the gentleman from Kansas will, of course, see that under the guise of a question of personal privilege the whole merits of the original matter can not be opened up for argument.

5124. On July 26, 1882,[1] Mr. Poindexter Dunn, of Arkansas, having the floor for a personal explanation, proceeded to have read extracts from a speech made in the Senate on the previous day by Mr. George G. Vest, of Missouri, on the subject of the river and harbor bill, in the course of which occurred this paragraph:

I have no official information of the fact, but I want to say that some potent influence is at work in the House of Representatives, subtle—I will not use the word of the Senator from Kansas, "sinister"—but most extraordinary. I have heard it said, I can not believe it, but the air is rife with the rumor and the statement that Members from States upon the banks of the Mississippi River have protested against the increase made by the Senate.

Mr. Dunn claimed that this was a reflection to which he might reply, and was proceeding to discuss the respective records of the House and Senate on the subject when Mr. John A. Kasson, of Iowa, raised a question of order.

The Speaker[2] had read the passages in Jefferson's Manual relating to the subject of references to the other body, and then said:

The Chair thinks that these two rules are very salutary ones; and it is not for the Chair to go beyond their terms. The difficulty here is whether or not a Member who thinks himself aggrieved by a statement of fact with reference to himself may not be allowed to answer, not by way of recrimination, but by way of stating the fact so as to set himself right before the House and the country. This is not quite a question of unfavorable comment upon what is said in the other body, because it is a personal matter relating to the individual, and not to the general proceedings of the House. The Chair is inclined to sustain the point of order; but to the extent indicated will allow the gentleman from Arkansas, if he desires, to state what he thinks is an answer to the charge, without making any charge himself of any kind against the Senate.

5125. A Senator in debate in the Senate having assailed a Member of the House, the Member was allowed, as a matter of privilege, to explain to the House his own conduct, but not to assail the Senator in his capacity as Senator.—On July 25, 1882,[3] Mr. Samuel H. Miller, of Pennsylvania, rising to a

[1] First session Forty-seventh Congress, Record, pp. 6526, 6527.

[2] J. Warren Keifer, of Ohio, Speaker.

[3] First session Forty-seventh Congress, Journal, p. 1723; Record, p. 6467.

question of personal privilege, sent to the Clerk's desk a copy of the Record wherein was printed a speech of Senator M. C. Butler, of South Carolina, in the Senate. This speech referred to a speech made by Mr. Miller in the House, alleging therein the uttering of falsehoods, garbling of evidence, perversion of the truth, and falsification of the record, and concluded as follows:

I have withstood the mastiffs of the radical party in the past, and can afford to dismiss with this brief notice the yelping of this cur of low degree. The name of this creature, I believe, is Samuel H. Miller.

Messrs. Aylett H. Buckner, of Missouri, and John G. Carlisle, of Kentucky, raised the point of order that allusions to what had transpired in the other House were forbidden by the rules, otherwise there would be interminable discussions and disputes with Members in the other end of the Capitol.

After debate the Speaker [1] said:

The point of order is made that the matter which has been just read from the Record does not present a question of personal privilege. These questions axe always very delicate ones for the Chair to undertake to dispose of. It seems to the Chair, leaving entirely out of view the question as to the source from whence these remarks came, that they constitute an attack upon the reputation and the conduct of a Member of this body, not only individually, but in his representative capacity. They make an attack upon him or a charge of improper conduct in debate, and in that view the Chair would be disposed to hold, although very much inclined against the practice of allowing the time of the House to be taken up by Members in answering personal attacks from any source or of any kind, and the Chair thinks a strong case should be made to present a question of privilege.

The question now is whether or not the gentleman from Pennsylvania shall be permitted to make an explanation of the matters with which he is charged by a Senator of the United States. Without undertaking to open the door at all or to break down the well-established parliamentary rule that what is said in one body shall not be referred to or assailed in another—a wise and good rule in the judgment of the Chair—without undertaking to attack that, or, as the Chair has stated, to break down that practice, the Chair is inclined to hold that the gentleman from Pennsylvania may make an explanation of his own conduct entirely disconnected with any assault upon the Senator. If he in any respect by remarks of his own assails the Senator whose remarks appeared in the Record and which have been read, the Chair thinks he should be promptly called to order. Whatever would be simply in the nature of a fair explanation of what has been said, or of what he said upon the floor of the House, would be only just to himself, it would be just to the House, and perhaps just to the Senator referred to.

In holding thus the Chair thinks it goes to the very verge, as suggested by the gentleman from Kentucky, and were the Chair to permit an explanation of this kind to go beyond this, the Houses would be likely to get into interminable disputations. The rule ought to be strictly applied in this House, to the end at least that attacks of a personal character on Senators should not be made and criminations and recriminations between Members and Senators should not be indulged in. The present occupant of the Chair was not presiding when the gentleman from Pennsylvania spoke on the election case. Within the limits indicated, therefore, the gentleman from Pennsylvania will be permitted to proceed.

In the course of his explanation Mr. Miller had read the report of the Attorney General and coroner in the affair called the "Hamburgh massacre," connecting the name of M. C. Butler with the same.

Mr. Nathaniel J. Hammond, of Georgia, raised the point of order that the presentation of these statements were not in order.

The Speaker said:

The Chair does not understand the gentleman from Pennsylvania to be seeking to establish anything against the gentleman from South Carolina in his capacity as Senator. If the Chair so understood,

[1] J. Warren Keifer, of Ohio, Speaker.

it would call the gentleman to order. * * * This is a matter of history that relates to a period long anterior to the gentleman's election to the Senate.

5126. On February 15, 1872,[1] and April 25 of the same year, questions arose in the Senate as to the extent to which a Senator might go in replying to attacks made on him in the other House. While it was contended that a Senator attacked should not be precluded from the right of defense, the better opinion seemed to be that the parliamentary law should be adhered to, and that a resolution should be adopted bringing the matter to the attention of the other House rather than that the Senator should be allowed to reply. The question was not conclusively passed on, however.

5127. A Member may not, in the course of debate, read a paper criticizing a member of the Senate.—On April 26, 1858,[2] Mr. Francis E. Spinner, of New York, offered a resolution and preamble relating to alleged abuses in the administration of the public land office. The preamble quoted from a newspaper article as follows:

During the second week after the office had opened, an order was received from Commissioner Hendricks, of Washington, to locate 6,000 acres in the name of Hon. Jesse D. Bright, of Indiana, Of course the order was complied with out of the regular office hours, and thus the honorable Senator got a slice of the public land at a single haul, while the rest of us had to take our turn at the mill as the wheel turned around, Wonder if the peculiar position that Senator Bright occupies towards the administration had anything to do with this piece of party favoritism? Was it any part of the price paid for his support of the Lecompton constitution?

Mr. Warren Winslow, of North Carolina, objected to the further reading of the preamble and resolution.

The Speaker[3] said:

The gentleman from North Carolina raised the question of order that the paper could not be read in consequence of its reflection upon a Member of the Senate. The Chair sustains the point of order; and, if the gentleman had attempted to read it in a speech, the Chair would have ruled it out of order.

5128. The resignation of a Senator for a public reason was debated in the House without question.—On July 28, 1846,[4] find debate proceeded unchallenged in the House on the subject of the resignation of Senator Haywood, of North Carolina, who had just resigned because he could not support the tariff bill presented by his party.

5129. After a speech reflecting on the character of the Senate had appeared in the Record, a resolution proposing an apology to the Senate was treated as a matter of privilege.

After examination by a committee a speech reflecting on the character of the Senate was ordered to be stricken from the Record.

Discussion of the importance of suppressing debate casting reflections on the other House or its Members.

On September 15, 1890,[5] Mr. Benjamin A. Enloe, of Tennessee, as a question of privilege, presented a resolution directing the Clerk to communicate to the Senate

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[1] Second session Forty-second Congress, Globe, pp. 1036, 1037, 2759.

[2] First session Thirty-fifth Congress, Globe, p. 1812.

[3] James L. Orr, of South Carolina, Speaker.

[4] First session Twenty-ninth Congress, Globe, p. 1159.

[5] First session Fifty-first Congress, Journal, pp. 1041, 1044; Record, pp. 10050, 10100.

that the House "reprobates and condemn" the utterances of Hon. Robert P. Kennedy, of Ohio. reflecting on the character and integrity of the Senate as a body.

A point of order having been raised as to the privilege of the resolution, the Speaker [1] said:

There can be no doubt that legislative proceedings dependent upon two branches—two coordinate branches—would be very much impeded if personal and improper reflections were allowed in the one body on the Members of the other. This fact is so plain, so well established and understood, that it seems unnecessary to say a word in regard to it. It is founded upon that principle which causes the Members of the House of Representatives to speak of each other and to address each other in debate by a phrase rather than by name. It is intended as far as possible to keep personal feeling out of public legislation, and the Chair is very glad, not only for the advantage of the relations existing between the House and Senate, but for the advantage of the relations of the Members themselves to each other and to the Chair, that this question should be passed upon in such manner as will make an impression upon us all. The Chair therefore overrules the point of order.

After debate, the subject of the resolution was referred to the Committee on the Judiciary.

On September 24, 1890,[2] Mr. John W. Stewart, of Vermont, from the Committee on the Judiciary, reported these resolutions, which were agreed to in the House by a vote of 151 yeas to 36 nays:

Resolved, That the House, deeming it a high duty that the utmost courtesy and decorum demanded by parliamentary law and precedent should mark the mutual relations of the two Houses of Congress, does hereby express its disapproval of the unparliamentary language used by Hon. Robert P. Kennedy, a Representative from the State of Ohio, in his speech delivered on the floor of the House on the 3d day of September, 1890, and published in the Congressional Record of September 14, 1890. And considering it impracticable to separate the unparliamentary portions of said speech from such parts thereof as may be parliamentary: Therefore,

Be it further resolved, That the Public Printer be directed to exclude from the permanent Congressional Record the entire speech of Hon. Robert P. Kennedy in the first resolution mentioned.

The report of the committee, which accompanied these resolutions, declared:

The Constitution assures to Members of the House freedom of debate. This freedom, however, like that of civil liberty, is held under well-recognized limitations, marked by rules of procedure and general parliamentary law, which are founded in reason and experience and are absolutely essential to the orderly conduct of public business.

The coordinate branches of Congress are independent and at the same time interdependent—in separate action independent, in joint action interdependent. This mutual relation is such that unfriendly conditions between the two bodies must be obstructive of wise legislation and little short of a public calamity. The rules of both Houses and well settled principles of parliamentary law alike forbid criticism of proceedings in either House by a Member of the other. Differences between the two Houses should be settled in a spirit of respectful courtesy, and, when (as must frequently occur) irreconcilable, should be submitted to without recrimination.

Applying these established principles to the speech in question, it must be regarded in its references to the Senate individually and generally as a grave infraction of parliamentary law and an abuse of the privilege of the House. It is in spirit and substance a bitter arraignment of the Senate for an alleged failure to yield prompt assent to a measure pending therein which had passed the House. Your committee are of opinion that neither the wisdom or unwisdom of the Senate in this regard, nor the methods of its action, nor the motives of Senators, are proper subjects of remark or criticism by any Member of the House acting in his official capacity. Such criticism is so interwoven with the substance of the speech in question that its excision would seriously mutilate and practically destroy its integrity.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Record, p. 10381.

5130. It has always been considered the particular duty of the Speaker to prevent expressions offensive to the Senate or Senators.—On January 18, 1831,[1] Mr. William D. Martin, of South Carolina, obtaining the floor for a personal explanation, called attention to the following passage in the published report of a speech made on the preceding Thursday by Mr. Churchill C. Cambreleng, of New York:

> I shall not, Mr. Speaker, travel out of my way, and violate a rule of order, by entering now into that discussion, by examining the provisions of the Turkish treaty. Whenever I do, Sir, my facts and my arguments shall be founded on something more substantial than a newspaper rumor—more unquestionable than the statement of an unprincipled partisan; more unimpeachable than the evidence of a perjured Senator.

Mr. Martin said that he had occupied the chair as Speaker pro tempore when these words were uttered, but had not heard them. Had he heard them, and not stopped the use of such language in reference to a Member of the other House, he would have been guilty of gross misconduct as Presiding Officer. Therefore he made this explanation.

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[1] Second session Twenty-first Congress, Debates, p. 520.

Chapter CXIV.

DISORDER IN DEBATE.

1. **Reflections on the House or its membership. Sections 5131–5139.**
2. **References to Members and their actions. Sections 5140–5146.**[1]
3. **Personalities in debate. Sections 5147–5156.**
4. **Questioning the statements of other Members. Sections 5157–5160.**
5. **Duty of the Speaker in preventing personalities. Sections 5161–5169.**
6. **General decisions. Sections 5170–5174.**
7. **Action by the House as to Member called to order. Sections 5175–5202.**[2]

5131. Indecent language against the proceedings of the House or reflections on its prior determinations are not in order in debate.

Mentioning a Member by name, arraigning the motives of Members, and personalities generally are not in order in debate.

It is the duty of the Speaker to suppress personalities in debate.

Section XVII of Jefferson's Manual has this provision:

No person is to use indecent language against the proceedings of the House, no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. (2 Hats., 169, 170; Rushw., p. 3, v. 1, fol. 42.) But while a proposition under consideration is still in fieri, though it has even been reported by a committee, reflections on it are no reflections on the House. (9 Grey, 508.)

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, etc. (Mem. in Hakew., 3; Smyth's Comw., L. 2, c. 3); nor to digress from the matter to fall upon the person (Scob., 31; Hale Parl., 133; 2 Hats., 166), by speaking, reviling, nipping, or unmannerly words against a particular Member. (Smyth's Comw., L. 2, c. 3.) The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. Qui digreditur a materia ad personam, Mr. Speaker ought to suppress. (Ord. Com., 1604, Apr. 19.)

5132. It is not in order in debate to cast reflections on either the House or its membership or its decisions, whether present or past.—On February 10, 1837,[3] during the consideration of the case of R. M. Whitney, a con-

[1] In case of words printed under "leave to print." (Sec. 7017 of this volume.)

Disorderly words stricken from the Congressional Record. (Secs. 6975–6982 of this volume.)

[2] Instance of censure proposed when words were not taken down. (Sec. 1655 of Vol. II.)

Action taken as to disorderly words after intervention of other business. (Sec. 2637 of Vol. III.)

Disorderly language by counsel in an impeachment trial. (Sec. 2140 of Vol. III.)

[3] Second session Twenty-fourth Congress, Debates, p. 1693.

tumacious witness, Mr. John F. H. Claiborne, of Mississippi, having the floor in debate, said:

> Talk not to me of vindicating your insulted dignity by the prosecution of Whitney. You have no dignity to vindicate.

Here the Speaker,[1] interposed, and said that the rules did not permit reflections on the House.

5133. On May 20, 1840,[2] Mr. David Petrikin, of Pennsylvania, in debating a motion to amend the Journal, said that "it could not be denied that of late the proceedings of the House had been such as not only to degrade it as a body, but also to degrade the country."

The Speaker,[3] said that the gentleman from Pennsylvania was not in order in saying anything disrespectful to the House of Representatives.

5134. On July 14, 1866,[4] while the House was considering the bill (S. 236) to authorize the construction of certain bridges, Mr. John Hogan, of Mississippi, having the floor, was called to order for the following words spoken:

> They have their agents here upon this floor; they have their interested stockholders here to vote upon this measure; they have their feed attorneys here to vote upon this measure and rob the people of the West of the great God-given right to navigate freely the great Mississippi River.

The Speaker,[5] decided that the words were out of order, as they contained a reflection upon Members of the House.

Mr. Hogan having taken his seat, and objection being made to his proceeding further, Mr. M. Russell Thayer, of Pennsylvania, moved that he be allowed to proceed in order.

This motion was agreed to.

5135. On March 15, 1866,[6] Mr. Green Clay Smith, of Kentucky, in the course of a personal explanation, was called to order for pronouncing opinions and decisions of the House "damnable heresies."

The Speaker[5] said:

> The Chair sustains the point of order. The gentleman from Kentucky has no right to reflect upon the decisions of the House.

The Speaker then directed the gentleman from Kentucky to take his seat, and the question was put on allowing the gentleman to proceed in order. And there were yeas 55, nays 70. So the House refused to allow Mr. Smith to proceed with his remarks.

5136. On June 8, 1872,[7] during the debate on the conference report on the disagreeing votes of the two Houses on the sundry civil appropriation bill (H. R.

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Twenty-sixth Congress, Globe, p. 405.

[3] Robert M. T. Hunter, of Virginia, Speaker.

[4] First session Thirty-ninth Congress, Journal, p. 1016; Globe, p. 3812.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] First session Thirty-ninth Congress, Journal, p. 407; Globe, p. 1423.

[7] Second session Forty-second Congress, Journal, p. 1108; Globe, p. 4441.

2705), Mr. John A. Bingham, of Ohio, was called to order for the use of the following words in debate:

> I say here and now, and stand ready to make it good before the tribunal of history and the great tribunal of the American people, that the proposition pretended to be set up here of the right of the minority to stay indefinitely the right of the majority to legislate is as disgraceful, as dishonorable—

The Speaker[1] ruled that the language was not parliamentary.

Thereupon, on motion of Mr. Henry L. Dawes, of Massachusetts, Mr. Bingham was permitted to proceed in order.[2]

5137. On June 3, 1797,[3] Mr. Matthew Lyon, of Vermont, was addressing the Chair, when he recalled the act of the House in inflicting its censure on a former occasion.

The Speaker[4] reminded Mr. Lyon that it was out of order to censure the proceedings of the House on any former occasion.

Later Mr. Lyon referred to a statement made by another Member in the debate of the preceding day.

The Speaker again reminded him that it was out of order to refer to the proceedings of a former day.

5138. On June 13, 1842,[5] Mr. Mark A. Cooper, of Georgia, said:

> The reason why the House was not more dignified was because its Members sat here tamely, acting as the passive instruments and tools of the aspirants for the Presidency in the other body. This was the truth.

Mr. Cooper was called to order, and presently the Chair[6] ruled that he was not in order.

5139. Words spoken in debate impeaching the loyalty of a portion of the membership of the House were ruled out of order.—On January 15, 1868,[7] the House was considering the bill (H. R. 439) supplementary to the act to provide for the more efficient government of the rebel States, when Mr. John F. Farnsworth, of Illinois, was called to order for words spoken in debate, which, on the demand of Mr. William Mungen, of Ohio, were taken down as follows:

> And whoever commends himself to the affections of the rebel element there commends himself equally to the affections of their rebel brethren on this floor.

The Speaker[8] decided the words out of order, not being proper to use in reference to Members of the House.

Mr. Farnsworth having requested permission to explain, the question was put on giving such permission, and it was decided in the affirmative.

Then Mr. Farnsworth withdrew so much of the words spoken as relates to Members "on this floor."

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[1] James G. Blaine, of Maine, Speaker.

[2] The Journal does not give the words excepted to.

[3] First session Fifth Congress, Annals, pp. 234, 235.

[4] Jonathan Dayton, of New Jersey, Speaker.

[5] Second session Twenty-seventh Congress, Globe, p. 621.

[6] John White, of Kentucky, Speaker.

[7] Second session Fortieth Congress, Journal, p. 196; Globe, p. 560.

[8] Schuyler Colfax, of Indiana, Speaker.

Then, on motion of Mr. George S. Boutwell, of Massachusetts, Mr. Farnsworth was allowed to proceed with his remarks in order.

Mr. Mungen then offered a resolution that Mr. Farnsworth be reprimanded by the Speaker for the words taken down, but the resolution was laid on the table.

5140. In debate a Member should not address another in the second person.—On January 18, 1899,[1] while the House had under consideration the bill (H. R. 26) for the establishment of a light and fog signal station on Hog Island Shoal, Rhode Island, a debate arose between Mr. William P. Hepburn, of Iowa, and Mr. Joseph G. Cannon, of Illinois, in the course of which the latter addressed the former by the personal pronoun "you" instead of referring to him as "the gentleman from Iowa."

The Speaker[2] thereupon called Mr. Cannon to order, saying:

The gentleman from Illinois should not use the second person in addressing a Member.

5141. On January 30, 1899,[3] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 11022) for the reorganization of the Army of the United States.

Mr. Charles B. Landis, of Indiana, in the course of a colloquy, addressed a Member with the personal pronoun "you."

The Chairman,[4] calling him to order, said:

The gentleman from Indiana should not address his colleague in the second person.

5142. On March 11, 1904,[5] during consideration of a resolution relating to the conduct of certain Members in relation to transactions in the Post-Office Department, Mr. Henry A. Cooper, of Wisconsin, in debate, referring to another Member, used the pronoun "you."

The Speaker[6] said:

Gentlemen will not interrupt without the consent of the Member speaking, and the Chair again cautions the House that it is not proper to refer to Members except in the usual way of the gentleman so-and-so.

5143. On January 27, 1842,[7] during a debate on the floor between Messrs. Henry A. Wise, of Virginia, and John M. Botts, of the same State, Mr. Botts addressed Mr. Wise, using the pronoun "you."

The Speaker[8] called Mr. Botts to order, saying that he had no right to so address a Member on the floor.

5144. A Member may not in debate refer to another Member by name.— On March 3, 1898,[9] the bill (H. R. 5359) to amend the postal laws relating to second-class matter was under consideration, and Mr. James M. Robinson, of

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[1] Third session Fifty-fifth Congress, Record, p. 762.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Third session Fifty-fifth Congress, Record, p. 1289.

[4] Sereno E. Payne, of New York, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 3152.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] Second session Twenty-seventh Congress, Globe, p. 182.

[8] John White, of Kentucky, Speaker.

[9] Second session Fifty-fifth Congress, Record, p. 2433.

Indiana, had the floor. Having in the course of his remarks mentioned the chairman of the Appropriations Committee by name, the Speaker [1] called him to order, saying:

The gentleman is out of order. He should not allude to Members by name.

5145. It is not in order in debate to mention a Member by name or to indulge in personalties.—On December 13, 1905,[2] Mr. William B. Lamar, of Florida, having the floor in general debate in Committee of the Whole House on the state of the Union, referred to another Member, Mr. John Sharp Williams, of Mississippi, as follows:

Now, Mr. Chairman, I could state with more truth than he has to charge me with party unfealty that that caucus was not right; that it was party treachery and party perfidy. I do not make that charge. His charge is more than an injustice, and unless Mr. Williams places himself before a caucus of Democrats—

The Chairman [3] interposed:

The Chair will call the attention of the gentleman from Florida to the fact that under the rules he should not mention by name any other Member of the House.

Later Mr. Lamar continued:

The minority leader would like to have quietude over here, and would like to be followed. Here is how he would like to be followed by the Democracy:

"MINORITY LEADER. Do you see yonder cloud that's almost in shape of a camel?

"Some Democratic MEMBER. By the mass, and 'tis like a camel indeed.

"WILLIAMS. Methinks—"

The Chairman again interposed:

The gentleman from Florida must obey the rules of the House.

Again Mr. Lamar said:

I shall follow him as a leader as long as he holds that position, but I'repudiate, with all the contempt that I have for him, the idea that he is fit to lead anybody anywhere. Now, I shall ask him—I say it on the floor of this House—

Mr. Williams here interposed:

Mr. Chairman, I very much dislike to call attention to a rule of the House, but as it is apt by its enforcement to prevent unpleasant things from happening on the floor I do call attention to the fact that the gentleman from Florida [Mr. Lamar] is not permitted by the rules of the House to use insulting language on the floor.

The Chairman said:

The gentleman will please proceed in order and not indulge in personalities.

5146. It is not in order in debate to call a Member by name and comment on his action in a preceding Congress.—On January 22, 1836,[4] during a discussion of a resolution to investigate the failure of the fortifications appropriation bill in the closing hours of the last Congress, Mr. Henry A. Wise, of Virginia, in debate, was proceeding to read from the Journal of the last Congress the names

[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 352, 356.

[3] Thomas S. Butler, of Pennsylvania, Chairman.

[4] First session Twenty-fourth Congress, Debates, pp. 2281, 2283, 2285, 2294, 2295.

of several gentlemen, Members of the present House, showing their votes at the time the bill failed to be acted on.

The Speaker[1] several times interposed and informed the gentleman from Virginia that it was not in order to call Members by their names, but permitted Mr. Wise to read their names from the Journal of the last session, when he did so without comment personal to the Members. Finally the Speaker said that he would repeat to the gentleman from Virginia that in reminding him a few moments ago that it was against order to refer to honorable Members of the last House who were also Members of the present House, and in their seats, by their names, it was far from the intention of the Chair to interfere with any of the rights of the gentleman from Virginia, and would exceedingly regret to interfere with the rights of any gentleman on the floor. The Chair thought it out of order and supposed such a course of debate, if suffered to proceed, was likely to produce excitement and collision, and he had therefore wished to arrest it. He felt sure that the gentleman from Virginia and every other Member would see the necessity for such a course, and would sustain the Chair in his efforts to preserve the order and harmony of the proceedings of the House.

5147. It is improper in debate to arraign the motives of Members.

A Member who has been called to order in debate and directed to sit down may not proceed on yielded time.

On the calendar day of March 2, 1903[2] (legislative day of February 26), the House was discussing the bill (H.R. 17546) "to provide for a Delegate to the House of Representatives of the United States from Porto Rico," when Mr. George A. Pearre, of Maryland, referring to an opponent in debate, said:

> The gentleman is guilty of a worse offense in concealing the truth from this House, especially when the gentleman knows the motive was a personal one.

The Speaker[3] called Mr. Pearre to order, saying:

> The motives of gentlemen must not be impugned.

Mr. Pearre was about to proceed, when Mr. Oscar W. Underwood, of Alabama, made the point of order that Mr. Pearre having been called to order, must sit down.

The Speaker sustained the point of order, and Mr. Pearre took his seat.

Mr. Henry A. Cooper, of Wisconsin, who controlled the time, proposed to yield time to Mr. Pearre that he might continue; but the Speaker said:

> The gentleman from Wisconsin can not do that. The gentleman from Maryland was admonished to take his seat, and if the gentleman from Wisconsin desires to proceed he can do so, but he can not yield to the gentleman from Maryland.

Soon after, Mr. Charles H. Grosvenor, of Ohio, moved that Mr. Pearre be allowed to proceed in order, and this motion being decided in the affirmative, Mr. Pearre proceeded.

5148. On April 3, 1902,[4] while the House was in Committee of the Whole House on the state of the Union considering the bill (S. 1025) to promote the effi-

[1] James K. Polk, of Tennessee, Speaker.

[2] Second session Fifty-seventh Congress, Record, pp. 2926, 2927.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Fifty-seventh Congress, Record, p. 3631.

ciency of the Revenue-Cutter Service, Mr. William P. Hepburn, of Iowa, while in a colloquy with Mr. John F. Lacey, of Iowa, said:

You have been opposing the bill. * * * And therefore I doubt very much your sincerity in this matter.

The Chairman,[1] interposing, said:

Gentlemen will not impugn the motives of fellow-Members.

5149. On April 20, 1904,[2] the House was considering the bill (H.R. 7262) entitled "A bill to provide for the allotment of lands in severalty to the Indians in the State of New York, and extend the protection of the laws of the United States and of the State of New York over such Indians, and for other purposes," Mr. Edward B. Vreeland, of New York, having charge thereof.

In the course of the debate Mr. William Sulzer, of New York, read a letter from a former Member of the House, John Van Voorhis, in the course of which occurred this paragraph:

White speculators want to get at the valuable oil privileges that are on those reservation lands, as they have in the past secured most of them for nothing. I would like at this moment to put Mr. Vreeland on the witness stand under oath, and ask him if it is not a fact that he himself has got rich off these very Indians, and if one corporation formed to exploit these lands was not formed by himself.

Mr. Sulzer also read another letter from W. H. Samson, president of the Rochester Historical Society, saying:

The purpose of the Vreeland bill, in my opinion, is to get the Indians' land and not to Christianize the Indians, not to civilize them, and one of the saddest and most discouraging things about the whole business is that Mr. Vreeland has deluded a whole lot of good people into the idea that its purpose is strictly philanthropical

The Speaker pro tempore[3] said:

The gentleman will suspend for one moment. The Chair feels it his duty to remind the gentleman that the rule of the House forbids reference to Members by name, and it is just as much a violation of the rule to read something somebody else has said as if the gentleman had stated it himself. It is also against the rules of the House to impugn the motives of other gentlemen.

5150. On April 21, 1904,[4] the House was considering a resolution relating to certain ballots before the Committee on Elections No. 2 in the Colorado election case of Bonynge *v.* Shafroth, of Colorado.

In the course of the debate Mr. John S. Williams, of Mississippi, referred to the speech of Mr. Robert W. Bonynge, of Colorado, and the following occurred:

Mr. WILLIAMS, of Mississippi. The gentleman used this rather cutting language, "A grand jury summoned by a Democratic sheriff," with the intent to leave that impression. [Cries of "Oh!" on the Republican side.] He said, "A grand jury summoned by a Democratic sheriff."

Mr. BONYNGE. That is a fact.

Mr. WILLIAMS, of Mississippi. And I purposely said, "A Democratic grand jury," so as to hear the gentleman's explanation of that rather cunning way of putting it.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 5205.

[3] Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

[4] Second session Fifty-eighth Congress, Record, pp. 5279, 5280.

Mr. BONYNGE. Mr. Speaker, will the gentleman yield for a moment? Did the gentleman from Mississippi say that he purposely misquoted my language?

Mr. WILLIAMS, of Mississippi. Oh, I purposely quoted what you intended to leave as an impression upon the House. [Cries of "Oh!" on the Republican side.]

The Speaker[1] said:

The Chair calls the attention of the House again to the fact that in debate it is against the rules of sound parliamentary usage to impugn the motives of Members.

5151. On May 8, 1902,[2] in the Senate, during a colloquy between Messrs. Jonathan P. Dolliver, of Iowa, and Edward W. Carmack, of Tennessee, the latter said:

A few moments ago when I unguardedly used an expression about the impudence of Senators upon the other side of the Chamber, the Senator from Wisconsin suggested to me that it was an improper expression, and I thought so, and withdrew it. The Senator from Iowa speaks of Senators upon this side of the Chamber as a syndicate of vituperation. I did not call the Senator from Iowa to order. If it had been any other Senator upon the other side of the Chamber I would have done so. But I did not call the Senator from Iowa to order because I know that to require him to speak the language of decency and courtesy in debate would be to condemn him to absolute silence for the rest of his life.

Mr. George F. Hoar, of Massachusetts, having called the Senator from Tennessee to order, the words were taken down, and the President pro tempore[3] decided that the language was "very clearly out of order."

Later Mr. Carmack withdrew the language by consent of the Senate.

5152. Personalities aimed at a Member in a capacity other than that of Representative are not in order.—On April 20, 1871,[4] Mr. John F. Farnsworth, of Illinois, having the floor for a personal explanation, referred to Mr. Benjamin F. Butler, of Massachusetts, in his capacity as custodian of certain public money, as follows:

Making a parade of his charity, he has been gorging himself and speculating with this money.

Mr. Butler objected to these words as not parliamentary.

The Speaker[5] said:

The gentleman from Illinois, referring by evasion, as the Chair understands, to the gentleman from Massachusetts, speaks of the "treasurer of the asylums." That officer is known to be identical with the gentleman from Massachusetts. The Chair rules that the language used transgresses the rules of the House.

Then, on motion of Mr. Samuel S. Cox, of New York, Mr. Farnsworth was allowed to proceed in order.

5153. It is not in order in debate for one Member to accuse another of an offense not connected with the representative capacity of the latter.

Questions involving the distinction between general language and personalities in debate.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 5171.

[3] William P. Frye, of Maine, President pro tempore.

[4] First session Forty-second Congress, Journal, p. 202; Globe, pp. 839, 840.

[5] James G. Blaine, of Maine, Speaker.

On February 13, 1905,[1] Mr. John A. Sullivan, of Massachusetts, was, by unanimous consent, permitted to occupy the floor for a personal explanation, and proceeded to reply to an article printed in the New York American, a newspaper owned and edited by Mr. William R. Hearst, a Member from New York.

In the course of the remarks of Mr. Sullivan Mr. James M. Robinson, of Indiana, made the point of order that he was referring to another Member in unparliamentary language, and cited the following:

The writer raises the query whether my "ignorance (of pending measures) was due to congenital incapacity or indifference to the people's rights." "Congenital incapacity" is a serious charge, yet obviously one which a person accused would not care to discuss. If the charge is true, he is not guilty but simply unfortunate, and it is surely a grievous misfortune not to be able to appreciate the value of the legislative services of the gentleman from New York. But congenital incapacity to understand is a term that covers a wide range of mental and moral deficiencies. It covers the case of the moral degenerate, who insolently casts his lecherous eyes upon the noblest of women whose virtue places them beyond the contamination of his lust. It covers the case of the unclean, unproductive, shiftless member of society who stands before the jeweler's window condemning the economic and municipal laws that place the beautiful gems beyond his reach. And it includes the man who, totally bereft of the sense of proportion, raises his profaning eyes toward the splendid temple of the people's highest gift—the Presidency of the United States—blissfully unconscious of the woeful contrast between the qualifications requisite for that high office and his own contemptible mental and moral equipment.

The Speaker[2] ruled:

The House will observe that the language used by the gentleman from Massachusetts would be unparliamentary if there were anything in the language to connect it with any Member upon the floor of the House. The Chair in passing upon the point of order can not enter the domain of speculation to say whether it refers to any Member of the House. To illustrate, if it were set out as a matter of pleading in a declaration it would need an averment that would connect it with a Member of the House. So that upon the face of the language as uttered by the gentleman from Massachusetts the Chair can not say that he is out of order.

At the conclusion of Mr. Sullivan's remarks Mr. William R. Hearst, of New York, asked and was granted unanimous consent to reply.[3]

In the course of his remarks Mr. Hearst said:

There is a certain class of gentlemen who are peculiarly sensitive to newspaper criticism, and have every reason to be. I was criticised on the floor of this House once before by a gentleman from California, Mr. Johnson. That gentleman had been attacked in my newspapers for subserviency to the Southern Pacific Railway. He had gone back to his constituents for vindication, and the district which had elected him by 5,000 Republican majority repudiated him and went 5,000 Democratic. It was the first time that district had gone Democratic, and it has never gone Democratic since that time, so it was obviously in order to reject the gentleman from California, Mr. Johnson. Mr. Johnson had been indicted for forgery—

Mr. Sereno E. Payne, of New York, made the point of order that it was not in order to attack a former Member of the House; but withdrew the point.

Proceeding further, Mr. Hearst said:

I had no desire, really, to criticise the gentleman from Massachusetts, and if I had I should certainly not have done it in so puerile a way. When I was at Harvard College in 1885 a murder was committed in a low saloon in Cambridge. A man partly incapacitated from drink bought in that

[1] Third session Fifty-eighth Congress, Record, p. 2479.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Record, pp. 2481, 2482.

saloon on Sunday morning, when the saloon was open against the law, was assaulted by the two owners of that saloon and brutally kicked to death. The name of one of the owners of that saloon was John A. Sullivan, and these two men were arrested and indicted by the grand jury for manslaughter and tried and convicted. I would like to ask the gentleman from Massachusetts [Mr. Sullivan] if he knows anything about that incident, and whether, if I desired to make a hostile criticism, I could not have referred to that crime?

Mr. Thomas S. Butler, of Pennsylvania, objected to this language as unparliamentary.

The Speaker said:

Up to this time, in the references to an individual not a Member of the House, the gentleman was in order touching that. So far as the Chair is able to judge from the question of the gentleman from New York [Mr. Hearst], the Chair can not see that the gentleman is out of order, and the Chair will again read to the House what he read to the House during the remarks of the gentleman from Massachusetts:

"No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, etc., nor to digress from the matter to fall upon the person by speaking, reviling, nipping, or unmannerly words against a particular Member."

Mr. Butler, of Pennsylvania, objected further:

Mr. Speaker, if I understood the gentleman from New York [Mr. Hearst] rightly, he inferentially charged the gentleman from Massachusetts [Mr. Sullivan] with either having murdered some one or conspired to murder.

The Speaker said:

He does not, from anything that the gentleman has so far said. An averment would have to be made before the Chair could know that he is referring to any Member of the House. * * *

The Chair recollects the language. The Chair was giving attention closely to the remarks. The Chair will state that the Chair himself hesitates sometimes in writing and halts in putting his own initials when he signs his name, and the Chair will state—although that is certain which may be rendered certain—that the Chair does not now even know the Christian name of either the gentleman from Massachusetts [Mr. Sullivan] or the gentleman from New York [Mr. Hearst]; nor does the Chair know whether of the 80,000,000 of people there are others bearing the same name. The Chair assumes that the gentleman from New York [Mr. Hearst] was not referring to the gentleman from Massachusetts. In other words, there is nothing so far to show on its face that the gentleman from New York [Mr. Hearst] is referring to the gentleman from Massachusetts [Mr. Sullivan].

Mr. Hearst then continued:

Mr. Speaker, I recognize the inherent justice of the remark that the gentleman from Pennsylvania has made about the character of discussion that has been going on in this House and I greatly regret it, but I must define the kind and character of men who have made their attacks upon me and their reasons for it. I must state there is a certain class of man who is peculiarly sensitive to criticism and particularly deserving of it, and I must say that it is the duty of a newspaper when such men are in public life to refer to their past and their character for the protection of the public.

The Speaker here intervened, saying:

The Chair will state, in view of the remarks of the gentleman, that an accusation of homicide against a Member—even although the alleged offense occurred before he was elected to this House—would seem to the Chair to fall within the parliamentary prohibition of being calculated "to provoke disturbance and disorder and to bring the body itself into contempt and criticism." The Chair will state that the words quoted are from a carefully considered report made to the House some years ago in a case wherein one Member charged against another an offense committed before the latter became a Member of the House. The gentleman from New York, the Chair presumes and believes, is quite familiar with parliamentary rules and usages and will proceed in order.

5154. The explanation of a Member being referred to by another Member in debate "as worthy of a Nero or a Jeffreys," the Speaker intervened and the language was withdrawn.—On July 20, 1867,[1] Mr. Frederick E. Woodbridge, of Vermont, having the floor for a personal explanation as to his action as a member of the Judiciary Committee in connection with the proceedings for the impeachment of President Johnson, said of a fellow-member of that committee:

Unlike my friend from Pennsylvania [Mr. Thomas Williams], I had not determined at that time what my vote would finally be. He, by his own statement before the House, had determined the question prior to the adjournment in June, and required no further testimony. The expression, sir, is more worthy of a Nero or a Jeffreys than a learned Member of the law committee of this House.

The Speaker,[2] interposing, said:

The Chair will state to the gentleman from Vermont that his language is not parliamentary.

Mr. Woodbridge thereupon withdrew the offensive words.

5155. Where charges of bribery had been made against a Senator, a question propounded to him by another Senator on the subject, was held to be in order.—On May 7, 1879,[3] in the Senate, during discussion of a proposition relating to the reopening of the case of Spofford *v.* Kellogg, from Louisiana, Mr. John T. Morgan, of Alabama, in colloquy with Mr. Kellogg, said:

Has the Senator from Louisiana [Mr. Kellogg] any objection to the Committee on Privileges and Elections investigating the question whether or not he bribed the members of the legislature that elected him?

Mr. George F. Edmunds, of Vermont, raised a question of order, that it was not in order, where another Senator was personally concerned and a resolution was offered affecting his character, to propound such a question.

The President pro tempore[4] decided that, in the opinion of the Chair, the language used by the Senator from Alabama contained no imputation upon the Senator from Louisiana, and was in order. He said:

If the Chair understood the observation of the Senator from Vermont, he claims that it was out of order upon the ground that it was insulting to the Senator from Louisiana. The Chair is unable to see anything of insult in the question. It is proposed that a certain charge against the Senator from Louisiana shall be referred to a committee for investigation. The Senator from Alabama simply asked the Senator from Louisiana whether he was willing that that charge should be investigated. The Chair can see nothing insulting, nothing criminating, nothing asking the Senator from Louisiana to criminate himself, in that question, and therefore rules that the point of order is not well taken.

5156. Instance of personalities in debate in the Senate.—On March 1, 1879,[5] in the Senate, Mr. George F. Hoar, of Massachusetts, offered an amendment relating to an exception of Jefferson Davis from the provisions of a proposed law to pension soldiers of the Mexican war.

Mr. L. Q. C. Lamar, of Mississippi, in the course of debate said:

I must confess my surprise and regret that the Senator from Massachusetts should have wantonly, without provocation, flung this insult—

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[1] First session Fortieth Congress, Globe, p. 759.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Forty-sixth Congress, Record, pp. 1120, 1121.

[4] Allen G. Thurman, of Ohio, President pro tempore.

[5] Third session Forty-fifth Congress, Record, p. 2227.

At this point the Presiding Officer[1] intervened, and ruled that the words were out of order.

Mr. Lamar having appealed, the decision of the Chair was reversed, yeas 15, nays 26, and it was decided that the words were in order.

5157. While in debate the assertion of one Member may be declared untrue by another, yet in so doing an accusation of intentional misrepresentation must not be implied.—On February 16, 1836,[2] the House was considering a motion to take from the files of the House and print a letter sent to the House at the last session of the preceding Congress by the late Postmaster-General. Mr. Albert G. Hawes, of Kentucky, having the floor in debate on the motion, was called to order by the Speaker for referring to matters irrelevant to the subject, and for using the words "grossly false," as applied to statements made by Mr. F. O. J. Smith, of Maine, in a publication made by him during the late recess of Congress; which irrelevant matter and words the Speaker[3] decided to be a violation of that rule of the House which provided that a Member "shall confine himself to the question under debate, and avoid personality."

Mr. Hawes, who had taken his seat, was permitted to explain, and said that the pamphlet to which he referred had been published privately by the gentleman from Maine in the recess before the present House had come into existence.

Mr. Waddy Thompson, jr., of South Carolina, having appealed, the decision of the Chair was sustained, yeas 160, nays 42.

5158. On May 1, 1868,[4] in debate Mr. John A. Logan, of Illinois, said of the statement of another Member of the House:

> That is not true, and he knows it.

Mr. Charles A. Eldridge, of Wisconsin, objected to these words, and on his motion the words were taken down.

A decision of the Chair having been demanded, the Speaker[5] said:

> The Chair thinks that those words are not unparliamentary. If the gentleman from Illinois had made use of opprobrious words sometimes used, but which the Chair will not repeat, he would have been out of order. But any gentleman has the right to say that a proposition is not true, and possibly that the one making it knew that it was not true. The Chair thinks that the words used may be severe, but they are not offensive in any sense in which it is forbidden to Members to use offensive language toward their fellow Members, and did not seem to be uttered in an offensive tone.

5159. On April 10, 1906,[6] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Frank A. Hopkins, of Kentucky, having the floor, was addressing the Committee.

Mr. William S. Bennet, of New York, rising to a question of order, demanded that the words just uttered by Mr. Hopkins be taken down.

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[1] George F. Edmunds, of Vermont, Presiding Officer.

[2] First session Twenty-fourth Congress, Journal, pp. 360, 361; Debates, pp. 2539, 2541.

[3] James K. Polk, of Tennessee, Speaker.

[4] Second session Fortieth Congress, Globe, p. 2341.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] First session Fifty-ninth Congress, Record, p. 5015.

The Chairman [1] said:

The Reporter informs the Chair that he has not been taking down the remarks of the gentleman from Kentucky for the reason that the gentleman from Kentucky informed him that his remarks were in manuscript and that there was no need of reporting them. If the gentleman from Kentucky will permit the Chair to see the manuscript, the question can be determined.

The Chairman, from suggestion made by Mr. Bennet, stated the objectionable words:

He says [referring to the gentleman from New York] that 30.6 per cent of the voters of the country in which I live can neither read nor write, which is not true.

Mr. John S. Williams, of Mississippi, made the point that the language was in order.

The Chairman said:

The Chair rules that the language is not unparliamentary, and the gentleman from Kentucky will proceed.

5160. On February 13, 1835,[2] in the Senate, Mr. Thomas H. Benton, of Missouri, had the floor in debate, and was replying to some remarks made by Mr. John C. Calhoun, of South Carolina. In the course of his remarks Mr. Benton said that a certain accusation made by Mr. Calhoun was "a bold and direct attack upon truth."

Mr. George Poindexter, of Mississippi, called Mr. Benton to order.

The Vice-President [3] having decided that Mr. Benton was in order, Mr. Daniel Webster, of Massachusetts, appealed, saying that the word untruth implied an intentional misrepresentation, and the application of it to a member of that body was unparliamentary and out of order. A member might not, he said, get up and say that the words of another were untrue. He might say that the words of another were founded on misconception, that he was mistaken, or had unintentionally made an erroneous statement, but he could not charge him with uttering an untruth. He remembered a case of this kind in the other House when a gentleman of distinction from South Carolina presided there. A Member applied certain epithets to the war then pending with Great Britain. He said it was a French war, and another Member answered that it was untrue. The Chair decided that the charge implied want of veracity, and that the Member making it was out of order.

The Senate, by a vote of 23 to 21, overruled the Vice-President, and Mr. Benton's remark was held to be out of order.

5161. In the early practice of the House the Speaker intervened to prevent in debate even the mildest imputation on the motives of a Member.— On June 17, 1813,[4] Mr. Samuel Farrow, of South Carolina, in debating a resolution of inquiry proposed by Mr. Daniel Webster, of New Hampshire, said, in the course of his remarks:

Information, in reply to those inquiries, is not the object of the honorable Member from New Hampshire. * * * Those resolutions are intended as a plea in bar to the demand of this nation for money.

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[1] James S. Sherman, of New York, Chairman.

[2] Second session Twenty-third Congress, Debates, pp. 427–432.

[3] Martin Van Buren, of New York, Vice-President.

[4] First session Thirteenth Congress, Annals, p. 185.

Here the Speaker[1] stated that it was not proper to state the motives of the Member from New Hampshire.

5162. On January 25, 1836,[2] during the discussion of the agitation of the abolition of slavery in the District of Columbia, Mr. Thomas Glascock, of Georgia, said of Mr. John Quincy Adams, of Massachusetts, who had presented several petitions on the subject:

> To press these petitions now, under circumstances like these, seems to me to be intended to produce excitement, and wound the feelings of the Southern Members.

The Speaker[3] reminded the gentleman from Georgia that it was not in order to impugn the motives of any Member of the House.

5163. Examples of personal and recriminating remarks held out of order in debate by the Speakers.

The Speaker sometimes interposes to prevent breach of order in debate, without waiting for a question to be raised by a Member.

On January 26, 1828,[4] Mr. Samuel P. Carson, of North Carolina, referring to the argument of an opponent in debate, said:

> I am perfectly secure from his malignant shafts.

The Speaker[5] interposed and reminded Mr. Carson that his remarks were out of order.

On the same day, Mr. John Floyd, of Virginia, said of words spoken by an opponent in debate:

> If that remark was intended for me, I say that the remark itself is a base insinuation, and as such I hurl it back in his teeth.

The Speaker here called Mr. Floyd to order.

Later the Speaker rose and addressed the House as follows.[6]

He felt, he said, very deep regret at the personal and unpleasant character which the debate had assumed, and which, if continued, was calculated to have a baneful effect upon the character and deliberations of the House. The Speaker certainly could have no wish to restrict improperly the freedom of debate. He had never attempted it; he never should; but at the same time he felt it a duty that he owed the House, the nation, and himself to interpose the authority of the Chair in maintaining the order and dignity of the House and in repressing personalities and recriminations, which could produce no other effect than deep excitement and personal altercations. In the eagerness of controversy and the commotion of debate it was often very difficult for the Chair to interpose successfully his authority in preserving order and limiting debate; in cases of great or unusual excitement it could never be done without the most prompt and vigorous cooperation of the House. In making these remarks the Chair intended no allusion to any particular Member of the House. He had risen to impress upon the House

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[1] Henry Clay, of Kentucky, Speaker.

[2] First session Twenty-fourth Congress, Debates, p. 2317.

[3] James K. Polk, of Tennessee, Speaker.

[4] First session Twentieth Congress, Debates, pp. 1195, 1201, 1203.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] Debates, p. 1203.

the necessity of enforcing order and sustaining the Chair, and to entreat gentlemen who might be disposed to mingle in the debate to refrain from personal and recriminating remarks toward each other and to confine themselves to the subject under consideration.

5164. On January 29, 1828,[1] Mr. Joseph Vance, of Ohio, in debate, thus referred to Mr. John Randolph, of Virginia:

> The Member from Virginia talked very pathetically about the poor man—his pound of sugar, peck of salt, etc. Now, sir, I would be glad to know when all these feelings came athwart the Member. Are they since the Huskisson dinner at Liverpool? They do not comport with what the Member is reported to have said after the excursion in the Dublin steam packets.

Mr. Vance here said he should read for the information of the House the Member's sentiments at that time.

The Chair[2] said it would be out of order, admonishing the gentleman from Ohio that personal allusions were out of order.

5165. On February 9, 1827,[3] during debate arising over the relations of the United States and Georgia, Mr. William Haile, of Mississippi, referring to Mr. Daniel Webster, of Massachusetts, said it was true the gentleman from Massachusetts was, in many respects, far superior to him, and was possessed of high standing and great influence, both in the nation and in the House; and if the gentleman chose to direct that influence against him——

Mr. Haile being called to order at this point, the Chair 4 decided that all reflections or observations touching the standing or influence of any Member were a violation of the decorum of debate.

5166. On January 24, 1828,[5] Mr. Henry Daniel, of Kentucky, while debating the resolutions relating to retrenchment of the expenditures of the Government, referred to an opponent as follows:

> His great argument appeared to be that, if the pay of Members of Congress were to be reduced, they could not so well educate their horses to go electioneering; and, indeed, sir, when those remarks fell from the Member I was greatly at a loss to determine which possessed the most native genius, the horse which was spoken of or his master.

The Speaker[2] here declared all personal observations out of order.

5167. On June 18, 1813,[6] Mr. Alexander C. Hanson, of Maryland, replying to Mr. Felix Grandy, of Tennessee, referred to the latter as "the apologist of France," and as possessing "a characteristic skill and cunning, for which he understood the Member stood unrivaled and preeminent in the highly civilized, polished, and refined State which honored the House with his presence here."

The Speaker[7] called the gentleman from Maryland to order, stating that the epithet "cunning was not proper to be applied to a Member of the House, and still more was it out of order to use the words "apologist of France."

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[1] First session Twentieth Congress, Debates, p. 1229.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] Second session Nineteenth Congress, Debates, p. 1046.

[4] John W. Taylor, of New York, Speaker.

[5] First session Twentieth Congress, Debates, pp. 1141, 1142.

[6] First session Thirteenth Congress, Annals, p. 252.

[7] Henry Clay, of Kentucky, Speaker.

5168. On January 30, 1840,[1] during the discussion of the subject of the public printing, a colloquy occurred between Messrs. Edward Stanly, of North Carolina, and F. O. J. Smith, of Maine, in the course of which Mr. Stanly said that he should blush to receive a compliment from the gentleman from Maine.

Mr. Isaac E. Crary, of Michigan, called the gentleman from North Carolina to order for using the words.

The Speaker[2] decided that Mr. Stanly's words were not in order, and that he could not proceed without leave of the House.

5169. On November 21, 1867,[3] during debate the Speaker[4] called Mr. James Brooks, of New York, to order for words spoken in debate. Being questioned as to what words were disorderly, the Speaker said:

> The language to which the Chair excepted was this: That the gentleman from Massachusetts [Mr. Henry L. Dawes] "had done a mean thing" toward the gentleman from New York [Mr. Brooks]. That language was not parliamentary. The gentleman from New York will now proceed in order.

5170. A Member is allowed a wide latitude in debate relating to a contumacious witness at the bar of the Rouse.—On June 8, 1868,[5] the House was considering the case of C. W. Wooley, a contumacious witness who had been arrested and was at the bar of the House. During the procedure, Mr. John Covode, of Pennsylvania, was called to order by Mr. Charles A. Eldridge, of Wisconsin, for the use of the following words in reference to the witness, viz:

> The witness present was not only guilty of contempt of the House, but guilty of perjury.

The Speaker[4] submitted the decision to the House, saying:

> In a case parallel to this which occurred in the Thirty-eighth Congress, when the gentleman from Indiana [Mr. Orth] alluded to a Member from Maryland as a "traitor," after the House of Representatives had adopted a resolution that he had given aid and comfort to the enemy by certain remarks which he had offered on the floor of the House, it was ruled, and the ruling was sustained on appeal, that the gentleman had a right to make that charge, because the House of Representatives had, by its resolution, made such a declaration. In this case the House must, in like manner, decide whether the language used by the gentleman from Pennsylvania is justifiable, in view of the facts and evidence within the knowledge of the House.

The question being put, "Are the said words out of order?" it was decided in the negative, yeas 37, nays 70.

5171. A Member in debate may impeach the testimony of a witness before a committee.—On April 17, 1828,[6] during discussion of the tariff bill, Mr. Churchill C. Cambreleng, of New York, criticised certain testimony given on the subject of prices of cloths as wrong.

Mr. David Woodcock, of New York, as a parliamentary inquiry, asked whether a Member had the right to impeach the testimony of a witness who had been sent for by the committee.

The Speaker[7] replied that he had.

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[1] First session Twenty-sixth Congress, Globe, p. 157.

[2] Robert M. T. Hunter, of Virginia, Speaker.

[3] First session Fortieth Congress, Globe, p. 776.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Fortieth Congress, Journal, pp. 819, 820; Globe, p. 2945.

[6] First session Twentieth Congress, Debates, pp. 2366, 2367.

[7] Andrew Stevenson, of Virginia, Speaker.

5172. A Member may not be required to give the authority of any respectful statement which he may quote in debate.—On April 15, 1830,[1] the bill in "alteration of the several acts laying duties on imports" was under consideration in Committee of the Whole House on the state of the Union.

In the course of the debate, Mr. Rollin C. Mallary, of Vermont, read from a paper, giving certain statements as to the subject under debate.

Mr. Churchill C. Cambreleng, of New York, having inquired as to the authority of the evidence, Mr. Mallary replied that it was of the most unquestioned respectability.

Mr. William Drayton, of South Carolina, raised a question of order as to whether it was not a matter of right to demand the authority of a paper which was presented for the purpose of influencing a committee.

The Chairman[2] decided that a Member, while addressing the committee, might read in his place any paper containing respectful language, and could not be required to give up the authority on which it was founded. It was for the committee to judge of the value of what was disclosed.

5173. Questions of order have been raised when language used in debate has been such as to suggest the dissolution of the Government.— On January 14, 1811,[3] the House was considering the bill to enable the Territory of Orleans to form a constitution and State government, when Mr. Josiah Quincy, of Massachusetts, was called to order by Mr. George Poindexter, the Delegate from Mississippi Territory, for using the following expressions which, he claimed, tended to dissolve the Government and reduce the House itself to "dust and ashes:"

> If this bill passes, it is my deliberate opinion that it is virtually a dissolution of this Union; that it will free the States from their moral obligations; and that as it will then be the right of all, so it will be the duty of some, definitely to prepare for separation, amicably if they can, violently if they must.

The Speaker[4] decided that the expressions following the words "moral obligations" were out of order.

An appeal being taken, the decision of the Chair was overruled by the House, yeas 53, nays 56.

5174. On April 9, 1864,[5] during debate on a resolution for the expulsion of Mr. Alexander Long, of Ohio, Mr. Benjamin G. Harris, of Maryland, who had the floor in debate, was called to order by Mr. Elihu B. Washburne, of Illinois, for the use of the following words:

> The South asked you to let them live in peace. But no; you said you would bring them into subjugation. That is not done yet; and God Almighty grant that it never may be. I hope that you will never subjugate the South.

The Speaker pro tempore[6] sustained the point of order, and Mr. Harris thereupon took his seat.

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[1] First session Twenty-first Congress, Debates, p. 797.

[2] William D. Martin, of South Carolina, Chairman.

[3] Third session Eleventh Congress, Journal, p. 481 (Gales and Seaton ed.); Anna1s, pp. 525, 526.

[4] Joseph B. Varnum, of Massachusetts, Speaker.

[5] First session Thirty-eighth Congress, Journal, p. 506 Globe, p. 1516.

[6] Edward H. Rollins, of New Hampshire, Speaker pro tempore.

5175. If any Member in speaking or otherwise transgress the rules of the House, it is the duty of the Speaker and the privilege of any Member to call him to order, and he may be punished by censure or otherwise.

A Member called to order shall immediately sit down, unless the House, on motion, but without debate, shall permit him to explain or proceed in order.

Present form and history of section 4 of Rule XIV.

Section 4 of Rule XIV provides:

> If any Member, in speaking or otherwise, transgress the rules of the House, the Speaker shall, or any Member may, call him to order; in which case he shall immediately sit down, unless permitted, on motion of another Member, to explain, and the House shall, if appealed to, decide on the case without debate. If the decision is in favor of the Member called to order he shall be at liberty to proceed, but not otherwise; and, if the case require it, he shall be liable to censure or such punishment as the House may deem proper.

This is the form of the rule reported in the revision of 1880,[1] but that form was taken almost verbatim from the original rule of April 7, 1789.[2]

On February 28, 1820,[3] Mr. William Lowndes, of South Carolina, proposed a provision that in case the decision should be against the Member called to order, he should not proceed without leave of the House if there should be objection. Mr. Lowndes urged that it was necessary to prevent waste of the time of the House in irrelevant debate, but the argument that it would be oppressive to the Member prevailed for the time being; but in 1822[4] the provision was engrafted in the rule. On March 4, 1868,[5] Mr. Speaker Colfax held that the rule required an objection from the floor in order to justify the Speaker in forbidding the Member to proceed. By an amendment of the rule adopted in 1880 this was changed so as to provide that the Member should not proceed at all after an adverse decision. Also, in 1880, it was provided that the permission to explain should be given "on motion of another Member."

5176. The parliamentary law relating to naming a Member who persists in irregularity, and punishment by the House.—Chapter XVII of Jefferson's Manual provides:

> If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict.[6] (2 Hats., 167, 7, 8, 172.)

5177. When a Member is called to order for words spoken in debate, the words are to be taken down at once; and he shall not be held to answer or be subject to censure if debate or business intervene.

Present form and history of section 5 of Rule XIV.

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[1] Second session Forty-sixth Congress, Record, p. 206.

[2] First session First Congress, Journal, p. 9.

[3] First session Sixteenth Congress, Journal, pp. 258, 282; Annals, pp. 1557, 1592.

[4] First session Seventeenth Congress, Journal, p. 350.

[5] Second session Fortieth Congress, Globe, p. 2356.

[6] This form of procedure has rarely, if ever, occurred in the House, the rules providing a method of procedure more definite and satisfactory.

Section 5 of Rule XIV provides:

If a Member is called to order for words spoken in debate, the Member calling him to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the House; but he shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened.

On February 24, 1808,[1] Mr. John Smilie, of Pennsylvania, proposed a rule providing that objectionable words might be taken down at the time they should be uttered. This rule was not adopted, but on December 30, 1808,[2] one Member having called another to order, Mr. Speaker Varnum. asked the objecting Member to put down in writing the words to which he objected. And thereafter it seems to have been the custom, when there was a desire to press a question of order for words spoken in debate, to have the words written down, as is illustrated by an incident on February 6, 1828.[3] The rule as it exists to-day evidently had its origin in a contest which occurred in the House in 1832 over a resolution proposing to censure Mr. William Stanberry, of Ohio, for a speech which charged the Speaker of the House with shaping his course so as to secure office from the President of the United States.[4] It was objected that the words complained of had been spoken on the previous day, and had not been taken down at the time; and Mr. John Quincy Adams, of Massachusetts, refused to vote on the resolution, on the ground that it proceeded upon inferences from words spoken without giving the words themselves. For this refusal to vote it was proposed to censure Mr. Adams.

On July 13, 1832, Mr. Adams proposed this rule,[5] which was not adopted then:

If a Member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to, and they shall be taken down in writing at the Clerk's table, and no Member shall be held to answer, or be subject to the censure of the House for words spoken in debate, if any other Member has spoken, or other business has intervened after the words spoken, and before exception to them shall have been taken.

On September 14, 1837, however, the rule was adopted,[6] and in the revision of 1880[7] it was given the form which it now has.

5178. The demand that disorderly words be taken down must be made at once before debate intervenes.—On August 27, 1890,[8] during debate on the question of approving the Journal, Mr. Benjamin A. Enloe, of Tennessee, made the point of order that words used by Mr. Joseph G. Cannon, of Illinois, were not in order, and demanded that the same be taken down so far as they applied to Mr. William McAdoo, of New Jersey, and read to the House.

The Speaker[9] overruled the point of order, on the ground that the demand came too late, debate having intervened subsequently to the words excepted to. The

[1] First session Tenth Congress, Journal, p. 191; Annals, p. 1679.

[2] Second session Tenth Congress, Annals, p. 964.

[3] First session Twentieth Congress, Debates, p. 1420.

[4] First session Twenty-second Congress, Annals, pp. 3888–3913.

[5] First session Twenty-second Congress, Journal, p. 1171.

[6] First session Twenty-fifth Congress, Globe, p. 31. Mr. Adams had evidently persisted in favor of this rule, for on January 5, 1836 (first session Twenty-fourth Congress, Report No. 83), the Committee on Rules, of which Mr. Adams was a member, had reported it, but it was not then adopted.

[7] Second session Forty-sixth Congress, Record, p. 206.

[8] First session Fifty-first Congress, Journal, p. 994; Record, p. 9234.

[9] Thomas B. Reed, of Maine, Speaker.

Speaker further held that under Rule XIV, clauses 4 and 5,[1] the Member who it was alleged had transgressed the rule of the House must be called to order and the words excepted to indicated, which had not been done in the present instance.

Mr. Enloe appealed from the decision of the Chair; and the question being put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative, yeas 103, nays 78.

5179. When a Member who has been called to order in debate denies that the words taken down are the exact words used by himself, the question as to the words is put to the House for decision.—On January 22, 1836[2] the following resolution was under consideration:

Resolved, That so much of the message of the President of the United States to Congress at the commencement of the present session as relates to the failure at the-last session of Congress of the bill containing the ordinary appropriations for fortifications be referred to a select committee, with instructions to inquire into, and report to the House, the causes and circumstances of the failure of that bill.

Mr. John Quincy Adams, of Massachusetts, while debating the resolution, was called to order by Mr. Charles F. Mercer, of Virginia, who, by direction of the Speaker, reduced to writing the words to which he excepted:

The Member from Massachusetts remarked, in terms, that in the debate in the paper, meaning the National Intelligence, and the debate to be a late debate in the Senate, that a charge had been made that the appropriation of three millions, meaning the amendment moved in a bill of this House of the last session, called the fortifications bill, was unconstitutional, thus referring to a late debate in the Senate of the United States.

Mr. Adams denied that he used the precise words excepted to and reduced to writing by Mr. Mercer, as herein set forth.

The question was then put to the House: "Are the words reduced to writing by Mr. Mercer the words spoken by Mr. Adams?"

And it was decided in the negative.

Thereupon Mr. Adams proceeded with his remarks.

5180. On February 15, 1836,[3] the House was considering the reception of a petition of citizens of Schoharie, N. Y., praying for the abolition of slavery in the District of Columbia. Mr. Henry A. Wise, of Virginia, having the floor in debate, was called to order for using certain expressions personal to Mr. Henry L. Pinckney, of South Carolina. The Speaker decided the words to be out of order, and at the request of a Member ordered them to be reduced to writing by the Clerk. The words were then read, as follows:

He hissed him and spurned him as a deserter from the principles of the South.

Mr. Wise disclaimed using the precise words as put down.

In response to an inquiry by Mr. Francis Granger, of New York, the Speaker said that the House must pass upon the words, and proceeded to put the question: "Are the words as put down the words used by the Member from Virginia?"

Before the question was put, Mr. Wise was permitted to explain, and admitted that he had used these words:

Hissed him as a deserter from the principles of the South, upon this question of slavery.

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[1] See sections 5175 and 5177 of this chapter.

[2] First session Twenty-fourth Congress, Journal, p. 231; Debates, pp. 2268, 2269.

[3] First session Twenty-fourth Congress, Journal, pp. 355, 356; Debates, pp. 2533–2536.

[4] James K. Polk, of Tennessee, Speaker.

The Speaker then decided that the words admitted to have been used were out of order, and that under the rule of the House Mr. Wise could "not be permitted to proceed without the leave of the House."

From this decision Mr. Wise appealed to the House, but subsequently withdrew the appeal.

Then, on motion of Mr. John Bell, of Tennessee, and by a vote of yeas 108, nays 92, Mr. Wise was permitted to proceed.

5181. A Member called to order in debate must take his seat, although he may be permitted by the House to proceed in order or explain, even after his words have been taken down.—On January 23, 1891,[1] Mr. George W. Cooper, of Indiana, claiming the floor for a question of privilege, offered a resolution relating to the investigation then going on of the conduct in of the Commissioner of Pensions.

Mr. William McKinley, jr., of Ohio, made the point of order that the resolution was not privileged.

Mr. Cooper, who proceeded to debate the point of order, was several times admonished by the Speaker to confine himself to the point of order, and finally was directed by the Speaker to take his seat.

Thereupon Mr. Richard P. Bland, of Missouri, moved that the gentleman from Indiana be allowed to proceed in order.

Mr. W. C. P. Breckinridge, of Kentucky, called attention to the fact that the debate was on a point of order, and that the Speaker had the right to say, to the Member that he did not desire to hear further argument.

The Speaker[2] said:

> The Chair desires to state the case to the House, because the gentleman from Kentucky [Mr. Breckinridge] has made some observations which it is desirable that the House should pay attention to. The Speaker endeavored in every way possible to induce the gentleman from Indiana [Mr. Cooper] to address the Chair upon the point of order in order. He did not exercise the power, which is inherent in the Chair, of saying that he did not desire to hear anything more, because he was perfectly willing to hear anything that was in order, but the gentleman from Indiana continued to proceed, as the Chair thinks, out of order. The Chair then called him to order, and the gentleman from Missouri [Mr. Bland] now makes the motion that the gentleman from Indiana be heard further in order, and that is the motion that is to be put to the House without debate.

5182. On April 13, 1898,[3] during the consideration of the resolution authorizing intervention in Cuba, Mr. David B. Henderson, of Iowa, had the floor, when he was interrupted by Mr. Henry U. Johnson, of Indiana.

Mr. Henderson having declined to yield, and Mr. Johnson having persisted, the Speaker[2] said:

> The gentleman from Indiana must take his seat. The gentleman from Iowa declines to yield.
>
> [Mr. Johnson continued speaking.]
>
> The Sergeant-at-Arms will proceed unless the gentleman resumes his seat; and the House will please be in order.

The Sergeant-at-Arms appeared with the mace, and Mr. Johnson resumed his seat.

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[1] Second session Fifty-first Congress, Record, p. 1788; Journal, p. 174.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 3814.

5183. On February 5, 1894,[1] the House, pursuant to the special order, proceeded to the consideration of, the resolutions (Mis. Doe., 75) relating to Hawaiian affairs.

Pending the debate, on the demand of Mr. Joseph H. Outhwaite, of Ohio, the following words, spoken by Mr. Elijah A. Morse, of Massachusetts, were taken down:

On the other side are not only white men and women, but nearly or quite all of the virtuous and intelligent white people of the islands. And yet, strange to tell, that at the command of their master, the great Grover Cleveland, the cuckoos in the House and in the Senate, stanch Southern Democrats—

Mr. Outhwaite made the point that the language was against order.

The Speaker[2] held that the language was not parliamentary.

On motion of Mr. Julius C. Burrows, of Michigan, Mr. Morse was permitted to explain.[3]

5184. On March 3, 1892,[4] the House resumed consideration of the bill (H. R. 372) to amend section 22 of an act entitled "An act to regulate commerce," approved February 4, 1887, and amended March 2, 1889, so as to give common carriers a right to allow a greater weight of sample baggage to commercial travelers and their employees and reduced rates of transportation.

In the course of debate on the bill and amendments Mr. Jerry Simpson, of Kansas, referred to a Member of the Senate as an iniquitous railroad attorney.

Mr. John Lind, of Minnesota, made the point of order that the language used by Mr. Simpson was a violation of the rules of the House and out of order.

The Speaker[2] sustained the point of order.

5185. Words spoken being held out of order, and the House having permitted the Member to explain, it is then in order to move that he be permitted to proceed.—On February 26,1894,[5] Mr. Lafe Pence, of Colorado, was recognized, and stated that he proposed to present a question of personal privilege. Proceeding with his statement, on the suggestion of Mr. Eugene I. Hainer, of Nebraska, the following language of Mr. Pence was taken down by the Clerk:

I do not think the gentleman from Oregon has made any statement, taken any action, or cast any vote on his own hook from the beginning of the session last August.

Mr. Hainer made the point that this language was out of order.

The Speaker[2] held that the language was not in order.

5186. On July 28, 1892,[6] Mr. Joseph Wheeler, of Alabama, as a matter of privilege, sent to the Clerk's desk a pamphlet purporting to have been prepared by Mr. Thomas E. Watson, a Representative in Congress from Georgia, which contained the following language, referring to the House of Representatives of the present Congress; which was read at the desk:

Lack of common business prudence never more glaring. Drunken Members have reeled about the aisles–a disgrace to the Republic. Drunken speakers have debated grave issues on the floor, and in the midst of maudlin ramblings have been heard to ask, "Mr. Speaker, where was I at?"

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[1] Second session Fifty-third Congress, Journal, p. 137; Record, pp. 1879, 1880.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See also Journal, first session Fifty-fourth Congress, p. 190, for instance where a Member was permitted to explain after his words were taken down.

[4] First session Fifty-second Congress, Journal, p. 87; Record, p. 1703.

[5] Second session Fifty-third Congress, Journal, p. 204; Record, p. 2450.

[6] First session Fifty-second Congress, Journal, p. 343.

Mr. Wheeler denounced the charges as false, unfounded, and libelous.

Mr. Watson took the floor in reply to the remarks of Mr. Wheeler, and in the course of his remarks stated that every word in that book (meaning the book from which the extract just mentioned had been read) was literally true.

Mr. Charles Tracey, of New York, made the point of order that the language of Mr. Watson, in connection with the extract which had been read, was disorderly and a violation of the rules of the House.

The Speaker[1] held that the language of Mr. Watson was out of order, and directed that Mr. Watson take his seat.

On motion of Mr. Jerry Simpson, of Kansas, Mr. Watson was allowed to explain.

Upon the conclusion of Mr. Watson's explanation, the question was put, "Shall Mr. Watson be allowed to proceed with his remarks?" and it was decided in the negative.

5187. The words of a Member having been taken down, and the Speaker having decided that they were not in order, it was held that a motion that the Member be permitted to explain had precedence of a motion that he be permitted to proceed in order.—On February 2, 1894,[2] the House was considering a report from the Committee on Rules, and Mr. T. C. Catchings, of Mississippi, had the floor, when, upon the demand of Mr. Charles A. Boutelle, of Maine, the following words spoken by Mr. Catchings were taken down by the Clerk:

> Now, Mr. Speaker, we did not submit it to the gentleman from Maine [Mr. Boutelle], because we knew in advance that nothing would receive his approval that did not give him free range to perform his fantastic and Bedlamite gyrations on this floor.

Mr. Boutelle made the point that said language was not in order.

Mr. Benton McMillin, of Tennessee, moved that Mr. Catchings be permitted to proceed in order.

Pending the vote on agreeing to this motion, Mr. W. C. P. Breckinridge, of Kentucky, made the point that, until it was decided that the language taken down was a transgression of the rules, the motion that he be permitted to proceed was unnecessary and premature.

The Speaker[1] stated that he recognized the force of the suggestion of Mr. Breckinridge, but inasmuch as the motion of Mr. McMillin had been submitted without objection, and the House was dividing thereon, the vote would proceed on said motion.

The motion of Mr. McMillin was then agreed to.

Mr. Catchings continued his remarks; when, on the demand of Mr. Boutelle, the following words spoken by Mr. Catchings were taken down.

Mr. Boutelle submitted that the language taken down was against order.

> In common with many other gentlemen on the floor, I have regarded him as afflicted with a species of harmless mania for making on all occasions an exhibition of himself.

The Speaker held that the language complained of was hardly parliamentary.

Mr. Joseph H. Outhwaite, of Ohio, moved that Mr. Catchings be permitted to proceed in order.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 132; Record, p. 1811.

Pending this, Mr. Sereno E. Payne, of New York, made the point that the question should first be taken on permitting Mr. Catchings to explain his remarks.

The Speaker held that the proper motion should be, that the gentleman be permitted to explain.

On motion of Mr. Outhwaite, it was "Ordered, That Mr. Catchings be permitted to explain his remarks."

Mr. Catchings explained, after which explanation the former motion of Mr. Outhwaite was agreed to and Mr. Catchings was permitted to proceed.

5188. When a Member is called to order for violation of the rules of debate, it is the practice to test the opinion of the House by a motion "that the gentleman be allowed to proceed in order."

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters.

The Speaker remained in the chair and ruled as to the relevance of language criticising his conduct as Speaker.

On May 13, 1897,[1] the question before the House was the approval of the Journal, and Mr. Jerry Simpson, of Kansas, having the floor, was proceeding to comment upon the fact that the Speaker had not appointed the committees, and to discuss the general observance of the rules of the House.

Mr. Nelson Dingley, of Maine, having raised the point of order that the debate was not proceeding in order, the Speaker'[2] sustained it, saying that the question before the House was the approval of the Journal, not obedience to the rules; and under the rule directed the gentleman from Kansas to take his seat.

Mr. James D. Richardson, of Tennessee, moved that the gentleman from Kansas be allowed to proceed in order, and the House agreed to the motion.

Mr. Simpson was proceeding, when again, on a point of order made by Mr. Dingley, he was called to order; and again the House voted that he be allowed to proceed in order.

Again Mr. Simpson was proceeding, discussing the alleged arbitrary way in which Members were deprived of their rights in the House and reflecting upon the Speaker, when Mr. Dingley again called him to order.

The Speaker, in ruling, said:

The Chair desires to say to the House in regard to this matter that when an appeal is made to him on a question of order, it becomes his duty to make a ruling upon the question as he understands it. So far as the Chair is concerned, he has only requested the gentleman from Kansas to confine himself to the subject that is under discussion. The Chair submits to the House that allusions or criticisms of what the Chair did at some past time is certainly not in order. Not because the Chair is above criticism or above attack, but for two reasons: First, because the Speaker is the Speaker of the House, and such attacks are not conducive to the good order of the House; and, second, because the Speaker can not reply to them except in a very fragmentary fashion, and it is not desirable that he should reply to them. For these reasons such attacks ought not to be made.

If there be any complaint of the conduct of the Speaker it ought to be presented directly for the action of the House, but this continual making of attacks with no proper opportunity for reply every Member must see, whatever may be his relation to the pending question, is not suitable and ought not to be indulged in. If there be any objections to the acts of the Speaker they are not above criticism

[1] First session Fifty-fifth Congress, Record, pp. 1067, 1068.

[2] Thomas B. Reed, of Maine, Speaker.

by direct presentation for the action of the House. It seems to the Chair that this view must commend itself to every gentleman present who has a regard for the honor and dignity of the House.

The Chair felt it his duty to hold that the words of the gentleman from Kansas, as the Chair understood them, were an attack of this kind, and that such an attack was not suitable to be made, and upon that he asks the favorable judgment of the House.[1]

Mr. William L. Terry, of Arkansas, moved that the gentleman from Kansas be allowed to proceed in order. This motion was negatived by the House, 96 nays to 83 yeas, 14 answering present. So the gentleman from Kansas was not allowed to proceed in order.

5189. On February 10, 1898,[2] the House was considering the bill (H. R. 2196) directing the issue of a duplicate lost check, and Mr. Levin I. Handy, of Delaware, who had the floor, was proceeding to discuss a subject relating to the State of Delaware.

Mr. George D. Perkins, of Iowa, thereupon made the point of order that the gentleman was not confining himself to the subject under debate.

The Speaker[3] said:

The Chair desires to call the gentleman's attention to the fact that under the rules of the House a speech foreign to the bill ought not to be made.

Again Mr. Handy was called to order by Mr. Dalzell for not confining himself to the subject under debate.

Mr. Joseph W. Bailey, of Texas, moved that Mr. Handy be permitted to proceed. The Chair declined to entertain that motion, the proper motion, he stated, being to permit the Member to proceed "in order."

Mr. Bailey having modified his motion, it was agreed to; and the Speaker announced that the gentleman from Delaware would proceed in order.[4]

5190. Although debate on a question of order is within control of the Speaker, yet he puts to the House the question whether a Member called to order during such debate shall "be allowed to proceed in order."—On January 23, 1891,[5] Mr. George W. Cooper, of Indiana, was presenting a question of privilege relating to the report of the committee appointed to investigate the charges against the Commissioner of Pensions.

The Speaker called Mr. Cooper to order for transgressing the rules of the House as to debate, and directed him to take his seat, under clause 4 of Rule XV.

Mr. Richard P. Bland, of Missouri, under that clause, moved that Mr. Cooper be allowed to proceed in order.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the, motion of Mr. Bland was not in order, for the reason that the debate, being on a question of order, was addressed to the Chair, which it was in his power to stop at any moment.

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[1] On March 1, 1837, Mr. Bailie Peyton, of Tennessee, addressed very scathing remarks to the Speaker, accusing him of having not only humbled himself to the Executive, but to the vilest instruments of the Executive, and of having made up an investigating committee so that it should not investigate. (Second session Twenty-fourth Congress, Debates, p. 2084.)

[2] Second session Fifty-fifth Congress, Record, pp. 1632–1635.

[3] Thomas B. Reed, of Maine, Speaker.

[4] For a similar instance see Record, second session Fifty-fifth Congress, p. 6767.

[5] Second session Fifty-first Congress, Journal, p. 174; Record, pp. 1778, 1788.

The Speaker[1] thereupon made the following statement:

The Chair desires to state the case to the House, because the gentleman from Kentucky [Mr. Breckinridge] has made some observations which it is desirable that the House should pay attention to. The Speaker endeavored in every way possible to induce the gentleman from Indiana [Mr. Cooper] to address the Chair upon the point of order in order. He did not exercise the power, which is inherent in the Chair, of saying that he did not desire to hear anything more, because he was perfectly willing to hear anything that was in order, but the gentleman from Indiana continued to proceed, as the Chair thinks, out of order. The Chair then called him to order, and the gentleman from Missouri [Mr. Bland] now makes the motion that the gentleman from Indiana be heard further, in order, and that is the motion that is to be put to the House without debate.

The Speaker then put the question, "Shall Mr. Cooper be allowed to proceed in order?" And it was decided in the negative, yeas 117, nays 142. So the House refused to allow Mr. Cooper to proceed in order.

5191. The House often votes that a Member who has been decided out of order in debate shall be allowed to proceed in order.—On June 16, 1841[2] during consideration of a resolution relating to the adoption of rules, and while the propriety of putting the previous question was being debated, Mr. Samuel Gordon, of New York, was called to order by Mr. Thomas D. Arnold, of Tennessee, for irrelevancy, and the call being sustained he took his seat.

Mr. John Campbell, of South Carolina, moved that Mr. Gordon have leave to proceed with his remarks, which was refused by the House.

Whereupon Mr. William M. Oliver, of New York, moved that Mr. Gordon have leave to proceed "in order." This was agreed to by the House.

5192. On December 21, 1843,[3] Mr. John Quincy Adams, of Massachusetts, had the floor on an appeal relating to the reception of a petition remonstrating against the admission of Texas into the Union while she tolerated slavery. In the course of his remarks he said:

Why, according to the construction of some human skulls, nothing that bears directly on the subject before the House is relevant, and it sometimes happens that the skulls of that kind have sympathy with the skull of the Speaker.

The Speaker[4] said that the Chair could not and would not permit reflections of that kind to be made on the House or on the Chair. He therefore called Mr. Adams to order for offensive remarks and directed him to take his seat.

Objection was made to allowing Mr. Adams to proceed in order, but Mr. John White, of Kentucky, contended that it had been the custom to permit a motion that the gentleman called to order be allowed to proceed in order, since not to allow such a motion might work injustice.

So Mr. White was permitted to move that Mr. Adams be permitted to proceed in order, and the House agreed to the motion.

5193. On April 29, 1864,[5] the House was considering a resolution calling on the President of the United States for certain documents relating to the holding of a commission in the Army by Francis P. Blair, jr. During the debate Mr. James

[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Twenty-seventh Congress, Journal, p. 140; Globe, p. 62.

[3] First session Twenty-eighth Congress, Journal, p. 90; Globe, pp. 60, 61.

[4] John W. Jones, of Virginia, Speaker.

[5] First session Thirty-eighth Congress, Journal, p. 595; Globe, p. 1969.

Brooks, of New York, was proceeding to speak of alleged corruption in the Treasury Department.

Mr. John M. Broomall, of Pennsylvania, after raising a question as to the relevancy of the debate several times, insisted on the enforcement of the rule, and the Speaker[1] decided that Mr. Brooks was not in order, and required him to take his seat.

Mr. Brooks having submitted to the decision of the Chair, Mr. William H. Miller, of Pennsylvania, moved that he be permitted to proceed in order.

The question being taken, the motion was agreed to, yeas 83, nays 36.

5194. A Member having been allowed by general consent to proceed in debate after he had been called to order, it was held that a vote of the House on the question might not be demanded.—On March 3, 1849,[2] Mr. Meredith P. Gentry, of Tennessee, in the course of debate, was called to order by the Speaker for personalities. But no objection having been made, he proceeded with his remarks in order.

Subsequently, Mr. Thomas J. Henley, of Indiana, rose and insisted that the gentleman from Tennessee, having been pronounced out of order by the Chair, should be required to take his seat and should not be permitted to proceed without a vote of the House.

The Speaker[3] decided that the objection came too late, the gentleman from Tennessee having already been permitted to proceed in order by the general consent of the House.

Mr. Henley having appealed, the decision of the Chair was sustained, yeas 130, nays 6.

5195. A Member who has been called to order in debate and granted leave to proceed, must still confine himself within the rules governing debate.

To a proposition to censure a Member for presenting a petition on the subject of slavery, debate on the opinions of statesmen of former times on the general subject of slavery was held to be irrelevant.

On February 9, 1837,[4] during the discussion of a resolution to censure Mr. John Quincy Adams, of Massachusetts, for having proposed to present to the House a petition from certain slaves, Mr. George Evans, of Maine, having the floor in debate, was proceeding to give the opinions of some of the former statesmen of Virginia on the subject of slavery.

Mr. Albert G. Harrison, of Missouri, rising to a question of order, presented his point in writing, as follows:

> The gentleman from Maine [Mr. Evans] is called to order because he is speaking the opinions of others on the subject of slavery, when that is not the question before the House.

The Speaker[5] decided that Mr. Evans was not in order.

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Second session Thirtieth Congress, Journal, p. 669.

[3] Robert C. Winthrop, of Massachusetts, Speaker.

[4] Second session Twenty-fourth Congress, Journal, p. 360; Debates, pp. 1668–1670.

[5] James K. Polk, of Tennessee, Speaker.

Thereupon Mr. Evans took his seat, and a motion was made by Mr. Franklin H. Elmore, of South Carolina, that Mr. Evans have leave to proceed.

Mr. Harrison inquired whether, if Mr. Evans should be granted leave to proceed, he must not still confine himself within the rules of the House.

The Speaker said that the gentleman from Maine would still be limited by the rules of debate.

The Speaker, in putting the question, said:

The gentleman from Maine is called to order because he is speaking of the opinions of others on the subject of slavery, when that question is not before the House. The Chair decides that it is not in order to discuss the question of slavery or to cite the opinions of others on that subject on the question before the House. The gentleman from Maine resumed his seat and acquiesced in the decision of the Chair, taking no appeal. The rule required, therefore, that before the gentleman could proceed the sense of the House must be taken.

The question being taken, the House voted that Mr. Evans might proceed.

5196. A Member who has been called to order in debate and decided out of order, loses the floor and another may be recognized.—On February 20, 1801,[1] a motion was made and seconded that the House do come to the following resolution:

Resolved, That the power of the Speaker or Chairman of the Committee of the Whole shall not be construed to extend (unless by consent of the House previously obtained, or in case of disorderly behavior) to the expulsion of any person, either from the lobby, when introduced by any Member of the House, or from the gallery, when the same is generally opened.

The previous question being demanded and under consideration,[2] Mr. Henry W. Livingston, of New York, was called to order by the Speaker[3] for proceeding, in the opinion of the Chair, to debate the merits of the main question, upon which the said Member from New York did not immediately sit down, pursuant to a rule of the House, and was again called to order by the Speaker.

An appeal being made to the House the decision of the Speaker was sustained, yeas 60, nays 42.

The previous question being put was decided in the negative, yeas 50, nays 53.

5197. On February 6, 1828,[4] during debate on resolutions relating to retrenchment of the expenditures of the Government, Mr. Lewis Williams, of North Carolina, rising to a parliamentary inquiry, asked if Mr. Thomas Whipple, jr., of New Hampshire, who had been called to order by the Speaker, and had taken his seat when required to do so by the Chair, might not proceed.

The Speaker[5] said that the gentleman from New Hampshire had forfeited his right to the floor. The Speaker felt no wish to restrain, improperly, any Member from addressing the House. For the last nine or ten hours he had been, although indisposed, in his chair, anxiously endeavoring to preserve the order and dignity of

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[1] Second session Sixth Congress, Journal, pp. 194–199 (old ed.), 811–813 (Gales & Seaton, ed.); Annals, p. 1041.

[2] At that time the demand for the previous question was debatable. See section 5443 of this volume.

[3] Theodore Sedgwick, of Massachusetts, Speaker.

[4] First session Twentieth Congress, Debates, p. 1455.

[5] Andrew Stevenson, of Virginia, Speaker.

the House, and restrain anything like disorder; but he found it impossible without interposing the power of the Chair. He had, therefore, deemed it his duty, after repeated calls and violations of order, to direct the Member from New Hampshire to take his seat, and should not permit him to proceed without the assent of the House.

No motion being made, Mr. Whipple did not get the floor.

5198. On January 2, 1844,[1] the House was considering a motion made by Mr. Lucius Q. C. Elmer, of New Jersey, that the Committee on Elections be authorized to employ a clerk.

During debate Mr. Charles H. Carroll, of New York, was called to order for irrelevancy, and the Speaker decided that the remarks of Mr. Carroll were irrelevant to the question under consideration.

Thereupon Mr. Elmer withdrew his motion, and Mr. William J. Brown, of Indiana, moved that the House adjourn.

Mr. Robert C. Schenck, of Ohio, made the following question of order:

> That the call of Mr. Carroll to order, and the decision of the Speaker that he was out of order, did not deprive him of the floor, no person having objected to his proceeding in order. Therefore Mr. Elmer could not rightfully obtain the floor to withdraw the motion upon which Mr. Carroll was addressing the House; neither was Mr. Brown entitled to the floor to move an adjournment; and that the question still was, of right, on the motion of Mr. Elmer, upon which Mr. Carroll was entitled to the floor.

The Speaker[2] decided that Mr. Carroll having been decided out of order by the Speaker was presumed, under the thirty-fifth rule[3] * * * of the House, to have taken his seat; and the floor was thus open to Mr. Elmer, who, under the Forty-fifth rule[4] * * * , had the right at any time before a decision or amendment to withdraw the motion made by him. He therefore overruled the question of order made by Mr. Schenck.

Mr. Schenck having appealed, the House, on the succeeding day, sustained the decision of the Chair.

5199. On February 1, 1805,[5] during debate Mr. Matthew Lyon, of Kentucky, was called to order by Mr. Joseph H. Nicholson, of Maryland, for a breach of decorum in debate, contrary to the rules of the House, by alleging that "he had been belied by another Member of the House."

Thereupon Mr. Lyon sat down, and the Speaker decided that he was out of order; after which Mr. Lyon again arose to proceed in the debate, and addressed the Chair.

This being excepted to as not in order, the Speaker[6] decided that Mr. Lyon was in order.

On appeal, this decision was sustained, yeas 81, nays 34.

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[1] First session Twenty-eighth Congress, Journal, p. 143.

[2] John W. Jones, of Virginia, Speaker.

[3] See section 5175 of this volume.

[4] See section 5300 of this volume.

[5] Second session Eighth Congress, Journal, p. 277, (old ed.), 114 (Gales and Seaton ed.); I Annals, p. 1115.

[6] Nathaniel Macon, of Georgia, Speaker.

5200. A Member whose remarks have been decided out of order as irrelevant may not proceed, under the rule, except with the permission of the House expressly granted.

On a proposition relating to the abolition of slavery in a particular locality or country, debate at large on the subject of slavery was held not to be relevant.

On December 20, 1837,[1] Mr. William Slade, of Vermont, presented sundry petitions from persons in Vermont praying the abolition of slavery and the slave trade in the District of Columbia.

Mr. Slade moved that the memorials be referred to a select committee with instructions to report a bill providing for the abolition of slavery and the slave trade in the District of Columbia.

While Mr. Slade was debating this motion he was proceeding to refer to the subject of slavery in the State of Virginia, when Mr. Robert Barnwell Rhett, of South Carolina, rising to a point of order, asked whether the discussion of the question of slavery in the States was in order in debating the motion before the House.

The Speaker[2] decided that Mr. Slade was not in order in so extending the limits of the discussion.

Mr. Slade was proceeding with his remarks, when Mr. James J. McKay, of North Carolina, objected that under the rule he could not proceed.

Mr. Slade thereupon took his seat by direction of the Speaker, and the question whether or not he should be allowed to proceed was put to the House.

5201. On June 10, 1841,[3] the House was considering a motion to reconsider the vote whereby the House had agreed to an amendment excepting the twenty-first rule from a resolution adopting the rules of the last House temporarily. This twenty-first rule was that forbidding the reception by the House of any petition praying the abolition of slavery or the slave trade in the United States.

Mr. Charles J. Ingersoll, of Pennsylvania, having the floor, in debate was proceeding to discuss the relations of the British Government to the slave trade, when he was called to order by the Speaker[4] for the reason that his remarks were irrelevant to the question before the House and in violation of the rule which declares that a Member "shall confine himself to the question under debate."

Mr. Ingersoll then took his seat; but the House, on motion of Mr. Nathan Clifford, of Maine, voted that he have leave to proceed.

5202. It is not in order as a question of privilege in the House to propose censure of a Member for disorderly words spoken in Committee of the Whole, but not taken down or reported therefrom.—On April 24, 1862,[5] Mr. John Hutchins, of Ohio, proposed to submit, as a question of privilege, the following preamble and resolution:

Whereas the Hon. C. L. Vallandigham, a Member of this House from the State of Ohio, in Committee of the Whole, made use of the following language concerning the Hon. B. F. Wade, a Senator in

[1] Second session Twenty-fifth Congress, Journal, p. 125; Globe, p. 41.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Twenty-seventh Congress, Journal, p. 76; Globe, pp. 37, 38.

[4] John White, of Kentucky, Speaker.

[5] Second session Thirty-seventh Congress, Journal, p. 610.

Congress: "Mr. Chairman: I have waited patiently for three days for this the earliest occasion presented for a personal explanation. In a speech delivered in this city the other day, not in this House, certainly not in the Senate—no such speech could have been tolerated in an American Senate—I find the following: * * * Now, sir, here in my place in the House and as a Representative, I denounce, and I speak it advisedly, the author of that speech as a liar, a scoundrel, and a coward, and his name is Benjamin F. Wade;" and whereas said remarks are a violation of the rules of this House, and a breech of decorum, and demand the censure of this House: Therefore,

Resolved, That said C. L. Vallandigham, for said violation of the rules of the House and its decorum, is deserving of censure, and is hereby censured.

The same having been read, Mr. Vallandigham made the point of order that, under the express language of the sixty-second rule of the House, he could not be held to answer, or be subject to the censure of the House for the words spoken, another Member having spoken and other business having intervened before exception to them was taken; and that consequently the preamble and resolution could not be entertained by the House.

On April 25, the Speaker[1] sustained the point of order, and decided that the preamble and resolution proposed to be submitted as a question of privilege by Mr. Hutchins were out of order.

In this decision of the Chair the House acquiesced.

The record of debate[2] shows that the Speaker, in deciding the question, quoted both the rule and also the paragraph of Jefferson's Manuel:

Disorderly words spoken in a committee must be written down as in the House, but the committee can only report them to the House for animadversion.

The Speaker decided that as the gentleman from Ohio (Mr. Hutchins) in his resolution had not complied with either the rule of the House or the provision of parliamentary law, that therefore the point of order was well taken.[3]

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] Second session Thirty-seventh Congress, Globe, pp. 1829, 1833.

[3] Section XVII of Jefferson's Manual provides "Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion." (6 Grey, 46.)

Chapter CXV.

DEBATE IN COMMITTEE OF THE WHOLE.

1. **Limiting general debate, Sections 5203–5211.**
2. **Committee may not change limit fixed by House. Sections 5212–5216.**
3. **Motion to limit not in order in Committee. Section 5217.**
4. **General decisions. Sections 5218–5220.**
5. **Rule and practice of five-minute debate. Sections 5221–5223.**
6. **Closing the five-minute debate. Sections 5224–5232.**
7. **Relevancy of debate in Committee of the Whole. Sections 5233–5256.**

5203. The motion to close general debate in Committee of the Whole is made pending the motion that the House resolve itself into committee, and though not debatable, the previous question is sometimes asked to prevent attempts at amendment of the motion.—On February 21, 1897,[1] the Committee of the Whole House on the state of the Union were considering a bill (S. 3307) relating to the Potomac Flats Park, when Mr. Joseph W. Babcock, of Wisconsin, asked unanimous consent that general debate be closed.[2]

Mr. Joseph Wheeler, of Alabama, having objected, Mr. Babcock moved that the committee rise. This motion being decided in the affirmative, the committee accordingly rose; and the Speaker having resumed the chair, Mr. Henderson, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (S. 3307) and had come to no resolution thereon.

Mr. Babcock thereupon moved that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill S. 3307; and pending that motion, submitted the further motion that in Committee of the Whole House on the state of the Union debate should be limited to ten minutes.

The motion to limit debate was first agreed to, and then the question was put on the motion to go into Committee of the Whole.

On January 11, 1898,[3] Mr. William H. Moody, of Massachusetts, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the legislative, executive, and judicial appropriation bill; and pending that moved that all debate in the Committee of the Whole House

[1] Second session Fifty-fourth Congress, Record, p. 2218.

[2] For an account of the evolution of the practice of closing general debate in Committee of the Whole, see section 5221 of this volume.

[3] Second session Fifty-fifth Congress, Record, pp. 518, 519.

on the state of the Union should cease at 5 o'clock that day. On the latter motion, in accordance with a frequent practice, he demanded the previous question, thus preventing amendments to his proposition as to time, unless the House should first vote down the previous question.[1]

5204. A motion to limit general debate in Committee of the Whole is not in order in the House until after such debate has begun.—On April 8, 1884,[2] the House had under consideration a bill relating to the boundaries between Indian Territory and Texas. Pending a motion to go into Committee of the Whole, Mr. John H. Evins, of South Carolina, further moved that when the Committee of the Whole next resumed consideration of the bill, all general debate thereon should be limited to one hour.

Mr. Thomas B. Reed, of Maine, made the point of order that the last motion was not in order, for the reason that there had been no general debate in the Committee of the Whole on the bill.

The Speaker[3] held that the motion to limit general debate in the Committee of the Whole could not be made until such debate had been actually entered upon, and upon the statement of the official reporter on duty at the time that there had been no general debate, held the motion of Mr. Evins to limit debate to be not in order at this time.

5205. On January 27, 1852,[4] Mr. William H. Polk, of Tennessee, submitted the following resolution:

> *Resolved,* That all debate in the Committee of the Whole House on the state of the Union on the joint resolution (No. 12) authorizing the joint committee on printing to contract with Messrs. Donelson and Armstrong for printing and binding the census shall cease in one hour after the committee shall take the same up (if the committee shall not sooner come to a conclusion upon the same); and the committee shall then proceed to vote on such amendments as may be pending, or offered to the same and shall then report it to the House, with such amendments as may have been agreed to by the committee.[5]

Mr. Thomas L. Clingman, of North Carolina, made the point of order that, inasmuch as the said joint resolution had not yet been considered in Committee of the Whole, it was not competent under the rule to submit a proposition to close debate on it. Mr. Clingman asserted that such had been the practice of the House in the past, and that it was supported by the wording of the rule:

> The House may, at any time, by a vote of the majority of the Members present, suspend the rules and orders for the purpose of going into the Committee of the Whole House on the state of the Union, and also for providing for the discharge of the Committee of the Whole House and the Committee of the Whole House on the state of the Union from the further consideration of any bill referred to them, after acting without debate on all amendments pending, and that may be offered.

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[1] In a case where the previous question had been ordered on a motion to close debate Speaker pro tempore Crisp held that the thirty minutes of debate was allowable under the rule for the previous question (first session Forty-ninth Congress, Journal, p. 1125; Record, p. 3028), but this is a highly exceptional ruling, and not in harmony with the theory of the rule in question. (See secs. 5443–5446 of this volume.)

[2] First session Forty-eighth Congress, Journal, p. 1010; Record, p. 2767.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Thirty-second Congress, Journal, pp. 267, 268; Globe, p. 403.

[5] This was the regular form of resolution at that time for discharging the Committee of the Whole by closing debate, under the rule quoted as part of Mr. Clingman's point of order.

The Speaker[1] overruled the point of order and held the resolution to be in order.

Mr. Clingman having appealed, Mr. Harry Hibbard, of New Hampshire, moved to lay the appeal on the table. On a yea and nay vote this motion was decided in the negative, yeas 76, nays 107. The question being taken on the appeal, the decision of the Chair was overruled, ayes 59, noes 96.

5206. On April 23, 1902,[2] Mr. E. Stevens Henry, of Connecticut, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other dairy products.

Mr. James A. Tawney, of Minnesota, rising to a parliamentary inquiry, asked if it would be in order to move that general debate close in one hour.

The Speaker[3] said:

Not at present; not until after some debate has taken place.

5207. The motion in the House to limit general debate on a bill in Committee of the Whole must apply to the whole and not a part of the bill.

Form of motion made in the House to limit general debate in Committee of the Whole. (Footnote.)

On July 30, 1888,[4] the House being in Committee of the Whole House on the state of the Union, considering the general deficiency appropriation bill, Mr. James N. Burnes, of Missouri, moved that the Committee rise. This motion having been agreed to, and the House having resumed its session, Mr. Burnes made this motion:

I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of general appropriation bills; and pending that motion I move that when the House shall again resolve itself into Committee of the Whole general debate upon that part of the bill preceding the last section be limited to forty minutes.

Mr. Richard W. Townshend, of Illinois, made the point of order that it was not in order for the House at this time to make such an order.

The Speaker[5] said:

The Chair has so stated. The Chair has stated that, under the rules, the House can proceed without limiting the debate, but if limited at all it must be on the entire bill. The gentleman from Illinois (Mr. Townshend) makes the point of order against the motion, and the point is sustained.[6]

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[1] Linn Boyd, of Kentucky, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 4585.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Fiftieth Congress, Record, p. 7039; Journal, p. 2507.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] The hour for closing general debate is often fixed in the committee or in the House by unanimous consent. But if objection is made the following resolution is usually moved, pending the motion that the House resolve itself into Committee of the Whole:

"Resolved, That all debate in the Committee of the Whole House on the state of the Union (or Committee of the Whole House, as the case may be) on (here insert title of bill or subject upon which it is proposed to close debate) shall cease (here insert time at which it is proposed to close debate) when its consideration is next resumed."

This resolution is not debatable, but the previous question is sometimes moved to prevent amendment.

5208. After the vote has been taken on the motion to go into Committee of the Whole it is too late to offer a motion to close general debate in the Committee of the Whole.—On February 28, 1901,[1] Mr. William P. Hepburn, of Iowa, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 5499) relating to the Revenue-Cutter Service.

The question having been put to the House, and the yeas and nays having been ordered and taken on it, but the result not yet having been announced by the Chair, Mr. Hepburn proposed a motion that general debate in Committee of the Whole be closed in twenty-five minutes.

Mr. James R. Mann, of Illinois, made the point of order that the motion was not in order at this time.

After debate the Speaker[2] held:

The Chair is of opinion that there is this difference which the gentleman from Iowa perhaps overlooks. When a motion is made to go into Committee of the Whole House, before that motion is put it has been usual to say, "Pending that, I move to close debate." But this is not that situation. The motion has been put and voted upon, and it seems to the Chair that must be announced before another motion can be made.

No one knows yet whether we are going into committee or not until the announcement is made. The House does not know whether this matter is to be considered or not, and it seems to the Chair that after having been taken, his first duty is to announce the result of that vote. On this question the yeas are 157, the nays 92, answering present 2: the ayes have it, and the motion is carried.

5209. General debate in Committee of the Whole may not be limited on a series of bills by one motion.—On February 7, 1899,[3] the House was proceeding under the following special order:

Resolved, That immediately after the reading of the Journal on Tuesday and Wednesday, February 7 and 8, the House proceed to consider such bills as may be indicated by the Committee on Public Buildings and Grounds, such consideration to be first had in Committee of the Whole House on the state of the Union, and the consideration of such bills in the House or in Committee of the Whole House to continue during the two days mentioned.

Mr. David H. Mercer, of Nebraska, moved that the House resolve itself into Committee of the Whole House on the state of the Union, for the purpose of considering bills reported to the House by the Committee on Public Buildings and Grounds, and pending that, moved that the general debate in the Committee of the Whole be limited to ten minutes to each bill,

Mr. Alexander M. Dockery, of Missouri, made a point of order on this motion.

The Speaker[4] sustained the point of order.

5210. A proposition for division of time is not in order as a part of a motion to limit general debate in Committee of the Whole.—On January 29, 1900,[5] Mr. James W. Wadsworth, of New York, moved that the House resolve itself into Committee of the Whole for the further consideration of the bill (H. R. 3988) "to reorganize and improve the United States Weather Bureau," and pending that motion moved that the general debate upon the bill be concluded at

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[1] Second session Fifty-sixth Congress, Journal, pp. 292, 293; Record, pp. 3235, 3236.

[2] David B. Henderson, of Iowa, Speaker.

[3] Third session Fifty-fifth Congress, Record, p. 1561; Journal, p. 143.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-sixth Congress, Record, pp. 1285, 1286.

5 o'clock that evening, the time to be equally divided between those opposed to the bill and those in favor of it.

The Speaker [1] said:

The Chair will state for the information of the House that the question of the division of time should be arranged in Committee of the Whole and should not be coupled with this motion. * * * If it were otherwise, it would deprive the Chairman of the Committee of the Whole of the right of recognition which he should have and place it in the hands of the Speaker. That matter must go untrammeled into the Committee of the Whole House on the state of the Union.[2]

5211. On March 13, 1902,[3] Mr. Eugene F. Loud, of California, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the Post-Office appropriation bill.

And pending that motion he further moved that general debate be closed in two hours, the time to be controlled on the one side by himself, and on the other by Mr. John A. Moon, of Tennessee.

The Speaker [1] said:

The gentleman from California moves that general debate in Committee of the Whole on the Post-Office appropriation bill be limited to two hours. The other part of his motion is not in order.

The several motions having been agreed to, and a question as to control of time arising in Committee of the Whole, the Chairman [4] said:

The Chair understood the Speaker to hold that he could not include in the motion the condition that the time was to be controlled by the gentleman from California and the gentleman from Tennessee. The Chair will take the instruction of the Committee upon the control of the time.

5212. The House having fixed the time when general debate in Committee of the Whole shall cease, the Committee may not extend it even by unanimous consent.—On February 22, 1853,[5] the House was in Committee of the Whole House on the state of the Union, considering the Indian appropriation bill.

The time for general debate, which had been fixed by the House, having expired, Mr. Volney E. Howard, of Texas, moved that the Committee rise, with a view of extending the time for closing debate. Mr. Graham N. Fitch, of Indiana, made the point that this could not be done, there having been a motion to reconsider, which was laid on the table.

The Chairman suggested that the only way in which the time could be extended would be by unanimous consent in the House.

Messrs. Volney E. Howard, of Texas, George S. Houston, of Alabama, and Robert W. Johnson, of Arkansas, expressed the opinion that the Committee of the Whole could by unanimous consent extend the time, the Committee being composed of the same Members as the House.

The Chairman [6] ruled that the Committee was acting in pursuance of an order of the House. The House had directed that at a certain hour debate must be closed

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[1] David B. Henderson, of Iowa, Speaker.

[2] Of course by unanimous consent, which would in effect be a special order, the House might divide the time of the Committee of the Whole.

[3] First session Fifty-seventh Congress, Record, pp. 2737, 2738.

[4] Charles E. Littlefield, of Maine, Chairman.

[5] Second session Thirty-second Congress, Globe, pp. 784, 785.

[6] Thomas S. Bocock, of Virginia, Chairman.

and the action of the Committee be reported to the House. He did not know that there was any power to extend the time for closing the debate except in the House. The Chairman said that he acted in this matter not only in pursuance of previous decisions, but in accordance with his own deliberate judgment; for, while the Committee consisted of the same Members as the House of Representatives, it was a different body. The Committee could do nothing except in pursuance of the order of the House. The action taken by the House bound the Committee.

Mr. Johnson having taken an appeal, the Chairman was sustained.

5213. On December 10, 1897,[1] the House was in Committee of the Whole House on the state of the Union considering the pension appropriation bill, the House having limited general debate. As the limit was about to expire, Mr. William A. Stone, of Pennsylvania, asked unanimous consent that additional time be allowed in order that a certain Member might speak.

In declining to entertain the request the Chairman[2] said:

> The Chair will suggest to the gentleman from Pennsylvania that after the first paragraph of the bill has been read the gentleman can take the floor, and it will be in the province of the Committee then to extend his time under the five-minute rule.

5214. On January 24, 1852,[3] the bill (H. R. 46) "providing for carrying into execution in further part the twelfth article of the treaty with Mexico," was under consideration in Committee of the Whole House on the state of the Union.

The time fixed by the House for the termination of general debate having arrived, there were several propositions that the time might be lengthened by unanimous consent.

The Chairman[4] said:

> The Chair decides that the resolution of the House terminating debate upon this bill in the Committee of the Whole on the state of the Union, being imperative and unconditional in its terms, can not, even by unanimous consent, be disregarded.

5215. On June 6, 1902,[5] the Committee of the Whole House on the state of the Union was considering the bill (S. 3653) "for the protection of the President of the United States, and for other purposes," when Mr. Malcolm R. Patterson, of Tennessee, asked for an extension of the time of general debate.

The Chairman[6] said:

> The Chair is obliged to rule that the House having fixed the time, it is not possible for the Committee of the Whole to extend it.

5216. On February 22, 1904,[7] the House was in Committee of the Whole House on the state of the Union for consideration of the naval appropriation bill under an order limiting general debate to five hours on the side of the majority and an equal time on the side of the minority.

The time having been used, excepting twenty minutes of the time of the majority, it was proposed to begin the reading of the bill for amendment, no Member of the majority desiring the floor.

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[1] Second session Fifty-fifth Congress, Record, pp. 81, 95.

[2] Sereno E. Payne, of New York, Chairman.

[3] First session Thirty-second Congress, Globe, p. 384.

[4] George W. Jones, of Tennessee, Chairman.

[5] First session Fifty-seventh Congress, Record, pp. 6398, 6399.

[6] Charles H. Grosvenor, of Ohio, Chairman.

[7] Second session Fifty-eighth Congress, Record, p. 2226.

Mr. John S. Williams, of Mississippi, on the minority side, asked unanimous consent to be recognized for twenty minutes.

The Chairman [1] said:

The Chair is unwilling to entertain that request, the House having fixed the time—five hours on either side. The five hours of the minority having expired, if the majority do not see fit to use their time, the Chair will hold that that has expired also, and will direct the reading of the bill.

5217. The motion to close general debate may not be made in Committee of the Whole.—On February 28, 1901,[2] the House had resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 5499) relating to the Revenue-Cutter Service.

Mr. William P. Hepburn, of Iowa, moved that all general debate on the pending bill be closed after two hours.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that the motion to close general debate could not be made in Committee of the Whole.

After debate the Chairman [3] held:

Looking to the long practice of the House, so far as it come has under the observation of the present occupant of the chair, it has been uniform to the effect that the Committee of the Whole has no power to limit debate except debate under the five-minute rule upon items of a bill.

Now, the fifth subdivision of Rule XXIII provides that "When general debate is closed by order of the House any Member shall be allowed," etc. But there is nowhere any provision for the limitation of general debate in the Committee of the Whole House.

Now, take these two rules together, one providing by inference for closing debate in the Committee of the Whole, the other providing for the limitation of debate under the five-minute rule, it seems to the Chair there can be no doubt that the two construed together have the effect of bringing this result, that the House may decide to go into Committee of the Whole for the consideration of a bill and make a limit of time during which general debate shall proceed; but when without limitation the House goes into Committee of the Whole, the Chair is of the opinion that there is no power of limitation of general debate beyond the ordinary motions to rise, and other motions of that character. Therefore the Chair sustains the point of order.

5218. The rule for closing general debate in Committee of the Whole applies to messages of the President as well as bills, and may be applied to a particular portion of a message.—On December 31, 1851,[4] the Speaker announced as the business first in order a resolution submitted by Mr. Thomas L. Clingman, of North Carolina:

Resolved, That all debate in the Committee of the Whole House on the state of the Union, upon so much of the President's message as relates to Louis Kossuth, shall cease in half an hour after the committee shall again resume its consideration (if the committee shall not sooner come to a conclusion upon the same); and the committee shall then proceed to vote on such propositions as may be pending or offered in reference to the same, and shall then report it to the House, with such propositions as may have been agreed to by the committee.[5]

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session Fifty-sixth Congress, Record, pp. 3236, 3237.

[3] Charles H. Grosvenor, of Ohio, Chairman.

[4] First session Thirty-second Congress, Journal, pp. 146, 147; Globe, pp. 168, 169.

[5] This resolution was offered to close a debate that had begun, and it has always been the practice of the House to limit general debate only after it has begun. The reason for this practice is found in the origin of the rule limiting debate. (See see. 5221 of this volume.)

Mr. Edward Stanly, of North Carolina, made the point of order that the rule closing debate did not apply to the message of the President of the United States, but only to bills, and that consequently the resolution was not in order.

The Speaker[1] overruled the point of order on the ground that although under a strict construction of the rule referred to nothing but bills would seem to be embraced, yet the uniform practice of the House had been to include under it all subjects referred to the Committee of the Whole. In confirmation that such had been the practice, he referred to the action of the House upon the President's message during the last Congress.

In this decision the House acquiesced.

Mr. George W. Jones, of Tennessee, made the point of order that the resolution was not in order, on the ground that it was not competent for the House to discharge the Committee of the Whole from a part of the message and not the whole.

The Speaker decided that inasmuch as the President's message[2] contained allusions to various and distinct subjects upon which the committee might act and report separately, it was manifestly in the power of the House to direct that all debate be closed upon any one of the subjects therein alluded to.

On appeal by Mr. Jones this decision was sustained by a vote of 92 to 64.

5219. General debate in Committee of the Whole is not necessarily closed by failure of those entitled to the floor to proceed in debate.—On December 15, 1904,[3] the Committee of the Whole House on the state of the Union was considering a bill (H. R. 4831) relating to the improvement of currency conditions, the arrangement made in the House as to general debate being that it should be equally divided as to time, Mr. Ebenezer J. Hill, of Connecticut, having control of the time on the majority side, and Mr. Charles L. Bartlett, of Georgia, the time on the minority side.

After the majority had consumed about an hour of time, and the minority about twenty minutes, Mr. John S. Williams, of Mississippi, who was in charge of the minority time in the absence of Mr. Bartlett, announced that there was no further demand for time on his side, and suggested that the general debate should close.

Thereupon Mr. Hill proposed to yield further time on the minority side.

Thereupon Mr. Williams objected, saying:

> But the gentleman from Connecticut can not yield to anybody now. The agreement in the House was that the time should be divided equally between those in advocacy of the bill and those in opposition to the bill. Gentleman on his side have already consumed more than an hour of time, while on this side we have consumed about twenty minutes.

Mr. Hill having asked for a decision, the Chairman[4] said:

> The time on that side of the House, represented by the gentleman from Mississippi, could be made equal, of course, in general debate; but general debate can not be closed by a refusal of one side of the

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[1] Linn Boyd, of Kentucky, Speaker.

[2] It is not now the custom of the House to consider the President's annual message in Committee of the Whole. That committee distributes the message to the standing committees.

[3] Third session Fifty-eighth Congress. Record, p. 321.

[4] John Dalzell, of Pennsylvaina, Chairman.

House to go on and debate the question. * * * The Chair thinks that under an agreement, such as was had in this case, it is not in the power of one side to close debate by refusing to go on.

Thereupon Mr. Williams moved that general debate be closed.

The Chairman said:

The gentleman from Mississippi appreciates the fact that general debate can not be closed by order of the Committee of the Whole; it can only be closed in the House.

5220. The time occupied in reading a bill in Committee of the Whole does not come out of the time allowed for general debate.—On February 24, 1875,[1] the House was in Committee of the Whole House on the state of the Union for the consideration of H. R. 4729, a bill making appropriations for the sundry civil expenses of the Government, and for other purposes.

Objection having been made to the request of Mr. James A. Garfield that the first reading of the bill be dispensed with, Mr. Garfield asked of the Chair whether or not the time occupied in reading the bill would come out of the time allowed for general debate.

The Chairman,[2] after considering the question, held that the reading of the bill would not come out of the time allowed for general debate.

5221. The rule governing the five-minute debate on amendments in Committee of the Whole.

The rules contemplate that general debate in Committee of the Whole shall be closed by order of the House before amendments may be offered.

An amendment once offered in Committee of the Whole may not be withdrawn.

Present form and history of section 5 of Rule XXIII.

Section 5 of Rule XXIII provides:

When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon; but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment; and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the Committee.

This form is substantially that of the revision of 1880. Previous to that time the following rule, which dated from April 7, 1789,[3] had been in existence:

Upon bills committed to a Committee of the Whole House, the bill shall be first read throughout by the Clerk, and then again read and debated by clauses, leaving the preamble to be last considered. The body of the bill shall not be defaced or interlined; but all amendments, noting the page and line, shall be duly entered by the Clerk, on a separate paper, as the same shall be agreed to by the committee, and so reported to the House. After report, the bill shall again be subject to be debated and amended by clauses before a question to engross it be taken.

The portions of this rule relating to consideration in Committee of the Whole are continued practically in present practice; but the consideration by paragraphs does not now exist in the practice of the House itself.

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[1] Second session Forty-third Congress, Record, p. 1699.

[2] Mr. George G. Hoskins, of New York, Chairman.

[3] First session First Congress, Journal, p. 11.

Prior to 1841 there was no limit to the time which a member might occupy when once in possession of the floor. The hour rule[1] had not been adopted, and in Committee of the Whole, where the previous question did not apply, and where a member might speak an unlimited time, whether in general debate or on an amendment, the problem of getting through with bills seems to have become very important and urgent. In 1840 the bill "to provide for the collection, safe-keeping, transfer, and disbursement of the public revenue" was in Committee of the Whole several weeks, and was rescued only by the suspension of the rules by a two-thirds vote and the adoption of a special order taking the bill from the Committee of the Whole and making it in order at once in the House.[2]

In 1841 the Whig party came into power in the House, but did not have the two-thirds majority which would be necessary to take a bill from Committee of the Whole in this manner. On June 22, 1841, the House sent to the Committee of the Whole a bill "to appropriate the proceeds of the sale of public lands and to grant preemption rights." This bill was still being debated in Committee on July 6, when the Committee on Rules, after much opposition,[3] secured the adoption of a rule providing that by the vote of the majority (instead of two-thirds) the House might suspend the rules for the purpose of discharging the committee of the Whole from the consideration of any bill referred to them after acting without debate upon all amendments pending and that might be offered. Immediately upon the adoption of this rule, and under authority of it, a resolution was agreed to closing the general debate on the public land bill at 7 p. m. and directing that the bill be reported to the House after pending amendments were voted on. This taking of the bill from the Committee of the Whole was marked by high party excitement. To the reporter of debates it seemed as if "chaos were come again," and a thunderstorm of unusual violence without seemed a fitting accompaniment to the turmoil within.[4] The hour rule of debate was also adopted for the first time during the excitement of this evening.

The method of closing general debate in Committee of the Whole by a resolution adopted by a majority in the House was continued at the next session of Congress,[5] since business could not be transacted without it.

On June 13, 1842,[6] a rule was proposed to permit in Committee of the Whole a motion to close debate, but it was laid on the table, yeas 102, nays 91. And thereafter the rule of 1841 for discharging the Committee of the Whole, after acting without debate on all amendments, continued in force, but was used for the real purpose of closing general debate, since after that was closed and the bill had been amended, an order to report it would follow as a matter of course. In the revision of the rules in 1880 the rule of 1841 was dropped, except for the reference in the words "when general debate is closed by order of the House," but the practice of the House has continued as before, the motion to close general debate being made pending the motion to go into Committee of the Whole.

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[1] See section 4978 of this volume.

[2] First session Twenty-sixth Congress, Journal, pp. 1156–1158; also remarks of Mr. Medill, first session Twenty-seventh Congress, Globe, p. 152.

[3] First session Twenty-seventh Congress, Globe, p. 132.

[4] First session Twenty-seventh Congress, Globe, p. 155.

[5] Second session Twenty-seventh Congress, Globe, pp. 126, 257; Journal, p. 560.

[6] Second session Twenty-seventh Congress, Journal, p. 949; Globe, p. 619.

The rule of 1841, however, was only the beginning of the present system of guiding business in Committee of the Whole. There was found to be great inconvenience in the requirement that amendments should be voted on without debate after the closing of general debate, and on December 18, 1847, a rule was adopted "that where debate is closed by order of the House any Member shall be allowed in Committee five minutes to explain any amendment he may offer."[1] In a few years a practice grew up whereby a Member would offer an amendment, debate five minutes, and withdraw it, thus allowing another Member to offer another amendment and repeat the performance. While the five-minute rule was generally in high favor, this practice produced much delay and irrelevancy. Therefore, on August 14, 1850,[2] the House added to the words "any Member shall be allowed in Committee five minutes to explain any amendment he may offer," the following provision:

> After which any Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate on the amendment; but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to the amendment; and neither the amendment nor an amendment to the amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the Committee.

This plan of permitting five minutes of debate on an amendment had been tried temporarily during consideration of an appropriation bill on February 20, 1845,[3] at the suggestion of Mr. Charles J. Ingersoll, of Pennsylvania.

The provision that an amendment once offered might not be withdrawn did not prevent the offering of amendments for purposes of obstructive debate, and on March 22, 1854,[4] the Committee on Rules reported a plan for closing debate on a paragraph or section; but it was not adopted.

The object of this rule was patent. The famous Kansas-Nebraska bill was pending, and the minority party were prepared to obstruct it indefinitely by five-minute debate, so that it might never get out of Committee of the Whole. They were engaged in carrying this purpose into effect when on May 22, 1854,[5] Mr. Alexander H. Stephens, of Georgia, moved to strike out the enacting words of the bill, saying that if the committee should agree to the motion the action would be reported to the House and the question would be on agreeing to the report. If the friends of the bill should vote to nonconcur in the report, they would then have the bill before the House, to do with as the majority might determine. Although this procedure was denounced, especially by Mr. Israel Washburn, Jr., of Maine, as an outrageous trampling on the rights of the minority, the Chairman[6] sustained it, and the bill was passed.

After this it became a common practice to take bills from the Committee of the Whole in this way until the revision of 1860, when Mr. Washburn, in reporting from the Committee on Rules, presented a plan, which is now section 6 of Rule XXIII,[7]

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[1] First session Thirtieth Congress, Globe, p. 47.

[2] First session Thirty-first Congress, Globe, pp. 1566–1575; Journal, p. 1265.

[3] Second session Twenty-eighth Congress, Journal, pp. 422–424; Globe, p. 317.

[4] First session Thirty-third Congress, Journal, pp. 550, 551; Globe, pp. 715–717.

[5] First session Thirty-third Congress, Globe, p. 1241.

[6] Edson B. Olds, of Ohio, Chairman.

[7] See section 5224 of this volume.

for modifying the rule relating to the enacting clause,[1] so as to prevent the practice, and also this additional provision for the five-minute rule:

Provided further, That the House may, at any time after five minutes' debate has taken place upon a proposed amendment or any section or paragraph of the bill, close the debate upon such section or paragraph, or, at their election, upon the pending amendments only.

This provision was not originally in this form, the words "or paragraphs" having been inserted on recommendation of Mr. John S. Millson, of Virginia, who said he did not propose to interfere with the right of the House to close debate upon the whole section, but thought it wise to have the power apply also to the paragraphs.[2]

The revision of 1880[3] left the provisions of the rule in its present form, except that in 1885[4] the clause prohibiting debate on the motion to close debate was inserted.

5222. A Member who has occupied five minutes on a pro forma amendment, may not, by making another pro forma amendment, lengthen his time.—On March 22, 1904,[5] while the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Thomas S. Butler, of Pennsylvania, was recognized in debate under the five-minute rule, having made a pro forma amendment to strike out the last word of the pending matter.

At the expiration of his five minutes, Mr. Butler proposed another pro forma amendment in order that he might continue for five minutes more.

The Chairman[6] said:

That motion is hardly in order. The Chair is of the opinion that when a gentleman is addressing the committee and his time has expired he is not entitled to offer a pro forma amendment and hold the floor for five minutes more. The motion would not be in order.

5223. During the five-minute debate recognitions are not necessarily alternated between the political divisions of the House, but are governed by conditions relating to the pending question.—On June 26, 1902,[7] the Committee of the Whole House on the state of the Union was considering under the five-minute rule the bill (S. 2295) temporarily to provide for the affairs of civil government in the Philippine Islands, when Mr. John W. Gaines, of Tennessee, raised a question as to recognitions, as between the majority and minority sides of the House.

The Chairman[8] said:

The Chair will state that on an amendment there is of course allowed five minutes debate on each side, and no more, except by unanimous consent. The Chair has followed this rule—that when an amendment is offered, no matter on which side, it is of course an attack upon the bill which is being

[1] See section 5326 of this volume.

[2] First session Thirty-sixth Congress, Globe, p. 1188.

[3] Second session Forty-sixth Congress, Record, p. 206.

[4] First session Forty-ninth Congress, Record, pp. 3126, 3127.

[5] Second session Fifty-eighth Congress, Record, p. 3532.

[6] Edgar D. Crumpacker, of Indiana, Chairman.

[7] First session Fifty-seventh Congress, Record, p. 7446.

[8] Frederick H. Gillett, of Massachusetts, Chairman.

defended by the committee; and the Chair therefore has held that it is always but fair—and the Chair thinks the committee will agree with him—that when the bill is attacked, no matter upon which side, a member of the committee should be next recognized to defend the bill. * * * That makes no difference upon which side the time is occupied.

5224. The Committee of the Whole may, after the five-minute debate has begun, close debate on the section, paragraph, or pending amendments; but this does not preclude further amendment.

Present form and history of section 6 of Rule XXIII.

Section 6 of Rule XXIII provides:

The committee may, by the vote of a majority of the Members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph, or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

This rule relates to the same subject as section 5 of Rule XXXIII, and its history is the same.[1]

5225. A motion to close debate under the five-minute rule is not in order until such debate has begun.—On June 13, 1902,[2] the Committee of the Whole House on the state of the Union, under the five-minute rule, was considering the bill (S. 3057) for the reclamation of arid lands by irrigation, when, a paragraph having been read, with an amendment proposed by the committee, Mr. John F. Shafroth, of Colorado, moved that all debate on the paragraph and amendments close in ten minutes.

The Chairman[3] said:

The Chair will remind the gentleman from Colorado [Mr. Shafroth] that the motion to close debate in the committee can not be made until the debate has commenced.

5226. The five-minute debate may be closed after one speech of five minutes.—On December 18, 1900,[4] the bill (S. 1929) to provide for eliminating certain grade crossings in the city of Washington, was under consideration in Committee of the Whole House on the state of the Union, under the five-minute rule, and Mr. John F. Fitzgerald had addressed the committee for five minutes on the pending amendment,

Thereupon Mr. Joseph W. Babcock, of Wisconsin, moved that debate on the amendment and amendments thereto close in one minute.

Mr. James D. Richardson, of Tennessee, made the point of order that debate could not be closed until the time allowed by the rules—five minutes for and five against the proposition—had expired.

After debate the Chairman[5] said:

The Chair is very clearly of the opinion that by section 5,[6] five minutes' debate is allowed for an amendment proposed and five minutes against that amendment and then the debate closes itself with-

[1] See section 5221.

[2] First session Fifty-seventh Congress, Record, p. 6745.

[3] James A. Tawney, of Minnesota, Chairman.

[4] Second session Fifty-sixth Congress, Record, pp. 409, 410.

[5] William H. Moody, of Massachusetts, Chairman.

[6] Of Rule XXIII. (See sec. 5221.)

out any motion. The sixth paragraph, which was adopted ten years later than the one just referred to, provided for closing debate at any time after it shall have begun. It would have been entirely unnecessary if it had been limited to the condition described in paragraph 5, because the debate then is closed without any motion, or upon the interposition of the point of order by any gentleman on the floor. The Chair therefore rules that the motion of the gentleman from Wisconsin is in order, that debate upon this amendment be closed in one minute.

5227. The motion to close the five-minute debate, while not debatable, is amendable.—On June 13, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (S. 3057) for the reclamation of arid lands by irrigation, when, in the course of the debate under the five-minute rule, a motion was made to close all debate on the paragraph and pending amendment. To this amendment a motion was made and entertained to amend by fixing the time for closing in ten minutes.

Later, during consideration of the same bill, a similar situation arose, the Chairman[2] stating the question as follows:

The Chair will state the question. The gentleman from Wyoming moved that all debate on the paragraph and pending amendments thereto close in ten minutes, and to that the gentleman from Colorado [Mr. Shafroth] moved an amendment that all debate close in five minutes, and then the gentleman from Alabama [Mr. Underwood] moved a substitute to close debate at once. The question is on the amendment offered by the gentleman from Colorado to perfect the original motion by the gentleman from Wyoming that all debate close in five minutes on the paragraph and the amendments thereto.

Mr. James M. Robinson, of Indiana, rising to a parliamentary inquiry, asked if the motion was debatable.

The Chairman replied that it was not.

5228. The closing of debate on the last section of a bill considered under the five-minute rule does not preclude debate on a substitute for the whole text of the bill.—On June 13, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (S. 3057) for the reclamation of arid lands by irrigation, when the last section was read, debate was limited on the section and amendments, and the time fixed for the limit of debate expired.

Thereupon Mr. James M. Robinson, of Indiana, proposed an amendment in the nature of a substitute for the whole text of the bill and was proceeding to debate.

A question being raised, the Chairman[2] at first held that debate was not in order; but later said:

The Chair was under the impression that this was offered as an amendment to the last section of the bill, and therefore that debate was not in order. It was offered as a substitute, and debate is in order. The motion to close debate can not be entertained until debate has begun. The Chair recognizes the gentleman from Indiana [Mr. Robinson].

5229. The right to limit debate on the pending section of a bill pending in the Committee of the Whole under the five-minute rule may be exercised by the House as well as by the Committee of the Whole.—On October 25, 1893,[4] Mr. Thomas C. McRae, of Arkansas, moved that the House

[1] First session Fifty-seventh Congress, Record, p. 6744.

[2] James A. Tawney, of Minnesota, Chairman.

[3] First session Fifty-seventh Congress, Record, p. 6777.

[4] First session Fifty-third Congress, Journal, p. 154.

resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering bill (H. R. 119) to protect forest reservations, and pending this Mr. McRae moved that debate on the pending section of the bill be limited to five minutes.

Mr. Sereno E. Payne, of New York, moved to amend the latter motion by substituting thirty minutes for five minutes.

Mr. Albert J. Hopkins, of Illinois, moved to amend the amendment by striking out thirty and inserting forty-five.

Mr. William M. Springer, of Illinois, made the point of order that under clause 6 of Rule XXIII, to wit: "The committee may at any time," etc., "close debate," the House having thus conferred this power on the Committee of the Whole could not itself continue to exercise that power.

The Speaker [1] overruled the point of order, holding that the rule did not confer upon the committee the exclusive right to limit debate on matters pending before it, and did not take away from the House its power in the premises.[2]

5230. An exceptional instance wherein the House closed the five-minute debate on a section of a bill in Committee of the Whole before all of the section had been read for amendment.—On February 12, 1885,[3] Mr. Albert S. Willis, of Kentucky, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of taking up the river and harbor appropriation bill, and pending that motion he moved that all debate on the pending section and amendments thereto be limited to one hour and a half.[4]

As it appeared from the debate on the point of order which subsequently arose, one-half of the section had been read and debated by paragraphs under the five-minute rule.

When the motion of Mr. Willis had been made, Mr. Thomas B. Reed, of Maine, made the point of order that under the rules of the House debate could not be limited on the section. He admitted that the framers of the rule seemed to have had in mind that the House should have the power to close debate on either the section or the paragraph; [5] and he recalled also that the question had been raised during the discussion on the tariff bill of 1883; [6] but the universal practice of the House for many years had been that debate could not be closed on provisions of a bill that had not been read. Half the paragraphs in the section had been read and debated, but the remainder had not been.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Section 6 of Rule XXIII (see sec. 5224 of this volume) is now in the same form as at the time of this ruling. November 2, 1893, the rule was amended so as to give in express terms the "House or the committee" power to close the five-minute debate. That change was not retained after the Fifty-third Congress.

[3] Second session Forty-eighth Congress, Record, pp. 1604–1612.

[4] This motion is not often made in this way in the recent practice of the House. Motions to close general debate in the Committee of the Whole are so made, but after general debate has ceased and the five-minute debate for amendments has begun the committee and not the House generally regulates the closing of debate, but not necessarily so.

[5] See remarks of Messrs. Washburn and Millson on this point during revision of rules in Thirty-sixth Congress. (Globe, March 15 and 16, 1860.) Also see Record, second session Forty-eighth Congress, pp. 1609, 1611.

[6] For this debate see Record for February 17, 1883.

The Speaker pro tempore [1] ruled as follows:

The Chair will state the point of order raised by the gentleman from Maine; and the argument submitted by him would in the opinion of the Chair be very well directed to a general appropriation or revenue bill. The river and harbor bill has been held more than once to be neither a general appropriation bill nor a revenue bill. The debate to which the gentleman alludes affecting the tariff bill, in the judgment of the Chair, does not apply in this case. If this were a general appropriation or a revenue bill the Chair would have no doubt as to the correctness of the views of the gentleman from Maine, but as a river and harbor bill has never been held to be either one or the other, the Chair does not think the point of order is well taken. The Chair will ask the Clerk to read the sixth clause of Rule XXIII.

"The House may, by the vote of a majority of the Members present, at any time after five minutes' debate has begun upon proposed amendments to any section or paragraph to a bill, close all debate upon such section or paragraph, or, at its election, upon the pending amendments only; but this shall not preclude further amendment, to be decided without debate."

The Chair is not disposed to bar the House of its right to debate. * * * It is within the power of the House to continue debate upon this section, or the paragraph, as long as it pleases; but under the clause of the rule read by the Clerk, this being neither a general appropriation nor a revenue bill, it is clear to the mind of the present occupant of the chair that it is competent for a majority of the Members here present to limit debate upon the pending section. The Chair therefore overrules the point of order made by the gentleman from Maine [Mr. Reed].

Upon an appeal, which was debated at length,[2] the Chair was sustained, the appeal being laid on the table by a vote of 121 yeas to 103 nays.[3]

5231. A motion is not in order in the House to close debate on a paragraph of a bill in Committee of the Whole until such debate has begun.— On May 27, 1886,[4] Mr. William H. Hatch, of Missouri, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of bills raising revenue.

Pending this, Mr. Hatch moved that when the House again resumes in said committee the further consideration of the bill of the House defining butter, etc., all debate on section 3 and amendments thereto be limited to ten minutes.[5]

Mr. Nathaniel J. Hammond, of Georgia, made the point of order that the motion of Mr. Hatch to limit debate on the pending section was not in order, for the reason that it contained three distinct paragraphs, and that debate could not be closed on a paragraph not reached.

The Speaker [6] sustained the point of order on the ground stated, and held that under clause 6 of Rule XXIII debate could not be closed on a paragraph until debate has actually begun upon it.

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[1] Richard P. Bland, of Missouri, Speaker pro tempore.

[2] Mr. J. Warren Keifer, of Ohio, sustained the ruling, arguing that it was the intention of the framers of the rule to allow the House to close debate either on sections or paragraphs, (Second session Forty-eighth Congress, Record, p. 1609.)

[3] For other rulings that river and harbor bill is not a general appropriation bill see sections 3897–3903 of Volume IV of this work.

[4] First session Forty-ninth Congress, Journal, p. 1736; Record, pp. 5004, 5005.

[5] It is unusual to move in the House to close debate on a paragraph (which is to be distinguished from general debate) of a bill under consideration in Committee of the Whole, because a rule provides that such a motion maybe made in Committee of the Whole. (See sec. 5224 of this volume.)

[6] John G. Carlisle, of Kentucky, Speaker.

The record of debate gives the statement of the Speaker in full:

The Chair finds on examination of the Record that when the reading of the first paragraph of the third section had been concluded in Committee of the Whole House on the state of the Union the gentleman from Georgia [Mr. Hammond] arose for the purpose of arresting the further reading; but the Chairman of the Committee of the Whole House on the state of the Union thereupon announced that the entire section would be read, but amendments would be received to the paragraph. The Chair thinks, inasmuch as every bill must consist of one or more sections—appropriation bills, for instance, containing in a single section 100 or more paragraphs—the House can not close debate on a paragraph till debate has begun upon it.

5232. In the absence of a rule by the House itself, the Committee of the Whole may by unanimous consent permit general debate during consideration of the bill for amendment.—On January 20, 1906,[1] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, general debate having been closed and the reading of the bill for amendment under the five-minute rule having proceeded. An amendment having been offered to appropriate for the transportation of silver coin, Mr. J. Warren Keifer, of Ohio, asked unanimous consent that an hour be given to discussion of the amendment, to be divided evenly between the two sides.

Mr. James A. Tawney, of Minnesota, rising to a parliamentary inquiry, asked:

Mr. Chairman, is it competent in the Committee of the Whole to provide by unanimous consent for general debate on any proposition? It would be, undoubtedly, competent for the Committee of the Whole to give to the gentleman from Ohio as much time as that committee may desire to give.

The Chairman[2] said:

In the absence of the mandate made by the House before going into the Committee of the Whole, it is competent for the committee to make such a rule as the gentleman now asks to have made by unanimous consent.

5233. It is the rule, well established in the practice of the House for many years, that the Member need not confine himself to the subject during general debate in the Committee of the Whole House on the state of the Union.—On April 18, 1840,[3] the House was in Committee of the Whole on the state of the Union. Mr. John B. Weller, of Ohio, being entitled to the floor on the bill pending, which was the civil and diplomatic appropriation bill, proceeded to discuss the subject of banks, when Mr. Horace Everett, of Vermont, rose to a point of order, and asked whether it was proper for the gentleman to discuss the subtreasury bill.

The Chairman[4] said that, although great latitude had been allowed on this bill, he was compelled to decide that the gentleman from Ohio [Mr. Weller] was not in order.

Mr. Caleb Cushing, of Massachusetts, said that if this latitude of debate, which was in violation of the rules of the House, was to proceed, he wanted to talk on the South American and China trade. Mr. John Reed, of Massachusetts, said that he had never known such latitude to be allowed. He had proposed on a previous occa-

[1] First session Fifty-ninth Congress, Record, p. 1327.

[2] James S. Sherman, of New York, Chairman.

[3] First session Twenty-sixth Congress, Globe, pp. 338, 340, 360.

[4] Zadoc Casey, of Illinois, Chairman.

sion that all such discussion should take place on the President's message. As the House had refused, he hoped that full latitude would be permitted.

On the next day Mr. Everett is reported to have addressed the House at considerable length on the subject, adverting to the change in the practice of the House as to general debate on the affairs of the Union, which used always to take place on a reference of the President's message, but was now irregularly indulged in on other bills. He laid the blame of the discursive character of the debate on the Administration side of the House, which first began it, but considered the debate, though not strictly regular, very valuable and important.[1]

On May 8, 1826,[2] during debate on the Creek treaty in the Committee of the Whole House on the state of the Union, Mr. John Forsyth, of Georgia, was called to order for not confining his remarks to the subject before the House.

The Chairman[3] declared Mr. Forsyth out of order, which decision was sustained.

5234. On February 23, 1849,[4] Mr. Samuel F. Vinton, of Ohio, moved that the House resolve itself into the Committee of the Whole House on the state of the Union, and this was done. When in committee Mr. Vinton moved to take up the Post-Office appropriation bill. The bill was read through, and then, after two amendments had been proposed and ruled out of order, Mr. Thomas J. Turner, of Illinois, moved to strike out the first section, and began to speak on the subject of the Territories and slavery. Mr. Frederick A. Tallmadge, of New York, made the point of order that such discussion was not in order on a Post-Office bill.

The Chairman[5] held that, according to the universal usage, when the House was in Committee of the Whole House on the state of the Union, all manner of matter was debated.

An appeal was taken, and the Chair was sustained.[6]

On the next day a resolution was adopted in the House that debate on the Post-Office bill should cease in Committee of the Whole House on the state of the Union in two hours, at the end of which time amendments should be voted on. When the committee began its session the debate on the slavery question was resumed. At its close the amendments were offered.[7]

5235. On July 30, 1850,[8] the House went into Committee of the Whole House on the state of the Union, and when in committee Mr. Thomas H. Bayly, of Virginia,

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[1] From 1860 to 1880 the House had a rule whereby, when an appropriation bill was made a special order in Committee of the Whole, general debate on other subjects was not allowed. (See Globe, p. 1210, first session Thirty-sixth Congress).

[2] First session Nineteenth Congress, Debates, p. 2613.

[3] Lewis Condict, of New Jersey, Chairman.

[4] Second session Thirtieth Congress, Globe, pp. 587, 592.

[5] Hugh White, of New York, Chairman.

[6] On May 30, 1848 (first session Thirtieth Congress, Globe, pp. 793, 797), this question had been debated very fully, and Chairman Robert Toombs, of Georgia, had held that the rules of the House applied, and that debate must be confined to the subject. He admitted that great latitude had been permitted, but did not consider himself bound by previous decisions. After long debate the decision was sustained, ayes 74, noes 72.

[7] This was before the system of five-minute debate had been perfected. (See sec. 5221 of this volume.)

[8] First session Thirty-first Congress, Globe, p. 1475.

moved to lay aside the California message with a view of taking up the pension appropriation bill. On a vote by tellers the message was laid aside. Then it was voted to take up the pension bill.

After it had been read through and a proposition had been made to consider it by sections, Mr. Harvey Putnam, of New York, got the floor and proceeded to discuss the admission of California and slavery in the Territories.

Mr. Alexander Evans, of Maryland, made the point that his remarks were irrelevant. The bill before the House was a pension bill, and the gentleman was discussing the slavery question.

The Chairman [1] decided that under the uniform practice a wide range of debate had always been allowed in Committee of the Whole on the state of the Union, and that the Chair therefore did not feel authorized to declare the remarks of the gentleman from New York out of order.

On appeal the decision was sustained.

5236. On July 20, 1852,[2] the House was in Committee of the Whole House on the state of the Union, and Mr. George S. Houston, of Alabama, moved to take up the Military Academy bill. Then Mr. Houston asked that there be no general debate, as he wished soon to call up another bill. The bill was then read through by the Clerk.

Then Mr. Edson B. Olds, of Ohio, arose and said he proposed to make a political speech. After he had begun Mr. Edward Stanly, of North Carolina, arose to a point of order.

The Chairman [3] said he was of the opinion that, in accordance with the general practice of the House, general discussion might be permitted to go on.

This decision was sustained, 94 yeas to 37 nays.[4]

Then, after further debate, the bill was read for amendments.

5237. On January 10, 1906,[5] the Philippine tariff bill (H. R. 3) was under consideration in Committee of the Whole House on the state of the Union, general debate not having yet been concluded.

Mr. Morris Sheppard, of Texas, having the floor, proceeded to discuss an incident which had occurred recently at the White House, and which had no connection with the tariff bill.

Mr. Sereno E. Payne, of New York, made the point of order that he was not confining himself to the subject before the committee.

The Chairman [6] held:

> The Chair is of the opinion, and finds himself sustained by former rulings, that in Committee of the Whole House a Member must confine himself to the subject, but it has been universally held that in Committee of the Whole House on the state of the Union a Member need not confine himself to the bill

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[1] Linn Boyd, of Kentucky, Chairman.

[2] First session Thirty-second Congress, Globe, p. 1856.

[3] John S. Phelps, of Missouri, Chairman.

[4] On June 1, 1880 (second session Forty-sixth Congress, Record, p. 4019), in Committee of the Whole House on the state of the Union, Chairman W. C. Whitthorne, of Tennessee, gave a full review of the principle that the member is not confined to the subject of the pending bill in general debate in Committee of the Whole House on the state of the Union.

[5] First session Fifty-ninth Congress, Record, p. 932.

[6] Marlin E. Olmsted, of Pennsylvania, Chairman.

or subject under debate. * * * The Chair will add that, as may be found in paragraph 885 of the Parliamentary Precedents of the House, on February 23, 1849, the question was squarely before the House in Committee of the Whole House on the state of the Union, and the Chairman, Mr. Hugh White, of New York, "held that, according to the universal usage, when the House was in Committee of the Whole House on the state of the Union all manner of matter was debated." An appeal was taken and the Chair was sustained. There has never been a contrary ruling from that time until the present day. [Applause on the Democratic side.]

The Chair finds that according to paragraph 888, the House then being in Committee of the Whole House, not on the state of the Union, the gentleman from New York [Mr. Payne] made a ruling that in that committee Members were confined to a discussion of the pending matter. It is, of course, so held in the House; but in Committee of the Whole House on the state of the Union, in general debate, under the unbroken precedents of the last fifty years or more, the ruling has been uniform that all manner of matter may be debated. Of course there are other ways in which a gentleman having the floor may violate rules and be out of order, but the Chair is unable to sustain the point as to germaneness. The point would be good in Committee of the Whole, but not in Committee of the Whole House on the state of the Union while general debate is in progress.

5238. On February 15, 1906,[1] during general debate in Committee of the Whole House on the state of the Union on the bill (H. R. 345) to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof, Mr. Sereno E. Payne, of New York, having the floor, proceeded to debate a question other than that involved in the pending bill.

Mr. Augustus P. Gardner, of Massachusetts, raised the question of order that the gentleman from New York was not confining himself to the subject-matter of the bill.

The Chairman[2] said:

The Chair will state that we are in Committee of the Whole House [on the state of the Union] and the gentleman is not bound to confine himself to the subject-matter of the bill.

5239. In general debate in Committee of the Whole House the Member must confine himself to the subject.

Instance wherein the Chair gave a casting vote in case of a tie on an appeal from his decision.

On March 4, 1898,3 the House was in Committee of the Whole House,[4] considering the bill (H. R. 285) for the relief of David D. Smith.

Upon this bill, during general debate, Mr. Levin I. Handy, of Delaware, proceeded to make general remarks on the condition of the United States Treasury.

Mr. Henry R. Gibson, of Tennessee, made the point of order that the remarks of the gentleman from Delaware were not addressed to the question before the committee.

The Chairman[5] sustained the point of order.

From this decision Mr. Richard P. Bland, of Missouri, appealed. The vote being taken by tellers on the question, "Shall the decision of the Chair stand as the judgment of the committee?" there were 91 ayes and 91 noes.

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[1] First session Fifty-ninth Congress, Record, p. 2617.

[2] John A. Sterling, of Illinois, Chairman.

[3] Second session Fifty-fifth Congress, Record, pp. 2497–2500.

[4] This should be distinguished from Committee of the Whole House on the state of the Union, referred to in decisions in sections 5233, etc. (For distinction between the two committees see sec. 4705 of Vol. IV of this work.)

[5] Sereno E. Payne, of New York, Chairman.

The Chairman voted in the affirmative and announced that the decision was sustained.[1]

5240. In debate under the five-minute rule[2] the Member must confine himself to the subject.—On August 17, 1850,[3] the House being in Committee of the Whole, and a general appropriation bill being under consideration, an amendment was offered allowing Members $45 for stationery. Mr. Thomas H. Bayly, of Virginia (for the purpose of making a remark), moved to amend the amendment by making the sum $9.

As Mr. Bayly began to speak the Chairman[4] interposed, and stated that the question was now on the gentleman's amendment to the amendment, and the rule required the gentleman to confine his remarks to the amendment to the amendment.

5241. On June 13, 1850,[5] during the consideration of the message transmitting the constitution of California, in Committee of the Whole House on the state of the Union, Mr. John Wentworth, of Illinois, had the floor in debate, when Mr. George Ashmun, of Massachusetts, made the point of order that during the five-minute debate Members should confine themselves to the subject of the amendments presented.

The Chairman[6] said:

This rule is stringent in its provisions, but in five minutes it would be extremely difficult for the Chair to determine what use the gentleman from Illinois might make of his remarks, which he has submitted. In reference to the Missouri Compromise and the annexation of Texas the Chair did not feel it to be his duty to call the gentleman to order or to sustain the question of order raised by the gentleman from Massachusetts.

Mr. Ashmun having appealed, the question was taken by tellers, and the decision of the Chair was overruled, ayes 77, noes 80.

5242. On July 27, 1852,[7] while the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the Chairman[8] addressed the committee as follows:

Before proceeding to the consideration of the pending amendments, the Chair asks the indulgence of the committee to state, in advance, a decision which he feels himself called upon to make relative to the further consideration of this bill. And, inasmuch as this decision will be an innovation upon the practice of the Committee of the Whole on the state of the Union, he announces it in advance, that no member of the committee, when called to order under it, may suppose the Chair personal or invidious, and that the committee, by an examination of the question, may be prepared to sustain or overrule the Chair.

The thirty-fourth rule * * * is as follows:

"Any member shall be allowed in committee five minutes to explain any amendment he may offer; after which, any member first obtaining the floor shall be allowed to speak five minutes in opposition to the amendment."

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[1] The tie vote would have sustained the Chair without his own vote. (See sec. 185 of Reed's Parliamentary Rules.)

[2] For this rule see section 5221 of this chapter.

[3] First session Thirty-first Congress, Globe, pp. 1594, 1596.

[4] Armistead Burt, of South Carolina, Chairman.

[5] First session Thirty-first Congress, Globe, p. 1194.

[6] Linn Boyd, of Kentucky, Chairman.

[7] First session Thirty-second Congress, Globe, p. 1938.

[8] Edson B. Olds, of Ohio, Chairman.

The Chair will feel himself bound to give a strict construction to this rule; and will hold, that all remarks upon the general merits of the bill will be out of order as "explaining" an amendment, and that all remarks touching the demerits of the bill will be out of order as opposing an amendment.

5243. On April 22, 1890,[1] the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill, under the five-minute rule.

The paragraph under consideration relating to compensation of officers, clerks, and messengers of the Senate, Mr. Francis B. Spinola, of New York, was proceeding to discuss certain charges against a Member of the Senate.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the gentleman was not in order.

The Chairman[2] said:

The Chair is prepared to decide the question of order. There is no necessity for debate. The Committee has under consideration a general appropriation bill making provision for the payment of the legislative, judicial, and executive salaries. The rule of the House has been read in the hearing of the Committee, and the Chair assumes that the members of the Committee are as familiar with the rule as the Chair. The Chair is familiar with the practice that has obtained since the present occupant of the chair has been a Member of the House, and knows that considerable latitude has always been allowed in debate in Committee of the Whole under this rule; but the Chair is clearly of the opinion—and there can be no doubt about it—that if the point of order is made in a case such as is presented now it is the duty of the Chair to hold that such remarks as have been indulged in are clearly not in order in discussing an amendment to this bill. The gentleman from New York has three minutes and the Chair hopes the gentleman will proceed in order.

5244. On May 25, 1892,[3] the House was in Committee of the 'Whole House on the state of the Union considering the sundry civil appropriation bill. The Committee were considering under the five-minute rule a paragraph appropriating for the World's Columbian Exposition.

Mr. Henry U. Johnson, of Indiana, having been recognized, proceeded to discuss a subject not contained in the paragraph, namely, the killing of Eli Ladd, in Henry County, Ind., to which reference had been made during the debate.

Mr. Joseph D. Sayers, of Texas, having made the point of order that the gentleman from Indiana was not proceeding in order, the Chairman ruled that the gentleman from Indiana must confine himself to the question.

Mr. Johnson having proceeded, he was again called to order by Mr. George D. Wise, of Virginia.

The Chairman[4] ruled that the gentleman from Indiana should take his seat.

Mr. Charles A. Boutelle, of Maine, moved that the Member from Indiana be permitted to explain. This motion was decided in the negative.

5245. On January 30, 1897,[5] the agricultural appropriation bill was under consideration under the five-minute rule in Committee of the Whole House on the state of the Union, and Mr. John F. Shafroth, of Colorado, having the floor, was proceeding to discuss the money question and the relations of gold and silver.

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[1] First session Fifty-first Congress, Record, p. 3695.

[2] Lewis E. Payson, of Illinois, Chairman.

[3] First session Fifty-second Congress, Record, pp. 4689, 4690.

[4] Rufus E. Lester, of Georgia, Chairman.

[5] Second session Fifty-fourth Congress, Record, p. 1355.

Mr. James W. Wadsworth, of New York, having made the point of order that the gentleman was not speaking to the paragraph, the Chairman sustained the point of order.

Mr. Shafroth having appealed from the decision, the Chairman[1] said:

The Committee is now discussing a particular item in an appropriation bill. Upon that the gentleman from Colorado arose and made a speech upon the question of silver, and other questions, which the Committee heard. The point of order was made by the gentleman from New York [Mr. Wadsworth] that the remarks of the gentleman from Colorado were not upon the subject-matter of the paragraph under consideration by the Committee. Upon that the Chair held that the remarks were not in order. From that the gentleman from Colorado appeals, and the question is upon sustaining the decision of the Chair.

The Chair was sustained by 70 yeas to 40 nays.

5246. On March 29, 1897,[2] the Committee of the Whole House on the state of the Union were considering the tariff bill under the five-minute rule, the paragraph relating to "clays or earths" being before them.

Mr. Richard P. Bland, of Missouri, having taken the floor, Mr. John Dalzell, of Pennsylvania, as a parliamentary inquiry, asked if it was in order for the gentleman from Missouri to make a silver speech under guise of debate on the paragraph.

The Chairman[2] said:

The gentleman from Pennsylvania makes a parliamentary inquiry, and the Chair must respond to it. Section 5 of Rule XXIII provides that—

"When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it."

The Chair thinks the clear meaning of that provision is that the debate shall be confined to the subject under consideration. It is true that heretofore great latitude has been allowed in Committee of the Whole, but the Chair thinks that at no time has that latitude been extended so far as to allow debate beyond the provisions of the bill, even when it has tolerated debate beyond the portion of the bill immediately under consideration.

5247. On February 24, 1898,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union under the five-minute rule, when Mr. Lemuel E. Quigg, of New York, proposed to reply to certain charges made on the previous day in regard to campaign funds in the State of New York.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this did not relate to the subject under consideration.

The Chairman sustained[1] the point of order.

5248. On March 11, 1898,[5] the House was in Committee of the Whole House considering under the five-minute rule the bill (H. R. 4936) for the allowance of claims for stores and supplies under the Bowman Act. Mr. James Hamilton Lewis, of Washington, having been recognized, proceeded to discuss a statement made in the public prints concerning the boundary between the United States and Canada.

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[1] Sereno E. Payne, of New York, Chairman.

[2] First session Fifty-fifth Congress, Record, p. 438.

[3] James S. Sherman, of New York, Chairman.

[4] Second session Fifty-fifth Congress, Record, p. 2142.

[5] Second session Fifty-fifth Congress, Record, pp. 2735, 2736.

Mr. John S. Williams, of Mississippi, made the point of order that the remarks of the gentleman were not germane to the subject before the Committee.

The Chairman[1] sustained the point of order.

5249. On March 25, 1898,[2] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

The Clerk having read, for debate under the five-minute rule, the paragraph relating to "Pay, miscellaneous" of the Navy, Mr. Charles S. Hartman, of Montana, secured the floor and was proceeding to speak on the issues of national party politics, when Mr. Charles A. Boutelle, of Maine, made the point of order that the gentleman was not addressing himself to the measure before the House.

The gentleman from Montana urged that in Committee of the Whole on the state of the Union it was permissible to discuss the general condition of the country.

The Chairman[3] sustained the point of order, making a distinction between general debate and debate under the five-minute rule.

On an appeal taken by Mr. Joseph W. Bailey, of Texas, the decision of the Chair was sustained, 116 ayes to 99 nays, on a vote by tellers.

Then, on motion of Mr. Benton McMillin, of Tennessee, the House voted that the gentleman from Montana might proceed in order.

Again on the same day Mr. Hartman was called to order, and Mr. Joseph W. Bailey, of Texas, moved that he be permitted to proceed in order.

Mr. Nelson Dingley, of Maine, raised the point that the motion prescribed by the rule[4] was that the gentleman should be allowed to explain.

So Mr. Bailey modified his motion, and the question being put, the House decided—116 nays to 104 yeas—that the gentleman from Montana should not be permitted to explain.[5]

5250. On February 26, 1898,[6] during the consideration of the sundry civil appropriation bill, under the five-minute rule, in Committee of the Whole House on the state of the Union, the paragraph relating to the care of national cemeteries was read.

Mr. James Hamilton Lewis, of Washington, being recognized, proceeded to discuss the relations of the United States with Spain.

Mr. Joseph G. Cannon, of Illinois, made the point of order.

The Chairman[1] sustained the point of order.

5251. On February 2, 1899,[7] the river and harbor bill (H. R. 11795) was under consideration in Committee of the Whole House on the state of the Union, and was being read for amendments under the five-minute rule, when the following paragraph was read:

Improving Forked Deer River, Tennessee: For maintenance, $3,000.

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[1] Sereno E. Payne, of New York, Chairman

[2] Second session Fifty-fifth Congress, Record, pp. 3226–3236.

[3] James S. Sherman, of New York, Chairman.

[4] See section 5175 of this volume.

[5] During the debate a precedent (Record, p. 2503, first session Fifty-fourth Congress), was cited, wherein it was held that gentlemen were not held to the subject in debating under the five-minute rule.

[6] Second session Fifty-fifth Congress, Record, pp. 2244, 2245.

[7] Third session Fifty-fifth Congress, Record p. 1399.

Mr. William P. Hepburn, of Iowa, moved to strike out the last word, and was proceeding to debate the subject of the improvement of the Muskingum River in Ohio.

Mr. Theodore E. Burton, of Ohio, made the point of order that the gentleman from Iowa was not confining himself to the subject before the House.

The Chairman [1] said:

The gentleman from Iowa is familiar with the rule that during the five-minute debate remarks must be germane to the pending proposition. * * * In conformity with the uniform rule the gentleman from Iowa should confine himself to the matter under consideration.

5252. On February 9, 1900,[2] a Friday evening session, the House was in Committee of the Whole House, and the bill granting a pension to Sarah Potter was before the committee.

A motion was pending to amend the bill by inserting the words "subject to the provisions and limitations of the pension laws."

Mr. Thetus W. Sims, of Tennessee, having been recognized, was proceeding to discuss the general subject of pensions, when Mr. James A. Norton, of Ohio, made the point of order that the gentlemen from Tennessee was not confining himself to the subject.

The Chairman [3] sustained the point of order.

5253. On April 20, 1900,[4] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union under the five-minute rule, the Clerk having read the paragraph relating to contingent expenses of the Bureau of Supplies and Accounts.

Mr. John W. Gaines, of Tennessee, being recognized, was proceeding to read in his own time a paper relating to the manufacture of armor plate.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that the gentleman from Tennessee was not confining himself to the subject.

The Chairman [5] sustained the point of order.

5254. On June 5, 1900,[6] the Senate amendments to the Military Academy appropriation bill were under consideration in Committee of the Whole House on the state of the Union, and the question was on an amendment relating to the pay of certain watchmen.

Mr. John J. Lentz, of Ohio, having the floor, proposed to discuss a different subject; a point of order was made by Mr. William B. Shattuc, of Ohio.

The Chairman [7] said:

The point of order is well taken. * * * The Chair will call the attention of the gentleman from Ohio to the fact that the committee is considering the amendment under the five-minute rule. The gentleman's colleague from Ohio has made the point of order that the remarks of the gentleman are not in order, and the Chair has ruled that they are not in order. The gentleman has insisted on his point of order, and the gentleman is not proceeding in order in debate.

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] First session Fifty-sixth Congress, Record, p. 1676.

[3] William P. Hepburn, of Iowa, Chairman.

[4] First session Fifty-sixth Congress, Record, p. 4482.

[5] Sereno E. Payne, of New York, Chairman.

[6] First session Fifty-sixth Congress, Record, p. 6742.

[7] Adam B. Capron, of Rhode Island, Chairman.

5255. On January 28, 1901,[1] the bill (H.R. 13423) for the codification and revision of the postal laws was under consideration in Committee of the Whole House on the state of the Union, and the Clerk was reading the bill by sections for amendment.

Mr. Dennis T. Flynn, of Oklahoma, having moved to strike out the last word, was proceeding to discuss a bill not then before the committee relating to certain Indian affairs.

Mr. John H. Stephens, of Texas, made the point of order that the debate was irrelevant.

The Chairman[2] held:

The Chair sustains the point of order. * * * The Chair will state that when a bill is being read by sections the gentleman must confine his remarks to the pending section.

5256. On February 23, 1907,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the amendment being pending:

Insert the following:

"For the continuation of the analysis and testing of the coal, lignite, and other mineral fuel substances belonging to the United States, in order to determine their fuel value, etc., under the supervision of the Director of the Geological Survey, to be immediately available, $250,000."

Mr. Richard Bartholdt, of Missouri, as an amendment to the amendment, moved to strike out the last word, and was proceeding:

What the gentleman from Minnesota said about the character and standing of the St. Louis engineer who wrote the letter about fuel tests is true—

Mr. Oscar W. Underwood, of Alabama, here interposed with the point of order that the gentleman from Missouri was not speaking to his amendment.

The Chairman[4] sustained the point of order.

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[1] Second session Fifty-sixth Congress, Record, p. 1585.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] Second session Fifty-ninth Congress, Record, p. 3806.

[4] James E. Watson, of Indiana, Chairman.

Chapter CXVI.

READING OF PAPERS.

1. **Rule and its history. Section 5257.**
2. **Provisions of Parliamentary law. Sections 5258, 5259.**
3. **General decisions. Sections 5260–5266.**
4. **As to messages of the President. Sections 5267–5272.**
5. **As related to suspension of the rules. Sections 5273–5284.**
6. **Instances of objections to reading. Sections 5285–5291.**
7. **Reading of reports. Sections 5292–5295.**
8. **In relation to the previous question, conference reports, etc. Sections 5296–5299.**

5257. When a Member objects to the reading of a paper other than one on which the House is to give a final vote, the question as to the reading is determined by vote without debate.

The right of a Member to demand the reading of a paper on which he is called to vote is recognized in the rules of the House.

Present form and history of Rule XXXI.

Rule XXXI provides:

> When the reading of a paper other than one upon which the House is called to give a final vote is demanded, and the same is objected to by any Member, it shall be determined without debate by a vote of the House.

The first rule on this subject dates from November 13, 1794,[1] when the House adopted this rule:

> When the reading of a paper is called for which has been before read to the House, and the same is objected to by any Member, it shall be determined by a vote of the House.

As early as 1802 this rule was changed to the following form:

> When the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the House.[2]

In this form the rule continued until the revision of 1880, when the present form was adopted. In their report[3] at that time the Committee on Rules say that they amended the old rule so as to make it applicable only to papers "other than one upon which the House is called to give a final vote," thus reaffirming or recognizing

[1] Third and Fourth Congresses, Journal, p. 228 (Gales and Seaton ed.).

[2] The rule appears first in this form in the draft of the rules printed in the Journal of January 7, 1802. (First session Seventh Congress, Journal, p. 39, Annals; p. 410).

[3] Second session Forty-sixth Congress, Record, p. 202.

the right of a Member to demand the reading of a paper on which he is called to vote. This is the long-established rule and practice of the English Parliament.

5258. Under the parliamentary law every Member has the right to have a paper once read before he is called to vote on it.

The reading of papers other than the one on which the vote is taken is usually permitted under the parliamentary law without question, but if objection is made the Speaker must take the sense of the House.

A Member may not, as a matter of right, require the reading of a book or paper on suggesting that it contains matter infringing on the privileges of the House.

If there is an evident abuse of the patience of the House, and objection is made, the Member must have leave of the House to read a paper in his place, even though it be his own written speech.

Section XXXII of Jefferson's Manual has these provisions in regard to the reading of papers:

Where papers are laid before the House or referred to a committee, every Member has a right to have them once read at the table before he can be compelled to vote on them,[1] but it is a great though common error to suppose that he has a right, toties quoties, to have acts, journals, accounts, or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every Member to have as much information as possible on every question on which he is to vote that, when he desires the reading, if it be seen that it is really for information and not for delay, the Speaker directs it to be read without putting a question, if no one objects; but if objected to, a question must be put. (2 Hats., 117, 118.)

It is equally an error to suppose that any Member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. (Ib.)

For the same reason, a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. (2 Grey, 227.)

5259. Before the adoption of rules, while the House was proceeding under general parliamentary law, the Speaker held that a Member in debate on an election case might not have read, as a matter of right, the record of testimony.—On February 1, 1890,[2] before the adoption of rules, the House proceeding under general parliamentary law, and the contested election case of Smith *v.* Jackson being under debate, Mr. Charles T. O'Ferrall, of Virginia, sent to the Clerk's desk a printed record of the testimony and called for the reading of it.

The Speaker[3] ruled that it could not be read; not even as a part of Mr. O'Ferrall's remarks; neither could the gentleman be allowed to read it himself.

After discussion, the Speaker said:

The rule of parliamentary practice has always been recognized in regard to that, and has been recognized by the rules of this House (and that is only a declaration of the ordinary parliamentary law),

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[1] See an instance in the Senate wherein a Senator was denied the right to have a paper read before voting on a motion to table it, but obtained the reading only by a vote of the Senate. (Second session Fortieth Congress, Globe, p. 3385.)

[2] First session Fifty-first Congress, Record, p. 1019.

[3] Thomas B. Reed of Maine, Speaker.

which is that a printed document, or a document other than one upon which the vote is finally to be taken, meaning a bill, resolution, or something of that nature, can only be read by consent of the House. That is a recognition in the old rules of a simple common parliamentary doctrine.

Of course the Chair has not the power to enforce against the gentleman any rule unless it be by the support of the House itself. It is simply the duty of the Chair to state the rule as he understands it, and the gentleman must not make a confusion, or even the House, between a court of justice and a deliberative body. * * * It is a recognized fact, and the reason why the documents are printed is for the information of Members, to be read by themselves for their own instruction, and the Chair can appeal to the unbroken experience of all gentlemen upon this floor in regard to this matter, both in this and other parliamentary bodies. * * *

As an inquiry, Mr. Charles F. Crisp, of Georgia, said:

Do I understand the Chair to hold that the gentleman from Virginia, in a contested-election case, may not read to the House such portions of the testimony as he thinks should be called to their attention?

The Speaker replied:

By no means. The Chair did not decide anything of the sort. * * * The gentleman had a perfect right to refer to a document and read portions and comment upon it. But the gentleman from Georgia will see the difference between that and reading an entire document, as the gentleman has proposed.

5260. When a paper on which the House is to vote has been read once, the reading may not be required again unless the House shall order it read.

A paper not before the House for action, but related to the pending matter, may be read by order of the House if there is objection to the request of a Member.

On August 28, 1852,[1] while the House was considering Senate amendments to the civil and diplomatic appropriation bill, Mr. Meredith P. Gentry, of Tennessee, raised a question of order concerning the rule:

When the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the House.

The Speaker[2] said:

The Chair holds that a paper in the shape of a bill, for instance, to be voted upon, must be read under the law, and that you can not dispense with the reading unless you dispense with the rules.[3] But if the paper has been read once, it is not within the power of any one Member to demand that it shall be read a second time. The rule provides that if he be sustained by a vote of the House he may have it read. Again, it will embrace another case like this: if a Member asks that a paper not before the House—a letter, for instance—be read, and it is objected to, he may, by a vote of the House, have it read. A bill or amendment to be voted on must be read under the rule—the rule commands it—and it can not be dispensed with except by a vote of two-thirds.[4]

5261. On a motion to refer a report the reading of it may be demanded as a matter of right by a Member; but the latest ruling leaves

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[1] First session Thirty-second Congress, Globe, p. 2416.

[2] Linn Boyd, of Kentucky, Speaker.

[3] The rule at this time was as follows: "When the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the House."

[4] Mr. Speaker Boyd omitted one evident qualification of this principle, viz, that the paper or letter which is not before the House for action should relate to the pending matter of business if the question of reading it is to be forced on the attention of the House. Evidently a Member might not displace the order of business to have read a paper unrelated to the business in order.

to the House to decide whether or not an accompanying record of testimony shall be read.—On July 2, 1856,[1] the Speaker announced as the business first in order the report of the select committee appointed under the resolutions of the House of the 19th of March last to inquire into and collect evidence in regard to the troubles in Kansas, etc., submitted on the previous day, the pending question being on the motion submitted by Mr. Israel Washburn, jr., and upon which the main question was ordered to be put, "that it be referred to the Committee of Elections and printed; and that leave be given to the minority of the said committee to submit a report at any time within ten days, and to take additional testimony, and, when submitted, that the same be referred to the Committee of Elections and printed."

The Clerk resumed and finished the reading of so much of the report as consisted of the statements and deductions of a majority of the committee.

The reading of the balance of the report, consisting of the Journal, testimony, etc., having been called for,

Mr. Thomas L. Clingman, of North Carolina, moved to dispense with the reading of the same.

Mr. Burton Craige, of North Carolina, submitted, as a question of order, that it was not competent for a majority to deprive any Member desiring it of the privilege of having the entire report read.

The Speaker[2] sustained the point of order and decided that the motion to dispense with the reading could not be entertained while any Member objected, on the ground that, under the parliamentary law, on a question of the reference of papers, if a Member insisted they shall be read, nobody could oppose it; he did not think that the fifty-seventh rule of the House related to such papers as were before the House for its action. The Speaker said:

> The gentleman from North Carolina moved that the further reading of the report of the committee be dispensed with. Objection being made, and a question of order being raised, the Chair decides that, as the motion pending is that the report be printed and referred to committees, it is the right of a Member of the House to have the report read. The Chair asks leave simply to make this suggestion, that according to the understanding of the Chair the fifty-seventh rule refers to papers laid before the House on which no action of the House is to be had, as, for example, if the question of admitting the State of Kansas be the pending question, and a Member of the House should ask that the report of the committee of investigation be read, the Chair would decide that it was not the right of a Member to have that report read, because no action of the House was called for on that report; but if the motion were submitted that a report bearing on that question should be read, it would be the duty of the Chair to submit the motion, and the majority would have the power to decide. That is the Chair's understanding of the application of the fifty-seventh rule—that it refers exclusively to papers on which no action of the House is had. The Chair desires to say nothing more on this question than to refer to the paragraph on the ninety-fourth page of the Manual, which is, that where a paper is to be referred to a committee, if a Member insists that it shall be read, no other Member can object.* * * The distinction between the reading of papers upon which action of the House is to be had and of those on which no action is to be taken covers a great principle of right. If the majority of the House may, by a simple vote, dispense with the reading of a paper upon which the House is called to act, great wrong may be done.[3]

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[1] First session Thirty-fourth Congress, Journal, p. 1146; Globe, p. 1535.

[2] Nathaniel P. Banks, of Massachusetts, Speaker.

[3] The rule at this time was somewhat different from the present rule. (See sec. 5257.)

Mr. Clingman having appealed, the decision of the Chair was sustained, 176 yeas to 7 nays.

5262. On February 20, 1889,[1] the question was on a motion to recommit the report of the investigation of school-site purchases in the District of Columbia, when Mr. William. P. Taulbee, of Kentucky, demanded the reading of the evidence accompanying the report.

The Speaker[2] held:

The rule of the House, as it has been laid down, is that the matter which is to be voted upon shall be read if the reading is demanded; but if it is insisted that the proof shall be read, that question will have to be decided by the House. The House does not vote upon the proof. It is simply a question now with the House whether it shall have it read or not. * * * All committees of investigation are required to report back the evidence taken, but it constitutes no part of the matter upon which the House is required to vote. * * * The Chair overrules the point of order, and will, if the gentleman insists upon the reading, let it be decided by the House whether it shall be read or not.

5263. The early practice was not uniform as to the right of a Member to demand the reading of a paper which it was proposed to print.—On March 3, 1827,[3] a motion was before the House to print a report of a select committee on the memorial of the Colonization Society.

Mr. James Hamilton, of South Carolina, demanded the reading of the report.

Objection being made, the Speaker[4] decided that the question on reading must be determined by a vote of the House.

Mr. Hamilton appealed, but after debate withdrew the appeal, and the House acquiesced in the decision of the Chair.

5264. On March 4, 1834,[5] Mr. James K. Polk, of Tennessee, moved that the report of the Committee on Ways and Means on the withdrawal of deposits from the Bank of the United States be printed.[6]

Mr. Clement C. Clay, of Alabama, called for the reading of the report.

A question being raised, and a motion made to dispense with the reading, the Speaker[7] said that the Member from Alabama had a right to have the report read before he could be required to vote, and that it was not in order to move to dispense with the reading nor in the power of the majority of the House so to direct. The rule which declared that, when the reading of a paper is called for, and the same is objected to, that the House shall determine by a vote whether it is to be read or not, did not apply to the case of a paper first presented for the consideration and action of the House. That rule was adopted, no doubt, in consequence of its having been supposed that this right of a Member to have a paper read for information extended to all papers which were on the table, or in the possession of the House, and on which the House might have passed. To guard against the delay and inconvenience which would have arisen from the exercise of such a right the forty-second rule[8] was adopted.

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[1] Second session Fiftieth Congress, Record, p. 2118; Journal, p. 571.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Nineteenth Congress, Journal, p. 494; Debates, p. 1532.

[4] John W. Taylor, of New York, Speaker.

[5] First session Twenty-third Congress, Debates, pp. 2868, 2869.

[6] Reports are now printed under provisions of a rule and law.

[7] Andrew Stevenson, of Virginia, Speaker.

[8] See section 5257 of this volume for the rule then and now.

That rule, however, was only applicable, in the opinion of the Chair, to papers upon the table or in possession of the House, and did not apply to papers first presented to the House and on which action was to be had. When any paper was thus presented for the first time, in the business and proceedings of the House, any Member had a right to have it read through once at the table before he could be compelled to give any opinion or vote in relation to it; but, having been once read it was, like every other paper that belonged to the House, to be moved [1] to be read, if again desired, and if objection be made the sense of the House was to be taken by the Chair. This was an important right to each individual Member, one of the few that could be exercised by him against the opinion of the House, and which no majority could, as the law was, deprive him of. It had been so regarded, and held sacred, by the individual who filled the Chair, and he had been sustained by the practice and decision of the House. In 1802 the question was first raised, in relation to a communication from the then Secretary of War; a motion having been made to dispense with the reading of it, it was decided by Mr. Speaker Macon to be out of order (no doubt for the reasons now stated, though that did not appear), and approved by a vote of more than four to one. A difference of opinion had probably arisen on the subject, the Speaker said, in consequence of the rules as laid down in the Manual. The authority of Hatzel, which Mr. Jefferson referred to as justifying the rule, had been entirely misapprehended. The practice of the House of Commons, certainly since the time of Mr. Onslow, was in accordance with the decision now made, and the right in question he had ever regarded as one highly important to each individual Member of this House.

5265. On February 10, 1859,[2] Mr. James M. Cavanaugh, of Minnesota, presented a memorial relating to navigation in the Red River of the North, and moved that it be referred to the Committee on Commerce and printed.

Pending this motion, Mr. George W. Jones, of Tennessee, called for the reading of the memorial.

The Speaker [3] decided that the question of the reading of the memorial should be submitted to the House, saying:

> Suppose, for instance, the Patent Office report is presented here and, upon the motion to print, a gentleman calls for the reading of the document. It would take two weeks to read the paper, and the Chair is of opinion that the rules of the House can not require that the time of the House shall be taken up for two weeks upon the mere requirement of a Member that the Patent Office report shall be read. The Chair thinks the majority of the House have the right to decide in such a case whether the paper shall be read or not.

Mr. Jones having appealed, the appeal was laid on the table.

5266. Illustration of the difficulty of conceding to a Member the right to have read any paper concerning which he is to vote.—On June 24, 1840,[4] Mr. George W. Crabb, of Alabama, moved to reconsider the vote of the House on the previous day, whereby Raymond's Political Economy had been received and placed in the Library of Congress.

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[1] Such motion has no privilege.

[2] Second session Thirty-fifth Congress, Journal, p. 376; Globe, p. 941.

[3] James L. Orr, of South Carolina, Speaker.

[4] First session Twenty-sixth Congress, Globe, p. 483.

Mr. Levi Lincoln, of Massachusetts, proposed to have the book read.

Mr. Hopkins L. Turney, of Tennessee, rising to a parliamentary inquiry, asked if it was in order to ask the reading of the book on the motion to reconsider.

The Speaker[1] decided that, as the gentleman from Massachusetts was called on to vote respecting this book, he had a right, under the rules of the House, to have it read if he so demanded.

5267. While a message of the President is always read in full and entered on the Journal, the latest rulings have not permitted the reading of the accompanying documents to be demanded as a matter of right.— On January 24, 1877,[2] the Speaker, as the first business in order on the Speaker's table, laid before the House a message from the President of the United States, transmitting certain documents in response to the following resolution of the House of Representatives:

Resolved, That the President be requested, if not incompatible with the public interest, to transmit to this House copies of any and all orders or directions, emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army or any portion thereof in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports by telegraph or otherwise from either or any of said military commanders or civil officers.

The message having been read heretofore, was not read again.

Mr. Stephen A. Hurlbut, of Illinois, demanded the reading of the papers accompanying the message.[3]

Mr. Fernando Wood, of New York, objected to the reading of the accompanying documents.

The Speaker[4] said:

The Chair thinks the demand for the reading of the accompanying documents can not be entertained. The rule provides for reading the message. * * * The Chair will submit the question to the House under Rule CXLI: "When the reading of a paper is called for and the same is objected to by any Member, it shall be determined by a vote of the House."[5]

5268. On December 18, 1893,[6] the Speaker laid before the House two messages from the President, one transmitting documents relating to the relations of the United States and Hawaii.

The messages having been read, were, with the accompanying documents, ordered to be printed and referred to the Committee on Foreign Affairs.

Mr. Charles A. Boutelle, of Maine, demanded the reading of certain telegrams and instructions of the Secretary of State accompanying the message previously read, and which had been referred to the Committee on Foreign Affairs.

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[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] Second session Forty-fourth Congress, Journal, pp. 294–297; Record, p. 925.

[3] The accompanying documents were exceedingly voluminous. A Member said in the debate that the reading would require a week.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] Previously, on December 6, 1876 (second session Forty-fourth Congress, Journal, pp. 41, 42), Mr. Speaker Randall had ruled that on the demand of a Member both the President's message and the accompanying documents should be read, the question being on referring. (See sec. 5271.)

[6] Second session Fifty-third Congress, Journal, pp. 37–41; Record, pp. 374, 375.

The Speaker held that the first message having been with the accompanying documents referred to a committee, it was not now in order to demand the reading of the documents except by the unanimous consent of the House.

The Speaker[1] also held that under the practice of the House the reading of documents accompanying a message from the President could not be demanded as a matter of right, but that the message itself was always read in full and entered in the Journal.

By unanimous consent, the instructions and telegrams accompanying the first message were read by the Clerk.

5269. On May 22, 1838,[2] a message was received from the President of the United States, and, with the accompanying documents, was read. A ruling by the Chair at this time leaves it to be inferred that it was considered at that time a matter of right to have the accompanying documents read when messages were presented to the House.

5270. On May 3, 1858,[3] the Speaker laid before the House the following message from the President of the United States:

To the House of Representatives;

In compliance with the resolutions of the House of Representatives of the 19th January, 1857, and 3d February, 1858, I herewith transmit the report of the Secretary of the Interior, with the accompanying documents.

JAMES BUCHANAN.

WASHINGTON, *May 3, 1858.*

The reading of the accompanying documents having been called for, the question was put, "Shall the same be read?" and it was decided in the negative.

Thereupon Mr. George W. Jones, of Tennessee, demanded as a matter of right, in order that he might vote intelligently, that the papers be read.

The Speaker[4] decided that, after the vote just taken, it was not the right of a Member to have the papers read.

Mr. Jones having appealed, the appeal was laid on the table.

5271. On December 6, 1876,[5] a message was received from the President of the United States, and the same having been laid before the House, Mr. William M. Springer, of Illinois, moved that the message be referred to the select committee appointed to investigate the recent election in the State of Louisiana.

Mr. Omar D. Conger, of Michigan, as a question of order, demanded the reading of the message and accompanying document.

The Speaker[6] decided that, every Member having under the rules a right to demand the reading of a paper before voting on any question connected therewith, that right could only be taken from him by a suspension of the rules, which motion was not now in order, and that therefore the message and accompanying document must be read, as demanded by Mr. Conger.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Twenty-fifth Congress, Journal, p. 943; Globe, p. 400.

[3] First session Thirty-fifth Congress, Journal, p. 730.

[4] James L. Orr, of South Carolina, Speaker.

[5] Second session Forty-fourth Congress, Journal, pp. 40–42; Record, p. 69.

[6] Samuel J. Randall, of Pennsylvania, Speaker.

5272. The documents which are a part of a message of the President are not read before the message is disposed of.—On May 11, 1846,[1] a message relating to the troubles with Mexico was received from the President of the United States. The message having been read, a motion was made by Mr. Hugh A. Haralson, of Georgia, that the message and documents accompanying the same be laid on the table and printed.

Mr. Robert C. Schenck, of Ohio, raised the question of order that a motion to lay the message and documents on the table was not in order until the reading of all the papers was completed.

The Speaker[2] decided that the motion of Mr. Haralson was in order.

Mr. Schenck having appealed, the decision of the Chair was sustained.

5273. It has generally, but not uniformly, been held that the right of the Member to have read the paper on which he is called to vote is not changed by the fact that the procedure is by suspension of the rules.—On February 26, 1859,[3] Mr. John S. Phelps, of Missouri, moved that the rules be suspended so that he might report a bill for the modification of the tariff, and that Mr. Justin S. Morrill, of Vermont, might submit a substitute therefor, and that any other members of the Ways and Means Committee might have the opportunity to offer amendments thereto.

The reading of the proposed amendments having been demanded, and objection being made thereto, the Speaker[4] decided that it was a question for the House to determine as to whether the said papers should be, read.

Mr. Henry C. Burnett, of Kentucky, having appealed, the appeal was laid on the table.

5274. On July 24, 1854,[5] the Speaker announced as the business first in order the motion submitted on a previous day by Mr. Williamson R. W. Cobb, of Alabama, to suspend the rules so as to enable him to move that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the bill of the House (H. R. 34) granting a right of way and a donation of land to the State of Alabama for railroad purposes.

Mr. Samuel A. Bridges, of Pennsylvania, asked that the bill be read for information.

The Speaker having directed the Clerk to read the same, Mr. Thomas L. Clingman, of North Carolina, made the point of order that it was not competent for a Member to cause the bill to be read on a motion such as the pending one.

The Speaker[6] overruled the point of order, saying that gentlemen had a right to know for what purpose they were asked to suspend the rules.

Mr. Clingman having appealed, the appeal was laid on the table.

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[1] First session Twenty-ninth Congress, Journal, p. 789; Globe, p. 791.

[2] John W. Davis, of Indiana, Speaker.

[3] Second session Thirty-fifth Congress, Journal, p. 499; Globe, p. 1411.

[4] James L. Orr, of South Carolina, Speaker.

[5] First session Thirty-third Congress, Journal, pp. 1193, 1194; Globe, p. 1888.

[6] Linn Boyd, of Kentucky, Speaker.

5275. On February 1, 1858,[1] Mr. Marcus J. Parrott, of Kansas, moved that the rules be suspended, so as to enable him to present resolutions of the legislative assembly of Kansas Territory.

The reading of the resolutions being called for, and objection being made thereto, the Speaker[2] decided that it was the right of a Member, before being called upon to vote, to have the papers read.

Mr. Burton Craige, of North Carolina, having appealed, the appeal was laid on the table.

5276. On March 3, 1868,[3] Mr. Speaker Colfax ruled that, on a motion to suspend the rules and have a protest entered on the Journal it was not in order to have the protest read to the House.

5277. On June 19, 1878,[4] Mr. Joseph G. Cannon, of Illinois, moved to suspend the rules and pass a bill relating to post routes, which he sent to the desk. Mr. Cannon then asked that the reading of the bill be waived.

Objection being made, the Speaker[5] held:

> So far as the experience of the Chair extends, and certainly according to his own uniform ruling, the right has always been conceded to a Member to have a proposition read upon which he was called to vote, so that he might know what he was to vote on.

Mr. Benjamin F. Butler, of Massachusetts, asked if the rules might be suspended so as to dispense with the reading.

The Speaker said:

> They can not.

5278. The right of the Member to have read a paper on which the House is to vote may be abrogated by a suspension of the rules.[6]

While one matter is before the House the motion to suspend the rules, if in order on the day, may be applied to the consideration of that matter, but it may not be used to displace it with a new matter.

On February 9, 1857,[7] the House proceeded to the consideration of the bill of the House (H. R. 187) "establishing the collection districts of the United States, and designating the ports of entry and ports of delivery in the same, and for other purposes," which had been previously postponed until this day, the pending question being on its engrossment, upon which the previous question had been moved.

Mr. Thomas J. D. Fuller, of Maine, having withdrawn the demand for the previous question, submitted an amendment in the nature of a substitute for the bill, and, after debate, moved the previous question. It was seconded, and the main question ordered to be put.

The Speaker having stated the question to be on the amendment, in the nature of a substitute, submitted by Mr. Fuller, Mr. Muscoe R. H. Garnett, of Virginia, called for the reading of the same.

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[1] First session Thirty-fifth Congress, Journal, p. 261; Globe, p. 515.

[2] James L. Orr, of South Carolina, Speaker.

[3] Second session Fortieth Congress, Globe, p. 1632.

[4] Second session Forty-fifth Congress, Record, pp. 4884, 4885.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] See, however, section 5277.

[7] Third session Thirty-fourth Congress, Journal, p. 386; Globe, p. 631.

Mr. Fuller moved that the rules be suspended, so as to dispense with the reading.

Mr. George W. Jones, of Tennessee, made the point of order that it was not in order to move to suspend the rules after the previous question had been seconded [1] and the main question ordered to be put.

The Speaker [2] stated that although it would not be in order to move to suspend the rules for the purpose of introducing, or having reference to a different subject, the present motion was clearly in order, and had so been held at former Congresses. He therefore overruled the point of order.

From this decision of the Chair Mr. Jones appealed. The appeal was laid on the table, and the Chair was thereby sustained.

5279. On March 2, 1857,[3] on motion of Mr. Lewis D. Campbell, of Ohio, by unanimous consent, the bill of the House (H. R. 616) entitled "An act making appropriations for the support of the Army for the year ending June 30, 1857," with the amendments of the Senate thereto, was taken up, and the House proceeded to its consideration. The reading of the amendments having been called for, Mr. Campbell moved that the rules be suspended. so as to dispense with the same.

Mr. William Smith, of Virginia, made the point of order that it was not competent for the House to deprive a Member of the privilege of having a proposition read before voting upon it.

The Speaker [2] stated that the right to have a proposition read was derived from the rules, but that it was competent for the House to suspend the rules, and thereby deprive him of the privilege. He therefore overruled the point of order.

From this decision of the Chair Mr. Smith appealed. And the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

5280. On March 3, 1859,[4] Mr. William H. English, of Indiana, the rules having been suspended for that purpose, introduced a bill (H. R. 892) establishing certain post routes; which was read a first and second time.

The reading of the bill in extenso having been called for, Mr. English moved a suspension of all rules requiring the same; which motion was agreed to, two-thirds voting in favor thereof.

Mr. John S. Millson, of Virginia, made the point of order that the House having suspended its rules, and thereby placed itself under the parliamentary law, each Member had the right to insist upon the reading of the bill before he could be called upon to vote thereon.

The Speaker [5] overruled the point of order, saying:

> The practice is one of every-day occurrence. The Chair does not understand that when the rules are suspended to allow a particular thing to be done which could not be done under the rules it is a suspension of all the rules. The Chair understands it to be simply a suspension of such rules as prevent the Member from accomplishing what he desires to accomplish. * * * The Constitution declares that each House may determine the rules of its proceedings. For the purpose of this bill, the House

[1] The second for the previous question is no longer required. (See sec. 5443 of this volume.)

[2] Nathaniel P. Banks, of Massachusetts, Speaker.

[3] Third session Thirty-fourth Congress, Journal, p. 618; Globe, p. 972.

[4] Second session Thirty-fifth Congress, Journal, p. 572; Globe, p. 1668.

[5] James L. Orr, of South Carolina, Speaker.

has declared that the bill shall be considered without being read in extenso. In making this decision the Chair follows the precedents which have existed for years, and which have been sustained by every House upon appeal, according to the recollection of the Chair.[1]

Mr. Millson having appealed, the appeal was laid on the table and the decision of the Chair was thereby sustained.

5281. On March 2, 1865,[2] on motion of Mr. Justin S. Morrill, of Vermont, the rules having been suspended for that purpose, the bill of the House (H. R. 744) entitled "An act to amend an act entitled 'An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes,' approved June 30, 1864," with the amendments of the Senate thereto, was taken up.

The reading of the amendments having been called for, on motion of Mr. Morrill, the rules were suspended so as to dispense with the same.

Mr. William S. Holman, of Indiana, insisted upon the reading of the amendments.

The Speaker[3] decided that inasmuch as the rules were suspended so as to dispense with their reading, he was not entitled to have them read.

From this decision of the Chair Mr. Holman appealed; and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

5282. On July 24, 1876,[4] Mr. Washington C. Whitthorne, of Tennessee, moved that the rules be suspended, so as to enable him to submit, and the House to consider and agree to, the following resolution:

Resolved, That the report of the Committee on Naval Affairs, together with that of the minority, made upon alleged abuses, errors, and frauds in the naval service, be printed, and that the consideration of said reports be made the special order for Friday next after the morning hour.

Mr. John H. Baker, of Indiana, demanded the reading of the report, and made the point of order that he had the right to have the report read before voting upon any proposition connected therewith.

The Speaker pro tempore[5] overruled the point of order, on the ground that the right being derived from the rules a Member could be deprived of that right by a suspension of the rules.

5283. On August 28, 1852,[6] the House having under consideration the civil and diplomatic appropriation bill with Senate amendments thereto,

Mr. Edward C. Cabell, of Florida, called for the reading of the Senate amendments.

Mr. Thomas L. Clingman, of North Carolina, moved that the rules be suspended, so as to enable him to move that the reading of the amendments be dispensed with.

Mr. Presley Ewing, of Kentucky, made the point of order that the motion was not in order, on the ground that each Member had a right to have every proposition

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[1] The Speaker thereupon cited the decision of the Speaker in the preceding Congress on the point of order made by Mr. William Smith.

[2] Second session Thirty-eighth Congress, Journal, pp. 397, 398; Globe, p. 1334.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] First session Forty-fourth Congress, Journal, p. 1331; Record, p. 4861.

[5] Milton Sayler, of Ohio, Speaker pro tempore.

[6] First session Thirty-second Congress, Journal, p 1116; Globe, p. 2416.

read upon which he might be called to vote, and that it was not in the power of the House to deprive him of that right.

The Speaker[1] decided that the motion was in order. He admitted that a Member had the right to have a proposition read before he could be called to vote upon it. This right, however, was derived from the rules,[2] and, by a suspension of those rules, he was clearly of the opinion that he might be deprived of it. The propriety of suspending the rules for that purpose was a matter to be judged of by Members in giving their votes.

On an appeal the decision of the Chair was sustained.[3]

5284. On March 12, 1860,[4] Mr. Luther C. Carter, of New York, moved to suspend the rules so as to enable him to submit a preamble and resolution which he presented. During the reading of the said preamble and resolution, Mr. Daniel E. Sickles, of New York, moved that the rules be suspended to enable him to move that the reading of the preamble and resolution be suspended.

Mr. John S. Millson, of Virginia, made the point of order that the reading of the paper having been objected to, it was competent for the House, by a majority vote, to determine whether or not it should be read.

The Speaker[5] overruled the point of order.

Mr. Sickles's motion was then agreed to.

The question being put on the motion to suspend the rules, the motion was disagreed to.

The resolution and preamble do not appear on the journal.

5285. A Member in debate usually reads or has read by the Clerk such papers as he pleases, but this privilege is subject to the authority of the House if another Member objects.—On January 30, 1833,[6] Mr. Dutee J. Pearce, of Rhode Island, in the course of a tariff speech, sent to the Clerk's desk to be read in his time, a long document relating to the subject under consideration.

During the reading Mr. Erastus Root, of New York, rising to a question of order, asked whether it was competent for the Member to read or cause to be read a printed speech.

The Chair[7] decided that it was the undoubted right of the gentleman from Rhode Island to send to the Clerk any statement or testimony which he might be anxious to have read.

5286. On January 10, 1840,[8] Mr. Nathan Clifford, of Maine, in the course of a speech on the New Jersey contested election cases, proposed to have read at the

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[1] Linn Boyd, of Kentucky, Speaker.

[2] The Globe (p. 2416) shows that the rule giving the Member the right to have a paper on which he must vote read was cited from Jefferson's Manual, and the suspension of the rules suspended this rule as well as all others.

[3] On March 3, 1853 (second session Thirty-second Congress, Journal, p. 401), the rules were suspended and a motion was agreed to for dispensing with the reading of the Senate amendments to the naval appropriation bill.

[4] First session Thirty-sixth Congress, Journal, p. 500; Globe, pp. 1113, 1114.

[5] William Pennington, of New Jersey, Speaker.

[6] Second session Twenty-second Congress, Debates, p. 1515.

[7] James M. Wayne, of Georgia, Chairman.

[8] First session Twenty-sixth Congress, Journal, p. 193; Globe, p. 115.

Clerk's table, as a part of his speech, a paper relating to the subject before the House.

Mr. Luther C. Peck, of New York, objecting, Mr. Clifford asked leave of the House, and on the question, "Shall the statement be read?" there appeared, yeas 110, nays 68.

5287. On February 9, 1837,[1] during the discussion of a resolution to censure Mr. John Quincy Adams, of Massachusetts, for having proposed to present to the House a petition signed by certain slaves, Mr. George Evans, of Maine, in discussing the subject of slavery, was proceeding to read from the debates on that subject in the Virginia convention.

Mr. Albert G. Harrison, of Missouri, objected.

The Speaker[2] sustained the objection, on the ground that no gentleman could, under the rule, read any paper to the House without its leave.

5288. On March 26, 1836,[3] during the consideration of a contested election case from North Carolina, Mr. William J. Graves, of Kentucky, having the floor in debate, sent a document to the Clerk's desk to be read.

Mr. Churchill C. Cambreleng, of New York, objected to the reading.

Mr. Graves moved that the document be read, and the question being taken by yeas and nays, the House decided, yeas 106, nays 76, that the document should be read.

5289. Instances wherein the request of a Member to have read a paper not before the House for action has encountered objection and been referred to the House.—On April 3, 1896,[4] in Committee of the Whole House, Mr. C. J. Erdman, of Pennsylvania, having the floor for debate, proposed to have read as part of his remarks a certain paper, which he sent to the Clerk's desk.

Mr. Theodore L. Poole, of New York, objected.

The Chairman[5] then put the question: "Shall the paper be read?" And the committee decided it in the negative.

5290. On March 30, 1897,[6] the House was in Committee of the Whole House on the state of the Union considering the tariff bill.

Mr. Jacob H. Bromwell, of Ohio, having the floor for debate, proposed to have read as part of his remarks a communication which he sent to the Clerk's desk.

Mr. William H. Fleming, of Georgia, objected to the reading of the letter.

The Chairman[7] said:

Rule XXXI of the House provides that when the reading of a paper, other than one upon which the House is called to give a final vote, is demanded, and the same is objected to by any Member, it shall be determined without debate by a vote of the House.

Following that rule, the Chair will put the question whether or not this paper shall be read.

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[1] Second session Twenty-fourth Congress, Debates, p. 1668.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Twenty-fourth Congress, Journal, p. 574; Debates, p. 2986.

[4] First session Fifty-fourth Congress, Record, p. 3557.

[5] William P. Hepburn, of Iowa, Chairman.

[6] First session Fifty-fifth Congress, Record, pp. 507, 513, 514.

[7] James S. Sherman, of New York, Chairman.

5291. On January 21,1898,[1] the House was in Committee of the Whole House considering the bill (H. R. 4829) relating to the claim of the Book Agents of the Methodist Episcopal Church South against the United States.

During the debate Mr. John Dalzell, of Pennsylvania, sent up to the Clerk's desk and asked to have read in his time a report made on this claim in a preceding Congress.

Mr. William H. Fleming, of Georgia, objected to the reading of the report from the Clerk's desk, citing Rule XXXI in support of the point.

The Chairman[2] ruled:

The Chair understands that several rulings have been made in the direction stated by the gentleman from Georgia, generally at Friday night sessions. Rule XXXI reads as follows:

"When the reading of a paper other than one upon which the House is called to give a final vote is demanded, and the same is objected to by any Member, it shall be determined without debate by a vote of the House."

Now, when these rules were revised in the Forty-sixth Congress, the report states as follows:

"Rule CXLI"—now Rule XXXI—"has been retained, with an amendment making it applicable only to papers 'other than one upon which the House is called to give a final vote,' thus reaffirming or recognizing the right of a Member to demand the reading of a paper on which he is called to vote. This is the long-established rule and practice of the English Parliament, and the committee quote as pertinent what is said on the subject by one of the most distinguished English writers on parliamentary law, Mr. Hatsell. He says:

"'Where papers are laid before the House or referred to a committee, every Member has a right to have them once read at the table before he can be compelled to vote on them, but it is a great though common error to suppose that he has a right, toties quoties, to have acts, journals, accounts, or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every Member to have as much information as possible on every question on which he is to vote that when he desires the reading, if it be seen that it is really for information and not for delay, the Speaker directs it to be read without putting a question, if no one objects; but if objected to, a question must be put.'

"It appears in the revision as Rule XXXI."

That was the report of the committee revising the rules. * * * Of course, the gentleman can read the report himself. It has been the practice of the House to allow the Clerk to read it; but under the strict construction of the rule and the interpretation given it by the Committee on Rules the Chair feels constrained to follow this precedent, although he is very much in doubt whether Rule XXXI ever contemplated any such proceeding.

5292. The reading of a report is in the nature of debate.—On January 22, 1847.[3] the House proceeded to the consideration of the bill (H. R. 494) for the relief of John C. Stewart and others, reported from the Committee of the Whole House, the question being on ordering the bill to be engrossed.

Mr. John R. J. Daniel, of North Carolina, demanded the reading of the report accompanying the bill.

The Speaker[4] decided that it was not in order to read reports accompanying

[1] Second session Fifty-fifth Congress, Record, p. 846.

[2] Sereno E. Payne, of New York, Chairman.

[3] Second session Twenty-ninth Congress, Journal, p. 212.

[4] John W. Davis, of Indiana, Speaker.

bills on the first and fourth Fridays of each month, the reports being arguments, and therefore in the nature of debate.[1]

Mr. Daniel appealed, but subsequently withdrew the appeal.

5293. A Member may not have a report read at the Clerk's desk in his own time, if objection be made, without leave of the House; and even has been debarred from reading it himself in his place.—On April 13,1900,[2] the Committee of the Whole House was considering the bill (S. 1194) granting an increase of pension to John B. Ritzman, and Mr. W. Jasper Talbert, of South Carolina, asked to have read in his time a paper relating, not to the bill under consideration, but to the general subject of pensions.

The Chairman[2] held that this would be in order only by unanimous consent.

Mr. Talbert then proposed to read the paper himself.

The Chair[3] held that this would not be in order.

Mr. Talbert having appealed, the decision of the Chair was sustained, ayes 52, noes 8.

Later, the bill (H. R. 1419) relating to the pension of Annie B. Goodrich, being under consideration, Mr. Talbert asked for the reading of the report.

The Chairman[3] said:

> The gentleman from South Carolina, as the Chair understands it, can ask that this report be read in his time, he having now taken the floor upon this bill; but if objection is made to the reading of the report, it is a question for the House to say whether it shall be read or not.

The committee then decided, ayes 1, nays 55, that the report should not be read.

Mr. Talbert then proposed to read the report in his own time.

The Chairman[3] ruled that this was not in order, reading the rule.[4]

5294. The reading of a report, being in the nature of debate, is not in order after the previous question is ordered.—On June 10, 1834,[5] during consideration of the contested election case of Moore and Letcher, the previous question again recurring, Mr. Thomas A. Marshall, of Kentucky, called for the reading of that portion of the report of the Committee on Elections which contained a statement of the votes.

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[1] Rule 30 at that time provided: "On the fast and fourth Friday of each month, the Calendar of Private Bills shall be called over, and the bills to the passage of which no objection shall then be made shall be first considered and disposed of." (Journal, p. 537.)

[2] First session Fifty-sixth Congress, Record, pp. 4136, 4137.

[3] Charles H. Grosvenor, of Ohio, Chairman.

[4] Jefferson's Manual, p. 147, provides: "It is equally an error to suppose that any member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House.

"For the same reason, a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

"A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. (2 Grey, 227.)"

[5] First session Twenty-third Congress, Journal, p. 726.

The Speaker[1] decided that under the 36th rule,[2] which declared that on a previous question there should be no debate, the reading of the portion of the report called for would not be in order, as it was in the nature of an argument, which, at this stage of the proceedings, was forbidden.

5295. On July 19, 1886,[3] the House was about to vote upon a concurrent resolution relating to the printing of the Civil Service Commissioners' Report, the previous question having been ordered, when Mr. James Reid, of North Carolina, called for the reading of the report.

The Speaker[4] held:

Debate is not in order, and the reading of the report is in the nature of debate. The House does not vote on the report, but simply on the resolution.

5296. The previous question being ordered, a Member may not ask a decision of the House on his request for the reading of a paper not before the House.—On July 19, 1850,[5] the previous question had been demanded on a resolution relating to the election of the Delegate from New Mexico, and this demand had been seconded.[6]

Mr. Willis A. Gorman, of Indiana, moved that the whole question be laid on the table.

Mr. William Duer, of New York, rose and submitted an amendment which he gave notice of his intention to offer at the proper time, to the resolution under consideration, and which he asked might be read at the Clerk's desk for the information of the House.

Objection being made, the Speaker was about to submit the question to the House to determine whether or not the said paper should be read, when Mr. Thomas L. Clingman, of North Carolina, raised the question of order that it was not in order to submit the said question to the House, the paper proposed to be read not being regularly before the House.

The Speaker[7] decided that under the rule, and in pursuance of the decision of the 9th instant,[8] when the same question was raised, the question must be submitted to a vote of the House to determine as to the reading of the paper.

Mr. Clingman having appealed, the decision of the Chair was overruled, yeas 84, nays 103. So it was decided that it was not in order to submit the question to the House.

5297. The previous question having been demanded on a resolution adopting rules for the House, a demand for the reading of the rules, which were not a part of the resolution, was overruled.—On December 2,

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[1] John Bell, of Tennessee, Speaker.

[2] Now section I of Rule XVIL See section 5443 of this work.

[3] First session Forty-ninth Congress, Record, pp. 7154, 7155.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Thirty-first Congress, Journal, p. 1149; Globe, pp. 1411, 1412.

[6] The second of the previous question was by a majority vote. It is no longer required.

[7] Howell Cobb, of Georgia, Speaker.

[8] On that date the Speaker ruled as on this occasion, and was sustained. (Journal, p. 1112.)

1901,[1] at the time of the organization of the House, Mr. John Dalzell, of Pennsylvania, offered the following resolution:

Resolved, That the rules of the House of Representatives of the Fifty-sixth Congress be adopted as the rules of the House of Representatives of the Fifty-seventh Congress, etc.

Before the vote was taken on agreeing to this resolution, and pending a demand for the previous question, Mr. Claude A. Swanson, of Virginia, called for the reading of the rules of the Fifty-sixth Congress.

The Speaker[2] held that the demand was not in order.

5298. Pending consideration of a conference report it is not in order to demand the reading of the amendments to which it relates.—On March 3, 1857,[3] pending the question on agreeing to the report of the committee of conference on the tariff bill, the main question having been ordered, Mr. Ebenezer Knowlton, of Maine, called for the reading of the Senate amendments referred to in the report.

The Speaker[4] decided that the report was the only paper the reading of which could be insisted upon at this time.

Mr. George W. Jones, of Tennessee, having appealed, the appeal was laid on the table.

5299. It has been held in the Senate that when the reading of a paper is objected to it must be determined by vote of the Senate.—On June 30, 1868,[5] in the Senate, the credentials of Thomas W. Osborn, as Senator-elect from Florida, were before the Senate, when Mr. Jonathan Doolittle, of Wisconsin, presented and asked to have read the credentials of William Marvin, a contesting claimant for the same seat.

Mr. Timothy 0. Howe, of Wisconsin, objected to the reading of the paper.

The President pro tempore[6] said:

The reading being objected to, it can only be ordered by a vote of the Senate.

The question being taken, the paper was ordered to be read, ayes 21, noes 8.

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[1] First session Fifty-seventh Congress, Record, p. 47.

[2] David B. Henderson, of Iowa, Speaker.

[3] Third session Thirty-fourth Congress, Journal, p. 677.

[4] Nathaniel P. Banks, Jr., of Massachusetts, Speaker.

[5] Second session Fortieth Congress, Globe, pp. 3600–3602.

[6] Benj. F. Wade, of Ohio, President pro tempore.

Chapter CXVII.

MOTIONS IN GENERAL.[1]

1. **Rule for offering motions. Section 5300.[2]**
2. **Rule of precedence of motions. Sections 5301–5303.[3]**
3. **Rule for stating a motion. Section 5304.**
4. **Matter not privileged not in order with a privileged motion. Section 5305.**
5. **Notion to postpone to a day certain. Sections 5306–5315.[4]**
6. **Motion to postpone indefinitely. Sections 5316–5318.**
7. **In relation to the previous question. Sections 5319–5321.**
8. **In relation to motion to suspend the rules. Section 5322.**
9. **The motion to rescind. Sections 5323–5325.[5]**
10. **Motion to strike out the enacting words. Sections 5326–5346.**
11. **Withdrawal of motions. Sections 5347–5358.**

5300. Every motion made to the House and entertained by the Speaker shall be reduced to writing on the demand of any Member.

Every motion entertained by the Speaker shall be entered on the Journal with the name of the Member making it unless it be withdrawn the same day.

Present form and history of section 1 of Rule XVI.

Section 1 of Rule XVI provides:

Every motion made to the House and entertained by the Speaker shall be reduced to writing on the demand of any Member, and shall be entered on the Journal with the name of the Member making it, unless it is withdrawn the same day.

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[1] For precedents relating to the following motions:

To adjourn. (Secs. 5359–5388 of this volume.)

To lay on the table. (Secs. 5389–5442 of this volume.)

The previous question. (Secs. 5443–5520 of this volume.)

To refer. (Secs. 5521–5568 of this volume.)

To refer after previous question is ordered. (Secs. 5569–5604 of this volume.)

To reconsider. (Secs. 5605–5705 of this volume.)

To suspend the rules. (Secs. 6790–6862 of this volume.)

Dilatory motions. (Secs. 5706–752 of this volume.)

[2] The usage governing recognition by the Speaker. (Secs. 1419–1479 of Vol. II.) In an impeachment trial. (Sec. 2131 of Vol. III.)

[3] Relation of question of consideration to motions. (Secs. 4943, 4971–4977 of this volume.)

[4] Effect of motion to postpone to a day certain. (Sec. 263 of Vol. I.)

Relation of motion to postpone to special orders. (Secs. 3177–3182 of Vol. IV and 4958 of this volume.

[5] Use of, in proceedings at organization. (See. 222 of Vol. I.) See also section 2442 of Volume III.

This is the form agreed to in the revision of 1880. As reported originally it did not contain the words "and entertained by the Speaker," which were added on February 11, 1880,[1] on motion of Mr. J. S. C. Blackburn, of Kentucky. The rule was taken from the old rule, No. 39, of which the portion providing that "every motion shall be reduced to writing if the Speaker or any Member desire it," dated from April 7, 1789.[2] On March 22, 1806, a committee, which had been appointed to amend the rules in regard to the Journal, reported and the House adopted a rule that "every written motion made to the House shall be inserted in the Journal, with the name of the Member making it, unless it be withdrawn on the same day on which it was submitted."[3]

Mr. Michael Leib, of Pennsylvania, who proposed the rule, declared that the Journal generally should be kept so that the people might know what was being done.

5301. When a question is under debate, certain motions only are received and their precedence is governed by rule.

The motions to adjourn, lay on the table, and for the previous question are not debatable and have precedence in the order named.

A motion to postpone to a day certain, refer or postpone indefinitely, being decided, is not again in order on the same day at the same stage of the question.

The House has long since discarded the use of the parliamentary motion to proceed to the orders of the day.

The motions to fix the day to which the House shall adjourn and for a recess are no longer in the list of privileged motions.

Present form and history of section 4 of Rule XVI.

Section 4 of Rule XVI provides:

> When a question is under debate, no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend, or postpone indefinitely, which several motions shall have precedence in the foregoing order; and no motion to postpone to a day certain, to refer, or to postpone indefinitely being decided, shall be again allowed on the same day at the same stage of the question.

The first rule on this subject, adopted April 7, 1789,[4] was:

> When a question is under debate, no motion shall be received, unless to amend it, to commit it, for the previous question, or to adjourn.[5]

On December 23, 1811,[6] the rule adopted arranged the motions in this order: Adjourn, lie on the table, previous question, postpone indefinitely, postpone to a day certain, commit, or amend. The rule also provided that "these several motions shall have precedence of the other in the order they stand arranged."

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[1] Second session Forty-sixth Congress, Record, pp. 206 and 830.

[2] First session First Congress, Journal, p. 9.

[3] First session Ninth Congress, Journal, p. 264; Annals, p. 446.

[4] First session First Congress, Journal, p. 9.

[5] The rule of the Continental Congress (Journal, May 26, 1778) had been similar: "While a question is before the House, no motion shall be received, unless for an amendment, for the previous question, to postpone the consideration of the main question, or to commit it."

[6] First session Twelfth Congress, Journal, p. 187; Reports of the House No. 38.

In the early days of the House the motion to proceed to the orders of the day was used to set aside a pending proposition; but on March 9, 1822,[1] Mr. Speaker Barbour held that it could not be admitted conformably with this rule, although he admitted that he had entertained it more than once in the past, relying for authority on the usage of the English Parliament. As late as May 26, 1836,[2] however, the motion to proceed to the orders of the day was in use as a means of setting aside a bill up for consideration in the morning hour, although the rule for the order of business might not justify such a motion at that particular time.[3]

On March 13, 1822,[4] the order of motions mentioned in the rule of 1811 appears changed in one respect only. The motion to postpone indefinitely has been taken from its place after the previous question and placed at the end of the list. There is also added the clause:

> And no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall be again allowed on the same day, and at the same stage of the bill or proposition.

On January 14, 1840,[5] the motion to fix the day to which the House shall adjourn was given privilege by inserting it in the rule of 1822 after the motion to adjourn.

In the revision of 1880[6] the motion to fix the day to which the House shall adjourn was given the first place, before the motion to adjourn, thereby conforming to a practice which had grown up; and the motion for a recess was inserted after the motion to adjourn.[7] The clause providing that there should be no debate on the previous question was a transfer of an old rule of December 17, 1805.[8]

In the revision of 1890 the motions to fix the day to which the House shall adjourn and for a recess were dropped from the list of privileged motions,[9] as they had been much used for obstructive purposes. They were restored in the Fifty-second and Fifty-third Congresses and dropped again in the Fifty-fourth.

The motion to rescind, it will be noted, is not in the list of privileged motions enumerated in this rule.

5302. No question being under debate, and a motion to adjourn having been made, motions for a recess and to fix the day to which the House should adjourn were not entertained.—On February 20, 1904,[10] Mr. Sereno E.

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[1] First session Seventeenth Congress, Annals, p. 1250.

[2] First session Twenty-fourth Congress, Journal, p. 885.

[3] The rule for the order of business (see sec. 3056 of Vol. IV) still retains "orders of the day" as the last stage in the daily order; but for many years no business has ever come up as an order of the day. The House makes special orders which set aside the entire order of business and come up as highly privileged, and has entirely abandoned the old method of directing a bill to be made the order for a certain day, then to come up at a period set apart for such orders.

[4] First session Seventeenth Congress, Journal, p. 350.

[5] First session Twenty-sixth Congress, Journal, p. 207; Globe, p. 121.

[6] Second session Forty-sixth Congress, Record, pp. 202–206.

[7] The motion for a recess was at times given a very high privilege, as in a ruling by Speaker pro tempore McCreary, which admitted it even during the reading of a bill. (First session Fiftieth Congress, Journal, p. 2255; Record, p. 5854.)

[8] First session Ninth Congress, Annals, pp. 284, 286.

[9] First session Fifty-first Congress, Report No. 23.

[10] Second session Fifty-eighth Congress, Record, p. 2178.

Payne, of New York, moved that the House do adjourn, there being no business before the House at the time.

Mr. John S. Williams, of Mississippi, moved that when the House adjourn it be to meet on Monday next.

Mr. Payne having objected that the motion was not in order, Mr. Williams moved that the House take a recess.

Mr. Payne objected that the motion was not in order.

The Speaker [1] said:

The Chair is informed that since the adoption of the rules of the Fifty-first Congress the motion to fix a day to which the House shall adjourn and the motion to take a recess lost their high privileges as against the motion to adjourn.

Before the adoption of the rules of the Fifty-first Congress and the rules of the present Congress, which are substantially the same, the motion which the gentleman refers to had precedence, as the Chair is informed, over the motion to adjourn; but under the rules of the House from the Fifty-first Congress to this time the motion to adjourn has had precedence.

5303. Whether "a question is under debate" or not, a motion to lay on the table has precedence of a motion to refer.—On January 3, 1854,[2] the Speaker announced as the business next in order the bill (H. R. 102) "granting lands equally to the several States to aid in the construction of railroads and for the support of schools," introduced on leave when the States were last called for resolutions; and that the pending question was on the motion of Mr. George W. Jones, of Tennessee, to lay the bill on the table.

Mr. Henry Bennett, of New York, made the point of order that the motion to lay on the table did not take precedence of the motion to refer to the Committee on Public Lands, which was made prior to the motion to lay on the table. Mr. Bennett held that the latter motion derived its precedence over the former from the forty-ninth rule only, and that rule applied only to "questions under debate," which was not the case in the present instance.[3]

The Speaker [4] decided that in this, as in all other cases, the motion to lay on the table took precedence of the motion to refer, and that the question must be first put on the former motion.

The House acquiesced in this decision.

5304. When a motion is made, the Speaker shall state it or cause it to be read by the Clerk before being debated.

A motion which has been stated by the Speaker or read by the Clerk is in possession of the House, but may be withdrawn before a decision or amendment.

The rules of the House do not require that an ordinary motion be seconded.

Present form and history of section 2 of Rule XVI.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Thirty-third Congress, Journal, pp. 152, 153 Globe, pp. 111, 112.

[3] This bill had been introduced after leave had been given under the call for resolutions. Under that procedure, which no longer exists, debate was not in order on the date of introduction.

[4] Linn Boyd, of Kentucky, Speaker.

Section 2 of Rule XVI provides:

When a motion has been made, the Speaker shall state it[1] or (if it be in writing) cause it to be read aloud by the Clerk before being debated, and it shall then be in possession of the House, but may be withdrawn at any time before a decision or amendment.

This is the form adopted in the revision of 1880.[2] The rule at that time was made up from two old rules, each of which dated from April 7, 1789:[3]

38. When a motion is made and seconded, it shall be stated by the Speaker, or, being in writing, shall be handed to the Chair and read aloud by the Clerk before debated.[4]

40. After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed to be in possession of the House, but may be withdrawn at any time before a decision or amendment.

The Journals of the earlier Congresses show that motions were seconded, but many years before the requirement of a second was dropped from the rule it seems to have been dropped in practice.

5305. A privileged motion loses its precedence if other matter be connected therewith.—On November 1, 1877,[5] Mr. Clarkson N. Potter, of New York, presented the following:

Resolved, That when the House adjourn to-morrow it adjourn to meet upon Tuesday next, and that when it then meets no business shall be in order but a motion to then adjourn to the following Thursday.

Mr. Horatio C. Burchard, of Illinois, made the point of order that the latter portion of the resolution required unanimous consent for its present consideration.[6]

The Speaker[7] sustained the point of order, whereupon Mr. Potter modified the motion by striking out all after the words "Tuesday next."

Debate arising over the motion as modified, Mr. Auburn L. Pridemore, of Virginia, made the point of order that the question was not debatable.

The Speaker[7] sustained the point of order.

5306. A motion to postpone must include the whole of a pending resolution, and may not apply to a portion only.—On January 8, 1850,[8] the House was proceeding under the following order, adopted on December 31, 1849:

Resolved, That the House will proceed to the election of Clerk and other officers on Thursday, the 3d day of January, 1850.

On the tenth vote for Clerk, no person having received a majority of the whole number of votes given in, Mr. James Brooks, of New York, moved that the further

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[1] If a motion shall appear to the Speaker as incorrect in point of form, or contrary to some standing order, he will state his reason to the House for not putting it in the words given, and suggest an alteration, which the House may adopt without going through the form of taking a question upon the alteration by motion of amendment. (Cobbett's Parliamentary History of England, vol. 31, p. 202.)

[2] Second session Forty-sixth Congress, Record, p. 206.

[3] First session First Congress, Journal, p. 9.

[4] The rule of the Continental Congress (Journal, May 26, 1778) was: "When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President or any Member, delivered in at the table, and read by the President, before the same shall be allowed to be debated."

[5] First session Forty-fifth Congress, Journal, pp. 115, 116; Record, pp. 214, 215.

[6] The motion to adjourn over had a privilege under the rules then.

[7] Samuel J. Randall, of Pennsylvania, Speaker.

[8] First session Thirty-first Congress, Journal, pp. 190, 251; Globe, p. 117.

execution of the resolution be postponed, so far as the same related to the election of officers other than the Sergeant-at-Arms, until the 1st of September next.

The Speaker[1] stated that, as the resolution provided for the election of Clerk and other officers, it was not in order to move to postpone a part thereof, but that the motion must include the whole resolution.

5307. The motion to postpone may specify the day but not the hour of that day.—On February 17, 1855,[2] the House was considering the message of the President transmitting his reasons for not approving the bill for the payment of French spoliation claims, when Mr. John Letcher, of Virginia, moved that the consideration of the message be postponed until Wednesday next, at 7.30 o'clock in the evening.

Mr. Rufus W. Peckham, of New York, raised a question of order.

The Speaker[3] said:

The motion is not in order in the opinion of the Chair. A question of order being raised upon the Chair, the Chair asks the attention of gentlemen to his decision, which is, that it is not in order to fix the hour at all. There is but a single proposition pending, which is to postpone this subject until Wednesday next.

5308. The election of certain officers of the House having been postponed to a day certain, the Speaker ruled out a motion providing for their earlier election.—On January 24, 1850,[4] the House agreed to the concurrent resolution of the Senate providing for the election of two chaplains of different denominations, one by the Senate and the other by the House.[5]

Mr. John Van Dyke, of New Jersey, then moved that the House proceed to the election of chaplain.

Mr. David K. Cartter, of Ohio, moved to amend by adding after the word "chaplain" the words "a doorkeeper and a postmaster."

The Speaker[1] decided the amendment out of order, on the ground that the House had postponed the election of a doorkeeper and a postmaster until the 1st of March, 1851.

Mr. Cartter having appealed, the decision of the Chair was sustained.

5309. The motion to postpone to a day certain is debatable within very narrow limits only.—On April 9, 1869,[6] while the House was considering the election case of Myers *v.* Moffit, Mr. George W. Woodward, of Pennsylvania, moved to postpone the further consideration of the resolution until the first Monday in December next.

Mr Woodward having proposed to debate, the Speaker[7] said in relation to the motion:

Under the rules it is debatable within very narrow limits.

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[1] Howell Cobb, of Georgia, Speaker.

[2] Second session Thirty-third Congress, Globe, p. 802.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Thirty-first Congress, Journal, pp. 404, 405; Globe, p. 223.

[5] At this time the chaplain was not an officer of the House in the sense that he is at present, being elected in accordance with a joint arrangement of the two Houses.

[6] First session Forty-first Congress, Globe, p. 683.

[7] James G. Blaine, of Maine, Speaker.

Also on February 21, 1857,[1] on a motion to postpone to a day certain a resolution for the impeachment of John C. Watrous, district judge of the United States for the district of Texas, the Speaker[2] said:

The Chair must remind the gentleman that the question of postponement does not open the general question of impeachment.

5310. On March 9, 1904,[3] the House was considering a resolution relating to the conduct of Members in relation to transactions in the Post-Office Department.

Mr. Jesse Overstreet, of Indiana, moved to postpone the resolution to a day certain, viz, Monday next.

Mr. Henry A. Cooper, of Wisconsin, rising to a parliamentary inquiry, asked if that motion was debatable.

The Speaker[4] said:

The motion is debatable only as to the desirability of postponing the consideration of the resolution until Monday next.

5311. On motion to postpone to a day certain, the merits of the bill may not be debated.—On April 22, 1826,[5] Mr. George W. Owen, of Alabama, offered a resolution relating to the claim of Francis Larche.

After debate Mr. Owen moved that the consideration of the subject be postponed until Tuesday next.

Mr. Lewis Williams, of North Carolina, and Mr. John Forsyth, of Georgia, in the course of the debate, were severally called to order, the Speaker[6] holding that they were discussing the merits of the case, whereas their remarks should be confined to the question of postponement alone.

5312. On February 27, 1833,[7] the House was considering the bill further to provide for the collection of the revenue.

Mr. Gulian C. Verplanck, of New York, moved that the bill be postponed until the next day.

Twice during the debate, once while Mr. Samuel Beardsley, of New York, was speaking, and again when Mr. Albert G. Hawes, of Kentucky, had the floor, the Speaker[8] called to order, on the ground that the question before the House was postponement, and the merits of the bill could not be gone into.

5313. On February 26, 1836,[9] the House was considering a contested election case from North Carolina, when Mr. Abijah Mann, jr., of New York, moved to postpone the subject till Tuesday week.

Mr. James Graham, of North Carolina, in debating this motion, was called to order by Mr. Jesse A. Bynum, of North Carolina, who asked if it was in order for his colleague to go into a detailed statement of the case at this stage of the proceeding.

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[1] Third session Thirty-fourth Congress, Globe, p. 798.

[2] Nathaniel P. Banks, of Massachusetts, Speaker.

[3] Second session Fifty-eighth Congress, Record, p. 3047.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] First session Nineteenth Congress, Debates, pp. 2509, 2510.

[6] John W. Taylor, of New York, Speaker.

[7] Second session Twenty-second Congress, Debates, pp. 1819, 1822.

[8] Andrew Stevenson, of Virginia, Speaker.

[9] First session Twenty-fourth Congress, Debates, p. 2640.

The Speaker[1] said that, though the merits of the question were not open, the gentleman had a right to state the grounds upon which he urged that the House should not postpone the subject to a day certain.

5314. On February 27, 1852,[2] Mr. Speaker Boyd, after brief consultation with Members, decided that a motion to postpone to a day certain was not debatable under the practice of the House.

5315. On February 17, 1855,[3] the House was considering the message of the President vetoing the bill providing for the payment of certain French Spoliation claims, the pending question being a motion to postpone the message until Wednesday next.

Mr. James L. Orr, of South Carolina, raised a question of order as to the extent of debate allowable on the motion.

The Speaker[4] said:

> The Chair thinks the practice under the rules uniformly has been, when debate has been allowed at all—and, I believe, some of my predecessors have decided that the motion was not debatable at all—that it must be limited to the question of time to which the consideration shall be postponed.

5316. A motion to postpone indefinitely opens to debate all the merits of the proposition.—On January 11, 1836,[5] a motion was proposed to postpone indefinitely the "bill to reduce the revenue of the United States to the wants of the Government."

Mr. Joseph R. Ingersoll, of Pennsylvania, rising to a parliamentary inquiry, asked if such a motion would open a discussion.

The Speaker[1] replied that the motion to postpone indefinitely opened the whole merits of a proposition to discussion.

5317. The motion to postpone indefinitely may not be applied to the motion to refer.—On June 21, 1809,[6] while the House was considering a report of the Committee on Manufactures relating to the imposition of additional duties, Mr. Thomas Newton, of Virginia, moved that the report be committed to the consideration of a Committee of the Whole House.

Mr. John Randolph, of Virginia, moved that the question of commitment be postponed indefinitely.

The Speaker[7] declared the motion out of order.

Mr. Randolph having appealed, the decision of the Chair was sustained.

5318. It has been held in order to move to postpone indefinitely the further execution of an order relating to the election of officers of the House.—On January 10, 1850,[8] the House was proceeding with the election of a Clerk in accordance with the following:

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Thirty-second Congress, Globe, p. 648.

[3] Second session Thirty-third Congress, Globe, p. 802.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Second session Twenty-fourth Congress, Debates, p. 1349.

[6] First session Eleventh Congress, Journal, p. 75 (Gales and Seaton ed.).

[7] Joseph B. Varnum, of Massachusetts, Speaker.

[8] First session Thirty-first Congress, Journal, p. 281; Globe, pp. 130, 131.

Resolved, That the House will proceed to the election of Clerk and other officers on Thursday, the 3d day of January, 1850.

Mr. Edward D. Baker, of Illinois, moved that the further execution of the order be postponed indefinitely.

Mr. James Thompson, of Pennsylvania, raised the question of order that the motion to postpone indefinitely was not in order, it being equivalent to the motion to rescind, which motion had heretofore been decided out of order.

The Speaker[1] decided that a motion to postpone indefinitely, or a motion to postpone to a day certain, was in order.

Mr. Thompson having appealed, the decision of the Chair was sustained.

5319. After the previous question is ordered on a bill a motion to postpone the bill is not in order.—On July 23, 1886,[2] the joint resolution (H. Res. 72) to provide for the settlement of accounts with the Mobile and Ohio Railroad Company was before the House, the previous question having been ordered on its engrossment and third reading.

Mr. William S. Holman, of Indiana, moved that the bill be postponed until the next Friday.

Mr. William C. Oates, of Alabama, raised a point of order against that motion.

The Speaker[3] said:

The Chair thinks that until the question has been taken upon the engrossment and third reading of the joint resolution, upon which the previous question has been ordered, postponement could be made only by unanimous consent. As soon as the vote is taken on that question it could be postponed by a majority vote of the House. The reason, the Chair will state, is this: The effect of the previous question is to bring the House to an immediate vote on the question then pending, which is the engrossment and third reading of the resolution. The motion to postpone would defeat that order; but as soon as that vote is taken a majority can then postpone the resolution or take such other steps as it may see proper.

5320. The motion to postpone may not be entertained after the previous question has been ordered.—On May 30, 1900,[4] the bill (S. 1939) "authorizing the President of the United States to appoint a commission to study and make fall report upon the commercial and industrial conditions of China and Japan," etc., was before the House, the previous question having been ordered on April 30, 1900, on a motion to concur in the recommendation of the Committee of the Whole House on the state of the Union that the enacting clause of the bill be stricken out.

The bill being brought up on a demand for the regular order, Mr. William H. Moody, of Massachusetts, rising to a parliamentary inquiry, asked if it would be in order to move that the consideration of the bill be postponed until the next day.

The Speaker[5] said:

That can not be done after the previous question has been ordered by the House.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Forty-ninth Congress, Record, p. 7393; Journal, pp. 2313, 2314.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 6250.

[5] David B. Henderson, of Iowa, Speaker.

5321. On February 9, 1899,[1] the House was considering the bill (H. R. 10969) for the erection of a public building at Blair, Nebr., upon which the previous question had been ordered to the final passage.

The bill having been read a third time, Mr. Alexander M. Dockery, of Missouri, moved to recommit the bill to the Committee on Public Buildings and Grounds.[2]

Pending this motion, Mr. Joseph G. Cannon, of Illinois, rising to a parliamentary inquiry, asked whether or not it would be in order to move to postpone the bill to a certain day.

The Speaker[3] said:

It is not in order after the previous question has been ordered, because it is a motion made when the bill is not under consideration. When the previous question is ordered, consideration has ceased.

5322. The motion to postpone indefinitely may not be applied to a motion to suspend the rules.

The motion to amend may not be applied to a motion to suspend the rules.

On January 14, 1840,[4] Mr. Waddy Thompson, of South Carolina, handed to the Chair the following resolution, which was read for the information of the House, and moved a suspension of the rules to enable him to offer it:

Resolved, That upon the presentation of any memorial or petition praying for the abolition of slavery or the slave trade in any District, Territory, or State of the Union, and upon the presentation of any resolution or other paper touching that subject, the reception of such memorial, petition, resolution, or paper shall be considered as objected to, and the question of its reception shall be laid upon the table without debate or further action thereon.

Mr. Horace Everett, of Vermont, asked for the yeas and nays on the question.

Mr. John Quincy Adams, of Massachusetts, moved the indefinite postponement of the motion to suspend the rules.

The Chair[5] was of the opinion that the motion of the gentleman from Massachusetts was not in order, because, if it prevailed, the effect would be that no motion to suspend the rules would be in order for the remainder of the session.

Mr. Edward J. Black, of Georgia, asked whether, if the motion of the gentleman from South Carolina (Mr. Thompson) to suspend the rules should prevail, it would be in order for him to offer an amendment to the resolution of that gentleman.

The Chair replied in the affirmative.

5323. A motion to rescind a special order was decided by the House not to be privileged under the rules.

Discussion as to the distinction between a special order and a standing order.

Instance wherein the Speaker submitted the decision of a question of order to the House.

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[1] Third session Fifty-fifth Congress, Record, p. 1661.

[2] This motion is authorized by a special rule. (See sec. 5443 of this volume.)

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Twenty-sixth Congress, Globe, p. 121.

[5] Robert M. T. Hunter, of Virginia, Speaker.

On April 12, 1884,[1] Mr. Philip B. Thompson, jr., of Kentucky, on the ground of its being a privileged question under clause 1, Rule XXVIII,[2] moved to rescind the special order adopted by the House on the 7th instant, setting apart Wednesday, April 9, for consideration of bills from the Committee on Public Buildings and Grounds.

Mr. Samuel Dibble, of South Carolina, made the point of order that the motion was not in order for the reason that the special order was adopted by a two-thirds vote of the House on a motion to suspend the rules, and was in terms a "special order," and therefore was not a "standing order" in the sense contemplated in clause 1, Rule XXVIII.

The Speaker[3] having expressed the opinion that the order of the 7th instant under consideration was not a "standing order," under the rules and practices of the House, stated that in view of its being a new as well as important question touching the power of a majority to control the business of the House, he would submit the question for the consideration of the House.

It was decided, 101 yeas to 78 nays, that Mr. Thompson's motion was not a privileged question.

5324. Under general parliamentary law, before the adoption of rules, the motion to rescind is used.—On December 28, 1855,[4] and January 21 and February 2, 1856, before the election of a Speaker and before the adoption of rules, the motion to rescind was entertained as the proper way of abrogating such rules and orders as had been made temporarily.

5325. As to the repetition of the motion to rescind under general parliamentary law.—On February 2, 1856,[5] before the election of Speaker or the adoption of rules, a motion was made to rescind the rule providing for the choice of Speaker by a plurality of votes, and that motion to rescind was laid on the table.

A motion to adjourn was then made and decided in the negative.

Then Mr. Percy Walker, of Alabama, moved again to rescind the rule.

Mr. Thomas L. Clingman, of North Carolina, made the point of order that it was not in order to repeat the motion to rescind.

The Clerk[6] expressed the opinion that the motion was in order, but submitted the matter to the House.[7]

And the question being put, the motion was decided to be out of order, yeas 83, nays 128.

5326. The motion to strike out the enacting words (which is authorized in a rule relating to the Committee of the Whole) has precedence of a motion to amend.

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[1] First session Forty-eighth Congress, Journal, p. 1051.

[2] See section 6790 of this volume. This rule at that time provided: "No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor." This clause is no longer a part of the rule.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Thirty-fourth Congress, Journal, pp. 195, 338, 434, 435.

[5] First session Thirty-fourth Congress, Journal, pp. 434, 435; Globe, p. 336.

[6] John W. Forney, Clerk.

[7] While the Clerk decided points of order during this time, he repeatedly declined to make a decision where there was an evident division of opinion on the part of the Members. Such a division existing, he referred the question to the House. (See instance on February 1, Journal, p. 417.)

Striking out the enacting words of a bill constitutes its rejection.

When the House disagrees to the recommendation of the Committee of the Whole that the enacting words be stricken out, the bill stands recommitted to the Committee of the Whole unless the House refer it otherwise.

Present form and history of section 7 of Rule XXIII.

Rule XXIII, which relates to procedure in Committee of the Whole, has, as section 7, the following:

A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection. Whenever a bill is reported from a Committee of the Whole with an adverse recommendation, and such recommendation is disagreed to by the House, the bill shall stand recommitted to the said committee without further action by the House; but before the question of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate.

Although not often used at the present time, this rule has played an important part in the parliamentary history of the House. The present form of the rule dates from the revision of 1880;[1] but that revision made no essential changes in the form of old Rule No. 123 that had existed since 1870, and which was as follows, with the dates of the adoption of its various portions:

A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection.—March 13, 1822. Whenever a bill is reported from a Committee of the Whole with a recommendation to strike out the enacting words, and such recommendation is disagreed to by the House, the bill shall stand recommitted to the said committee without further action by the House.—March 16, 1860. But before the question of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate, and resume its original place on the Calendar.—May 26, 1870.

The first rule of 1822 was merely for the purpose of giving greater definiteness to a practice which had been growing in the House for a decade at least. On April 13, 1812,[2] the Committee of the Whole reported the bill to incorporate the Louisiana Lead Company, with an amendment striking out the first section. The House having concurred in this amendment, Mr. Speaker Clay decided that the bill was rejected. Apparently this practice continued, and on April 5, 1814,[3] the Committee of the Whole again reported a bill with an amendment striking out the first section. As the bill had only one section, Mr. Speaker Cheves ruled that the amendment would amount to a rejection of the bill, and therefore was not in order. He did not, however, refuse to receive the entire report, as was afterwards intimated when this ruling was discussed during the Kansas-Nebraska contest, for the bill came before the House and was indefinitely postponed. The use of the motion to strike out the first section continued, and on February 25, 1822,[4] while the bill to establish a system of bankruptcy was under consideration in Committee of the Whole, Mr. A. Smyth, of Virginia, made the motion and it was debated until March 9, when it was

[1] Second session Forty-eighth Congress, Record, p. 206.

[2] First session Twelfth Congress, Journal, pp. 289, 290, 533; Annals, p. 1318.

[3] Second session Thirteenth Congress, Journal, p. 386.

[4] First session Seventeenth Congress, Annals, pp. 792, 1246.

decided in the negative. A few days later, on March 13, 1822,[1] the House adopted the rule giving the motion a definite standing and defining it as a motion "to strike out the enacting words."[2] And it was not included among the rules relating particularly to the Committee of the Whole, but as a part of that rule[3] which prescribed the precedence of motions admissible when a question was under debate.

In 1841[4] the Committee on Rules reported a proposed amendment to the rule providing that in Committee of the Whole the motion to strike out the enacting clause should not have precedence of the motion to amend, but the House apparently did not agree to it.[5] This proposed amendment indicates what is shown in fact that the motion to strike out the enacting clause was in use in the House as well as in Committee of the Whole. Thus, on March 1, 1830,[6] when a bill had been reported from the Committee of the Whole with amendments, Mr. Speaker Stevenson held that a motion to strike out the enacting clause had precedence of the question on concurring in the amendments.

In 1843[7] the rule was separated from its old connection and became a separate rule, numbered 119 and classified under the subdivision of "Bills."

In 1854,[8] during the contest over the bill (H. R. 236) "to organize the Territories of Kansas and Nebraska," Mr. Alexander H. Stephens, of Georgia, moved to strike out the enacting clause in order to avert a course of proposed amendments apparently interminable. Mr. Israel Washburn, jr., of Maine, urged that this motion under the rule applied in the House but not in Committee of the Whole; but his contention was overruled, and after five minutes of debate for the motion and five against the question was taken. The votes of the friends of the measure carried the motion to strike out the enacting clause, and the bill with that amendment was reported to the House, where the previous question could be used to cut off the obstructive amendments which threatened the bill in Committee of the Whole. The House disagreed to the recommendation that the enacting clause be stricken out, and then the bill was put on its passage.

This device, to avoid full and sometimes obstructive consideration in Committee of the Whole, came into quite frequent use, and in 1858[9] the Committee on Rules reported an amendment to prevent it which, on March 16, 1860,[10] became a

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[1] First session Seventeenth Congress, Journal, p. 350.

[2] On March 24, 1826 (first session Nineteenth Congress, Journal, p. 377; Debates, p. 1764), the old motion to strike out the first section was made and carried in Committee of the Whole, but the report made to the House stated that the enacting clause had been stricken out.

[3] Now section 4 of Rule XVI. See section 5301 of this volume.

[4] First session Twenty-seventh Congress, Report No. 11, p. 12.

[5] Yet on February 16, 1842 (second session Twenty-seventh Congress, Globe, pp. 244, 245), Chairman George N. Briggs, of Massachusetts, held that the motion might not be made in Committee of the Whole before the bill had been read for amendments.

[6] First session Twenty-first Congress, Journal, pp. 986, 987.

[7] See Appendix of Journal, first session Twenty-eighth Congress.

[8] First session Thirty-third Congress, Globe, p. 1241.

[9] Second session Thirty-fifth Congress, Report No. 1.

[10] First session Thirty-sixth Congress, Globe, p. 1179. For further particulars as to this rule and the rules to prevent obstruction in Committee of the Whole see sections 5221, 5224 of this volume.

part of the rule. That amendment destroyed much of the usefulness of the rule, which was restored by the addition made on May 26, 1870.[1]

It was not until the revision of 1880[2] that the rule relating to the motion to strike out the enacting clause was classified among those rules relating particularly to the Committee of the Whole.

5327. The motion to strike out the enacting clause may not be made until the first section of the bill has been read.—On May 12, 1902,[3] the bill (H. R. 13405) "authorizing the Washington Gaslight Company to purchase the Georgetown Gaslight Company, and for other purposes," was under consideration in Committee of the Whole House on the state of the Union, and general debate had been closed. The Clerk began the reading of the bill by sections for amendment, when Mr. William S. Cowherd, of Missouri, moved to strike out the enacting clause.

The Chairman[4] ruled that the first section should be read before the motion was submitted.

5328. The motion to strike out the enacting clause has precedence of the motion to amend, and may be offered while an amendment is pending.—On February 22, 1851,[5] the use of the motion to strike out the enacting clause in Committee of the Whole was discussed in the light of the rule and recent usage, and Chairman James S. Green, of Missouri, decided, and on appeal was sustained by the Committee, that in Committee of the Whole the motion to strike out the enacting clause had precedence of a motion to amend. The Chairman admitted that the practice had heretofore been different.

5329. On January 27, 1855,[6] while the bill (H. R. 117) to provide for the ascertainment and satisfaction of the French spoliation claims was under consideration for amendment in Committee of the Whole House on the state of the Union, Mr. Edward A. Warren, of Arkansas, moved to strike out the enacting clause.

Mr. Samuel W. Parker, of Indiana, made the point of order that, as there was an amendment pending, the motion was not in order.

The Chairman[7] said:

> Whatever doubts the Chair may have upon that question, the precedents are such that he does not feel himself at liberty to disregard them, and he therefore rules the motion of the gentleman from Arkansas to be in order.

An appeal having been taken, the Chair was sustained, ayes 96, noes 31.

5330. On February 20, 1857,[8] Chairman Humphrey Marshall, of Kentucky, held that a motion to strike out the enacting words of a bill was in order pending an amendment. This was during the consideration of the tariff bill in Committee of the Whole, and the motion was made and carried for the purpose of getting

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[1] Second session Forty-first Congress, Globe, pp. 3848, 3349.

[2] Second session Forty-eighth Congress.

[3] First session Fifty-seventh Congress, Record, p. 5336.

[4] Kittredge Haskins, of Vermont, Chairman.

[5] Second session Thirty-first Congress, Globe, p. 648.

[6] Second session Thirty-third Congress, Globe, pp. 426–428.

[7] Origen S. Seymour, of Connecticut, Chairman.

[8] Third session Thirty-fourth Congress, Journal, p. 479; Globe, p. 789.

the bill out of the Committee of the Whole and into the House, where it could be acted on.

5331. On June 12, 1858,[1] the bill (H. R. 582) to authorize a fifteen millions loan was taken out of the Committee of the Whole by striking out the enacting clause before the consideration for amendment had ceased. Speaker Orr sustained the proceeding, although objection was made.

5332. The motion to strike out the enacting clause applies in the Committee of the Whole.—On April 30, 1900,[2] the bill (S. 1939) authorizing the President of the United States to appoint a commission to study and make full report upon the commercial and industrial conditions of China and Japan was under consideration in Committee of the Whole House on the state of the Union, the reading of the bill for amendments had begun and amendments had been agreed to.

Pending further amendment, Mr. John S. Williams, of Mississippi, asked if a motion to strike out the enacting clause would be in order.

The Chairman,[3] having read the rule,[4] stated that it would be in order.

Mr. Williams having made the motion, Mr. William P. Hepburn, of Iowa, made the point of order that the motion was not in order in Committee of the Whole.

The Chairman said:

> This is a rule relating to the Committee of the Whole. The Chairman overrules the point of order.

The motion to strike out the enacting clause was then agreed to.

5333. In Committee of the Whole the motion to strike out the enacting clause is debatable, and in later usage is governed by the five-minute rule.—On December 6, 1882,[5] the bill (H. R. 110) to refund to the State of Georgia certain money expended for the common defense in 1777 was under consideration in Committee of the Whole House on the state of the Union, when Mr. Frank Hiscock, of New York, moved to strike out the enacting clause.

Debate continuing, Mr. Hiscock made the point of order that the motion was not debatable.

After debate on the point of order, the Chairman[6] submitted the question to the decision of the Committee, and the Committee voted not to sustain the point of order,[7] and the debate proceeded.[8]

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[1] First session Thirty-fifth Congress, Journal, p. 1116; Globe, pp. 3022, 3023.

[2] First session Fifty-sixth Congress, Record, p. 4887.

[3] Sereno E. Payne, of New York, Chairman.

[4] Section 7 of Rule XXIII. (See sec. 5326 of this volume.)

[5] Second session Forty-seventh Congress, Record, pp. 60–62.

[6] John Turner Wait, of Connecticut, Chairman.

[7] Under the earlier usage, when the motion was used as a means for getting bills out of the Committee of the Whole, the motion to strike out the enacting clause was held not to be debatable. (First session Thirty-fifth Congress, Globe, p. 154.) In a recent instance of the use of the motion, in 1893, there was no attempt to debate. (Second session Fifty-third Congress, Record, pp. 120, 121.)

[8] On January 5, 1826, Mr. Charles F. Mercer, of Virginia, moved to strike out the "first section" of the Judiciary bill in Committee of the Whole, and that motion was debated at length. (First session Nineteenth Congress, Debates, p. 892.)

5334. On February 7, 1855,[1] the bill (S. 96) for the payment of certain creditors of the late Republic of Texas was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John C. Breckinridge, of Kentucky, moved to strike out the enacting clause.

Mr. John S. Millson, of Virginia, raised a question of order as to whether or not the motion was debatable.

The Chairman[2] held:

The recollection of the Chair is that on some occasions during this session of Congress it has been held that the motion to strike out the enacting clause of a bill is debatable, but that the last decision was that the motion is not debatable. The Chair now decides that the motion is not debatable.

On December 22, 1857,[3] the Committee of the Whole House on the state of the Union was considering the bill (S. 13) to authorize the issue of Treasury notes, the bill being in the course of being read for amendment under the five-minute rule, when Mr. William Barksdale, of Mississippi, moved to strike out the enacting clause.

Mr. Lewis D. Campbell of Ohio, was proceeding to debate the motion when the Chairman[4] ruled:

The motion to strike out the enacting clause takes precedence of an amendment, and is not of the nature of an amendment for it is for the purpose of withdrawing the bill. The Chair therefore rules that the motion is not debatable.

On an appeal the decision of the Chair was sustained.

5335. On June 10, 1902,[5] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 11536) to transfer certain forest reserves to the control of the Department of Agriculture. The reading of the bill for amendment having begun, Mr. Joseph G. Cannon, of Illinois, moved to strike out the enacting clause.

A question having arisen as to debate the Chairman[6] held:

At this point, in order to avoid possible misunderstanding later, the Chair calls attention to the fact that whether a motion to strike out the enacting clause is debatable at all, or, if so, to what extent, is a matter upon which the precedents are conflicting. In the second session of the Thirty-third Congress (February 7, 1855, Globe, p. 616) Mr. Thomas A. Hendricks, of Indiana, in the chair, sustained the point of order made by Mr. John S. Millson, of Virginia, and ruled that "the motion is not debatable." In the Thirty-fifth Congress, first session (December 22, 1857, Globe, p. 154), Mr. John S. Phelps, of Missouri, in the chair, a similar ruling was made, and on an appeal the decision of the Chair was sustained.

On the other hand, in the Forty-seventh Congress, second session, the point of order having been made by Mr. Hiscock, of New York, was submitted by the Chair to the Committee of the Whole and not being sustained, the motion was apparently treated as debatable without limit (Hinds' Precedents, 941). This ruling was made without much discussion or citation of precedents, and was manifestly wrong. As the motion to strike out the enacting clause is not in order at all in Committee of the Whole until general debate has been closed, it certainly can not be, under the rules properly construed, the subject of general debate. Such a motion is in order after the first paragraph of the bill has been read for amendment under the five-minute rule. It is now made at that point.

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[1] Second session Thirty-third Congress, Globe, p. 616.

[2] Thomas A. Hendricks, of Indiana, Chairman.

[3] First session Thirty-fifth Congress, Globe, p. 154.

[4] John S. Phelps, of Missouri, Chairman.

[5] First session Fifty-seventh Congress, Record, p. 6567.

[6] Marlin E. Olmsted, of Pennsylvania, Chairman.

The present occupant of the chair is of opinion that it should be treated for this purpose as in the nature of, or at least analogous to, an amendment and debatable accordingly, and in this view is apparently sustained by the observation of Speaker Blaine in the first session of the Forty-third Congress (Record, p. 2338), who, in ruling that such a motion when made in the House was debatable, said:

"There is no express rule prohibiting its being debated in Committee of the Whole. The impression prevails that it is not debatable from this fact that the motion is usually made in Committee of the Whole after debate has been closed or when the five-minute debate is in order. The motion in Committee of the Whole to strike out the enacting clause would never by any usage of the House be debated over five minutes on each side, and generally not debated at all."

The Chair holds that the motion is debatable five minutes on either side, and after that only by unanimous consent.

5336. On a motion to strike out the enacting clause a Member may debate the merits of the bill, but must confine himself to its provisions.— On July 1, 1841,[1] the House was in Committee of the Whole House on the state of the Union considering a bill "to appropriate the proceeds of the sale of the public lands and to grant preemption rights," the pending motion being to strike out the enacting clause of the bill, on which extended debate had taken place.

While Mr. Aaron V. Brown, of Tennessee, had the floor, Mr. Christopher Morgan, of New York, asked if they were to be detained "by discussing everything under the heavens." The gentleman's remarks had no reference to the subject under consideration.

The Chairman[2] stated that the question then pending was on striking out the enacting clause of the bill, and the gentleman had a right to go into the whole merits of it; but the gentleman must confine himself to the provisions of the bill.[3]

5337. A bill being reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the motion to concur is debatable in the House.

A bill being reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, a motion to lay on the table is not in order.

The Member on whose motion the enacting clause of a bill is stricken out in Committee of the Whole is entitled to prior recognition when the bill is reported to the House.

On March 21, 1874,[4] the House was considering the bill (H. R. 2106) to authorize the construction of a bridge across the Eastern Branch of the Potomac. The bill had been reported from the Committee of the Whole with the recommendation that the enacting clause be stricken out, and the question before the House was upon concurring in the recommendation of the Committee of the Whole.

A question arising as to the construction of the rule, the Speaker[5] expressed the opinion that the question of concurring was debatable in the House, and that the

[1] First session Twenty-seventh Congress, Globe, p. 135.

[2] Joseph Lawrence, of Pennsylvania, Chairman.

[3] This decision was made before the adoption of the rule limiting debate on amendments in Committee of the Whole to five minutes for and five minutes against.

[4] First session Forty-third Congress, Journal, p. 629; Record, p. 2342.

[5] James G. Blaine, of Maine, Speaker.

spirit of the rule was, under such circumstances, adverse to a motion to lay on the table. The Speaker also made the following statement as to the rule:

As the motion to strike out the enacting clause of a bill may be frequently used hereafter, the Chair, if the House will give its attention, will state very briefly the history of the rule on the subject. Previous to the revision of the rules in 1860, the motion to strike out the enacting clause was used in one notable instance to bring a bill from the Committee of the Whole, and the bill when reported to the House was regarded as before the House for whatever action it might see fit to adopt. The Nebraska bill was brought out of the Committee of the Whole on the motion to strike out the enacting clause; and when the House refused to concur in that motion, the Speaker ruled that the bill was before the House. The House, however, was dissatisfied with that construction, because it enabled the majority in the Committee of the Whole at any time to terminate debate, thus practically carrying into the Committee of the Whole the full force and effect of the previous question, which it is one object of the Committee of the Whole to get rid of. Hence in the revision of 1860, which was a very notable revision of the rules, there was added to the rule a provision that when a bill should be reported from the Committee of the Whole with the enacting clause struck out, the first question in the House should be upon concurrence in that recommendation; that if the House should nonconcur in striking out the enacting clause, the bill was thereby at once recommitted to the Committee of the Whole, and stood upon its original place upon the Calendar, while, if the motion was concurred in, the bill, of course, would be dead.

The operation of this rule was found inconvenient in practice, as it really kept the House in a parliamentary straitjacket. In the summer of 1870 a lengthy tariff bill was under discussion in Committee of the Whole, under the charge of the then chairman of the Committee on Ways and Means, a very skillful parliamentarian, now minister to England. The House found that it had before it in Committee of the Whole a bill of several hundred pages, which could not be got rid of except by going through every paragraph. It was found that striking out the enacting clause would do no good, because when the bill was returned to the House, the House must either concur or nonconcur. If it concurred, the bill was dead; and the House did not desire to kill the bill. If it nonconcurred, the bill was put right back to its original place in the Committee of the Whole. In view of the difficulty thus arising the rule was subsequently amended by the addition of this clause:

"But before the question of concurrence is submitted, it is in order to entertain a motion to refer the bill to any committee of the House, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate, and resume its original place on the Calendar."

Under the rule, when the Committee of the Whole reports a bill to the House, with the enacting clause struck out, the House can send the bill to the standing committee from which it came, with instructions to report it in a new form; and when so reported, it goes back to its original place on the Calendar. Now, the Chair thinks that, when a bill is reported from the Committee of the Whole with the enacting clause struck out, this rule, fairly construed, prohibits any motion whatever, except those specifically defined in the rule—first, will the House concur or nonconcur with the recommendation of the Committee of the Whole; or, secondly, will it prefer to refer the bill to some standing committee, with or without instructions? The Chair thinks that it will simplify the practice to hold the House rigidly to the motions provided for in the rule.

In response to inquiries the Speaker further gave the opinion that when a bill reaches the House, having been thus reported with the enacting clause stricken out, the right to the floor belongs to the Member upon whose motion the enacting clause was struck out in Committee of the Whole.

After debate, Mr. Robert S. Hale, of New York, moved the previous question.

Mr. Samuel J. Randall, of Pennsylvania, moved that the bill be laid on the table.

The Speaker decided that the motion was out of order, and in this decision of the Chair the House acquiesced.

The question then recurring on the demand for the previous question, it was seconded and the main question ordered and put, viz, Shall the enacting words be stricken out? And it was decided in the affirmative, yeas 121, nays 84.

5338. On December 8, 1893,[1] on motion of Mr. William C. Oates, of Alabama, the House resolved itself into Committee of the Whole House on the state of the Union; and after some time spent therein, the Speaker resumed the chair, and Mr. Joseph H. Outhwaite, of Ohio, reported that the committee, having had under consideration the bill (H. R. 139) to establish a uniform system of bankruptcy throughout the United States, had directed him to report the same to the House with the recommendation that the enacting clause be stricken out.

The question being on concurring in the recommendation of the Committee of the Whole, Mr. Joseph G. Cannon, of Illinois, took the floor and proceeded to debate the question.

Mr. William H. Hatch, of Missouri, made the point of order that the pending question was not subject to debate.

The Speaker[2] overruled the point of order, holding as follows:

> The Chair thinks that under our system of rules all matters are debatable unless there is some express limitation in the rules. The general rule is that any proposition is debatable. Debate was exhausted in Committee of the Whole, but not in the House. The House instructed the committee to close debate, but this is in the nature of an amendment. True, if it is concurred in by the House, it finally disposes of the bill; but in the absence of the previous question the Chair thinks the matter is debatable.

After debate the House concurred in the recommendation of the Committee of the Whole.

5339. On April 21, 1826,[3] the bill providing for the expense of the mission to Panama was reported to the House from the Committee of the Whole House on the state of the Union.

Thereupon, in the House, Mr. George McDuffie, of South Carolina, moved to strike out the enacting words[4] of the bill, and proceeded to debate it at length.

The motion was decided in the negative.

5340. On March 21, 1874,[1] the bill (H. R. 2106) to authorize the construction of a bridge over the Potomac was reported from the Committee of the Whole with, the enacting clause stricken out.

Mr. Samuel J. Randall, of Pennsylvania, objected to debate.

The Speaker[6] said:

> The motion to strike out the enacting clause is debatable.

Thereupon Mr. William S. Holman, of Indiana, said that the motion was not debatable in Committee of the Whole, to which the Speaker replied:

> It is not usually debated in Committee of the Whole. There is no express rule prohibiting its being debated in Committee of the Whole. The impression prevails that it is not debatable from this fact, that the motion is usually made in Committee of the Whole after debate has been closed, or when the five-minute debate is in order. The motion in Committee of the Whole to strike out the enacting

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[1] Second session Fifty-third Congress, Journal, pp. 21, 22; Record, pp. 120, 121, 124.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Nineteenth Congress, Journal, p. 459; Debates, p. 2491.

[4] Rule 30 in 1826 provided for striking out the enacting clause, and contemplated its use in the House. (See sec. 5326 of this volume.)

[5] First session Forty-third Congress, Record, p. 2338.

[6] James G. Blaine, of Maine, Speaker.

clause would never, by any usage of the House, be debated over five minutes on each side, and generally not debated at all. But there is nothing in the rules that prevents its debate in the House.[1]

5341. An amendment reported from Committee of the Whole striking out all after the enacting clause of a bill and inserting new matter is, when reported, treated like any other amendment reported from that Committee.—On January 26, 1887,[2] the Committee of the Whole House on the state of the Union had risen and had reported the river and harbor appropriation bill with an amendment which struck out all after the enacting clause and inserted a new text. This amendment had been agreed to before the consideration of the bill by paragraphs had been completed.[3]

Mr. Nelson Dingley, jr., of Maine, rising to a parliamentary inquiry, asked:

If the House shall refuse to agree to the substitute amendment, would the vote then come up under the operation of the previous question on passing the bill for which the substitute was made, or would the bill have to go back to the Committee of the Whole to be considered?

The Speaker[4] said:

If the House refuse to agree to the substitute the next question is on ordering the bill to be engrossed and read a third time; that is to say, on the bill referred to the Committee of the Whole House on the state of the Union, without regard to any amendments which may have been agreed to.

Mr. Julius C. Burrows, of Michigan, having suggested that the bill had never been considered by the committee, the Speaker said:

That is a question for the House. The Committee has reported it back to the House. The Committee has no power over it.

The Chair will further state, in response to the gentleman from Maine, that the bill will not go back to the Committee unless the House refers it to the Committee. Under the rules and practice of the House, when the Committee of the Whole House on the state of the Union strikes out the enacting clause of a bill, the effect of which is to destroy the bill, and the House refuses to concur in that action, the committee resumes its session. But where the committee strikes out all after the enacting clause it is but an amendment. Then a vote to nonconcur in the amendment of the Committee in the nature of a substitute would at once bring the House to vote on the bill.

5342. A bill being reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the previous question may be moved on a motion to concur without applying also to further action on the bill.

Instances of the former practice of using the motion to strike out the enacting words as a means of taking bills from the Committee of the Whole.

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[1] It is very rare that a motion to strike out the enacting clause is made in the House as an original motion, and the practice has not always been in accordance with this opinion of Mr. Speaker Blaine. On December 9, 1902 (second session Fifty-seventh Congress, Record, p. 168), the House was considering the bill (H. R. 9059) to amend an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," when Mr. James S. Sherman, of New York, moved to strike out the enacting clause.

Mr. James A. Tawney, of Minnesota, having asked if the motion was debatable, the Speaker pro tempore (John Dalzell, of Pennsylvania) said:

"The Chair would state that it is not."

[2] Second session Forty-ninth Congress, Record, p. 1060.

[3] Such proceeding was irregular. Under the ordinary practice, an amendment in the nature of a substitute may not be voted on until the original text has been perfected.

[4] John G. Carlisle, of Kentucky, Speaker.

Instance of prolonged obstruction by the alternating of privileged motions.

On May 2, 1854,[1] the Chairman of the Committee of the Whole House on the state of the Union reported that the Committee having, according to order, had the state of the Union generally under consideration, and particularly the bill of the House (No. 236) to organize the Territories of Nebraska and Kansas, had directed him to report the same, with a recommendation that the enacting clause be stricken out.

The Speaker having stated the question to be on agreeing to the report, Mr. William A. Richardson, of Illinois, moved the previous question.

Finally, after fifteen roll calls on motions to adjourn, to fix the day, and to lay on the table, alternated for purposes of delay, the previous question was ordered, and under its operation the report of the Committee of the Whole was disagreed to.

Mr. Richardson then moved a substitute for the bill.[2]

Mr. Solomon G. Haven, of New York, made the point of order that the previous question was not exhausted, but was still pending, which would prevent the offering of the substitute.

The Speaker[3] ruled:

> The Chair overrules the question of order raised by the gentleman from New York, and for the reason that the proposition of the Committee of the Whole on the state of the Union was nothing more nor less, in substance, than a motion to reject the bill; and it has no such connection with any one of the readings of the bill as that the previous question would cover both. For instance, the previous question ordered to be put will not cover two readings of a bill, neither can it cover the report of the Committee, which proposed to reject the bill, and an amendment that is afterwards offered, or the ordering of the bill to a third reading.[4]

The previous question was then ordered and the substitute was agreed to.

5343. On February 20, 1857,[1] Mr. Humphrey Marshall, of Kentucky, Chairman of the Committee of the Whole House on the state of the Union, reported that the committee having, according to order, had the state of the Union generally under consideration, and particularly the special order, H. R. 566, a bill reducing the duty on imports, and for other purposes, had directed him to report the same, with a recommendation that the enacting clause be stricken out.

The Speaker having stated the question to be on agreeing to the said report,

Mr. Lewis D. Campbell, of Ohio, moved the previous question; which was seconded and the main question ordered, and under the operation thereof the report was disagreed to.

The Speaker then stated the question to be on the engrossment of the bill.

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[1] First session Thirty-third Congress, Journal, pp. 872, 901, 918.

[2] This procedure occurred when the motion to strike out the enacting clause was used as a means of taking a bill from the Committee of the Whole before it had been read through for amendment, and before amendments to the rule had stopped the practice. See section 5326 of this volume.

[3] Linn Boyd, of Kentucky, Speaker.

[4] The rule for the previous question has been changed since this decision. (See sec. 5443 of this volume.)

[5] Third session Thirty-fourth Congress, Journal, p. 479; Globe, pp. 789, 790.

Mr. Lewis D. Campbell moved to amend the same by striking out all after the enacting clause and inserting in lieu thereof a new tariff bill.

This substitute was agreed to, and ultimately became the law.

5344. On December 22, 1857,[1] Mr. John S. Phelps, of Missouri, Chairman of the Committee of the Whole House on the state of the Union, reported that the committee having, according to order, had the state of the Union generally under consideration, and particularly the bill of the Senate (S. 13) to authorize the issue of Treasury notes, had directed him to report the same, with a recommendation that the enacting clause be stricken out.

The Speaker having stated the question to be on agreeing to the recommendation of the committee, that the enacting clause of the bill be stricken out, Mr. J. Glancy Jones, of Pennsylvania, moved the previous question; which was seconded and the main question ordered, and, under the operation thereof, the House refused to strike out the enacting clause of the bill.

The bill was then put upon its passage.

5345. When the House disagrees to the recommendation of the Committee of the Whole that the enacting words of a bill be stricken out, the bill goes back to the Calendar of the Committee of the Whole as unfinished business.—On Friday, March 14, 1890,[2] the Speaker announced as the regular order the bill (H. R. 3538) for the relief of Albert H. Emery, which had been reported from the Committee of the Whole House on the preceding Friday, with the recommendation that the enacting clause be stricken out. The Speaker then put the question, "Will the House concur in that recommendation?"

The question being taken, there were yeas 66, nays 143; so the House refused to concur.

Mr. William M. Springer, of Illinois, then asked, as a parliamentary inquiry, as to the status of the bill on the Calendar of the Committee of the Whole House, to which it was recommitted under the rule.[3]

The Speaker[4] said:

> This bill goes to the Committee of the Whole House and takes its position on the Calendar as if it had never been sent back to the House. It becomes the first bill on the Calendar, as the unfinished business, to be considered when the House again resumes consideration of the Private Calendar.

5346. On May 30, 1900,[5] the House was about to vote on the bill (S. 1939) "authorizing the President of the United States to appoint a commission to study and make full report upon the commercial and industrial conditions of China and Japan," etc., the bill having been reported from the Committee of the Whole House on the state of the Union with the recommendation that the enacting clause be stricken out and the previous question having been ordered on the motion to concur in the recommendation of the Committee of the Whole.

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[1] First session Thirty-fifth Congress, Journal, p. 107; Globe, p. 154.

[2] First session Fifty-first Congress, Record, pp. 2237, 2238.

[3] See section 5326 of this volume.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-sixth Congress, Record, p. 6250.

Mr. William P. Hepburn, of Iowa, having made a parliamentary inquiry as to the situation of the bill, the Speaker[1] said:

The Chair is of the opinion that if the action of the Committee of the Whole is sustained, that ends it. If the action of the Committee of the Whole is reversed, the bill will fall back to its old place in the Committee. * * * It will be on the Calendar of the Committee of the Whole House on the state of the Union. * * * In other words, it would leave this bill practically where it was when the first motion was made in the morning hour. On this matter the previous question has been ordered. So the question is on concurring in the recommendation of the Committee of the Whole, to strike out the enacting clause.

5347. A motion may be withdrawn in the House, although an amendment to it may have been offered and may be pending.—On April 14, 1892,[2] Mr. Julius C. Burrows, of Michigan, moved that there be omitted from the Congressional Record the chapters of a book entitled "Protection and Free Trade," which had been incorporated in the remarks of Mr. William Stone, of Kentucky.

Mr. George W. Fithian, of Illinois, moved to amend the motion by striking out from the Record a certain letter published in a speech of Mr. J. P. Dolliver, of Iowa.

Mr. Burrows then withdrew his motion, to which withdrawal Mr. Fithian objected, and submitted the question of order, whether the resolution could be withdrawn without the consent of the House pending the motion to amend.

The Speaker[3] held that the mover could withdraw the resolution, there having been no amendment adopted or decision thereon.

5348. Even after the affirmative side had been taken in a division on a motion in Committee of the Whole, the withdrawal of the motion was permitted, as the Committee had come to no decision.—On February 8, 1850,[4] the House was in Committee of the Whole House on the state of the Union, considering the joint resolution from the Senate "limiting the expenses of collecting revenue from customs for the present fiscal year."

An amendment from the Committee of Ways and Means was pending, when Mr. David Rumsey, jr., of New York, moved that the Committee now rise and report the bill.

The question was put, and the Chair proceeded to count the affirmative, when Mr. Robert C. Schenck, of Ohio, made the point of order that the Committee had not yet voted on the amendment pending.

The Chairman stated that the gentleman from New York, before the count was completed, withdrew the motion for the Committee to rise.

Mr. Samuel W. Inge, of Alabama, made a point of order against the withdrawal of the motion after the count on one side was announced.

The Chairman[5] decided that in accordance with the practice of the House the motion could be withdrawn at any time before the decision was announced.[6]

On an appeal the Chair was sustained.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-second Congress, Journal, p. 144; Record, pp. 3299–3301.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Thirty-first Congress, Globe, p. 318.

[5] Emery D. Potter, of Ohio, Chairman.

[6] The withdrawal of this motion should not be confounded with the rule of the Committee of the Whole, adopted August 13, 1850, to prevent the withdrawing of amendments.

5349. A motion may be withdrawn after the viva voce vote has been taken and after tellers have been ordered and appointed.—On February 5, 1881,[1] Mr. William J. Samford, of Alabama, moved that the House adjourn. On division there appeared, ayes 62, noes 63. Tellers being ordered, Messrs. Thomas B. Reed, of Maine, and S. S. Cox, of New York, were appointed tellers.

Thereupon Mr. Samford withdrew his motion.

Mr. Omar D. Conger, of Michigan, objected that it was not in order to withdraw the motion.

The Speaker[2] held that under Rule XVI,[3] section 2, Mr. Samford had the right to withdraw the motion, no decision or amendment having been made thereon.

Mr. Conger appealed, as follows:

> I appeal from the decision of the Chair that a motion to adjourn may be withdrawn while the House is dividing, and after the viva voce vote has been taken and announced.

This appeal was laid on the table.

5350. While the House was dividing on a second of the previous question on a motion to refer a proposition, a Member was permitted to withdraw it, the House having made no decision.—On January 27, 1847,[4] Mr. Robert C. Schenck, of Ohio, by unanimous consent of the House, introduced a joint resolution providing for a termination of the war with Mexico.

Mr. Schenck moved that the resolution be committed to the Committee of the Whole House on the state of the Union, and that it be printed.

Mr. Thomas J. Henley, of Indiana, moved the previous question; and while the House was in the act of dividing for the purpose of ascertaining whether there was a second for the same,[5] Mr. Schenck proposed to withdraw his resolution.

Mr. Reuben Chapman, of Alabama, made the point of order, that while the House was in the act of dividing upon a question, it was not in order for the mover to withdraw the proposition under consideration.

The Speaker[6] overruled the point of order, no decision having been made by the House, and decided that Mr. Schenck could withdraw his resolution.[7]

On Mr. Chapman's appeal, the Chair was sustained, 93 to 87.

5351. A refusal to lay a motion on the table was held to be such a decision by the House as would prevent the withdrawal of the motion.—On March 23, 1880,[8] during the consideration of a motion made by Mr. James A. Garfield, of Ohio, to amend the Journal, the House voted to lay Mr. Garfield's motion on the table.

The Speaker having stated that a motion to reconsider the last vote and to lay that motion on the table would be in order, Mr. Richard W. Townshend, of Illinois,

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[1] Third session Forty-sixth Congress, Journal, p. 338; Record, p. 1277.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] See section 5304 of this volume.

[4] Second session Twenty-ninth Congress, Journal, p. 241 , Globe, p. 272.

[5] The previous question no longer requires a second. (See sec. 5343 of this volume.)

[6] John W. Davis, of Indiana, Speaker.

[7] This was cited in the Manual and Digest for many years previous to 1900 as the withdrawal of a motion, and it was such in effect. Had Mr. Schenck been reporting the joint resolution from a committee, instead of on his own motion, the case would have been very different.

[8] Second session Forty-sixth Congress, Record, pp. 1807, 1808; Journal, p. 842.

made such motion. Upon a vote the House refused to lay on the table the motion to reconsider.

Thereupon Mr. Townshend proposed to withdraw the motion to reconsider.

The Speaker[1] said:

The Chair would consider that the vote of the House against laying on the table the motion to reconsider is a procedure on the part of the House to consider the motion to reconsider, and in a vital sense a proceeding upon that subject. Therefore, if objection be made to the withdrawal, the Chair would rule that the motion to reconsider is in possession of the House. A decision by the Chair to the contrary would be unusual and unjust to the House, because a majority of the House by a yea-and-nay vote have indicated a purpose to proceed with the motion to reconsider to its conclusion.

Objection being made, the Chair decided that the motion could not be withdrawn.

An appeal having been taken by Mr. Townshend, the appeal was laid on the table by a vote of 152 yeas to 57 nays.

5352. On April 27, 1846[2] Mr. Robert C. Schenck, of Ohio, offered a resolution relating to a statement made on the floor as to the use of the contingent funds of the State Department, and providing for a select committee to determine how the seal of confidence imposed by law in regard to that subject had been broken.

Mr. Shelton F. Leake, of Virginia, moved that the whole subject be laid on the table. This motion was decided in the negative, yeas 61, nays 100.

Mr. Schenck then proposed to modify his resolution.

Mr. Reuben Chapman, of Alabama, raised the question of order that, a vote having been taken on the motion to lay on the table, it was not now in order for the mover to modify it.

The Speaker[3] decided that, in accordance with the invariable custom of the House, the modification was in order.

Mr. Chapman appealed, but later withdrew the appeal.

5353. The ordering of the yeas and nays on a motion is such a decision by the House as prevents withdrawal of the motion.—On April 10, 1894,[4] Mr. Thomas B. Reed, of Maine, called up for consideration, as involving a question of privilege, the motion of Mr. William M. Springer, of Illinois, to discharge the Sergeant-at-Arms from the further execution of a warrant of arrest, which motion was pending when the House adjourned on Saturday last.

Mr. William M. Springer, of Illinois, thereupon proposed to withdraw the motion.

Mr. Reed made the point that, the yeas and nays having been ordered on the question of agreeing to the motion, and the yeas and nays having been taken thereon and a quorum not being disclosed, it was not now in order to withdraw the motion.

By unanimous consent, the further consideration of the question of order was postponed until the next day, when the Speaker[5] held that where the yeas and nays have been ordered on a proposition it is not in order for the mover to withdraw such proposition.

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[1] Samuel.T. Randall, of Pennsylvania, Speaker.

[2] First session Twenty-ninth Congress, Journal, pp. 723–725; Globe, p. 734.

[3] John W. Davis, of Indiana, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 323, 324; Record, pp. 3630, 3683.

[5] Charles F. Crisp, of Georgia, Speaker.

5354. The ordering of the yeas and nays on a motion to lay an appeal on the table was held to be such a "decision" by the House as would prevent the withdrawal of the appeal.—On June 21, 1890,[1] the Speaker stated the pending question to be the motion of Mr. William McKinley, jr., of Ohio, to lay on the table the appeal of Mr. Richard P. Bland, of Missouri, from the decision of the Chair pending when the House adjourned on the previous day, on which motion the yeas and nays were ordered. Mr. William M. Springer, of Illinois, made the point of order that Mr. Bland was entitled to withdraw his appeal.

The Speaker[2] overruled the point of order on the ground that under the established practice of the House the order for the yeas and nays, a constitutional right, was a "decision" of the House that it desired to vote upon the pending question.

5355. A motion may not be withdrawn after the previous question has been ordered on it.—On April 30, 1890,[2] the House was considering the bill (S. 389) granting pensions to soldiers and sailors who are incapacitated for the performance of labor, etc., under a special order, the terms whereof provided that "the previous question be considered as ordered to the passage, at 4 o'clock, on the bill and all pending amendments."

Amendments having been submitted by Messrs. Joseph B. Cheadle, of Indiana, Charles H. Turner, of New York, and John G. Sawyer, of New York, after debate, the hour of 4 o'clock having arrived, at which time the previous question was to be considered as ordered, the Speaker stated the pending question to be on agreeing to the amendment submitted by Mr. Sawyer to the amendment submitted by Mr. Turner, of New York.

Mr. William M. Springer, of Illinois, made the point of order that the said amendment submitted by Mr. Turner, of New York, had been withdrawn.

The Speaker[2] overruled the point of order, on the ground that the previous question having been ordered, an amendment could not be withdrawn without unanimous consent, which had not been granted.

5356. Instance of the withdrawal of a motion after the previous question had been ordered on an appeal from a decision on a point of order as to the motion.

A motion being withdrawn, all proceedings on an appeal arising from a point of order related to it, fell thereby.

Reference to proceedings during the contest over the organization of the House in 1839.

On December 14, 1839,[4] before the House had organized and while Mr. John Quincy Adams, of Massachusetts, was acting as Chairman of the House, Mr. Daniel D. Barnard, of New York, submitted the following resolution:

Resolved, That the execution of the order of this House, adopted yesterday, that the House do proceed to the election of Speaker, be suspended to give opportunity to any Member who may be so disposed, to move the House that the Members proceed in the first place to hear and adjudge, pursuant to a resolution of this House heretofore adopted, upon the elections, returns, and qualifications of persons

[1] First session Fifty-first Congress, Journal, pp. 770–772; Record, p. 6353.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, p. 550; Record, pp. 4026, 4061.

[4] First session Twenty-sixth Congress, Journal, p. 57 Globe, pp. 51, 52.

who appear to be contesting seats on this floor from New Jersey, or to move that the names of John B. Aycrigg, John P. B. Maxwell, William Halstead, Charles C. Stratton, and Thomas Jones Yorke, the regular-return Members from the State of New Jersey, be not called or their votes counted in the election of Speaker, or to move that Philemon Dickerson, Peter D. Vroom, Daniel B. Ryall, William R. Cooper, and Joseph Kille be called and their votes counted in the election of Speaker.

Mr. Robert Craig, of Virginia, moved the question of consideration.

Mr. William Beatty, of Pennsylvania, objected to the introduction of the resolution, and submitted the following point of order, in writing:

That, under the fifty-second rule of the House, no motion or any other business shall be received, without special leave of the House, until the unfinished business in which the House was engaged at the last preceding adjournment shall have been disposed of.

The Chairman referred to the House the decision upon the question of order submitted by Mr. Beatty; and after debate Mr. Hopkins L. Turney, of Tennessee, moved that the resolution moved by Air. Barnard and the question of order do lie on the table; which motion was decided by the Chair to be in order; when Mr. Barnard submitted the following question of order, in writing:

A point of order having been made, that a resolution offered by Mr. Barnard was not in order at this time pending the discussion on that point of order, Mr. Turney rises and moves to lay the subject of the point of order on the table; and also, at the same time, to lay the resolution of Mr. Barnard on the table. On this motion of Mr. Turney, Mr. Barnard makes this point of order: That it is not now in order to move to lay the resolution of Mr. Barnard on the table.

The Chairman decided against the point of order submitted by Mr. Barnard; from which decision Mr. Millard Fillmore, of New York, appealed to the House; and after debate,

The previous question was moved by Mr. Turney, and demanded by a majority of Members; and the previous question was put, viz: Shall the main question be now put? And passed in the affirmative.

The main question was then stated, i. e., that the decision of the Chair stand as the judgment of the House; when Mr. Barnard withdrew the resolution moved by him to suspend the execution of the order for the election of a Speaker; and all the incidental questions arising thereon fell, of course.

5357. The vote whereby the previous question was ordered having been reconsidered, it was held in order to withdraw the motion for the previous question, the "decision" having been nullified.—On April 20, 1894,[1] Mr. Julius C. Burrows, of Michigan, called attention to the fact that Mr. Joseph Wheeler, of Alabama, had, without leave of the House, caused to be printed in the Congressional Record of Wednesday extended remarks on the proposed rule adopted by the House on Tuesday.

Mr. Burrows suggested that the remarks should be omitted from the permanent Record.

After debate on the question, Mr. Alexander M. Dockery, of Missouri, moved to refer the subject to the Committee on Printing.

On motion of Mr. Dockery, the previous question was ordered on the motion to refer.

[1] Second session Fifty-third Congress, Journal, p. 345; Record, p. 3911.

Pending further proceedings, on motion of Mr. Thomas C. McRae, of Arkansas, the vote by which the previous question had just been ordered was reconsidered.

The question recurring on the demand for the previous question, Mr. Dockery proposed to withdraw his motion for the previous question.

Mr. Burrows made the point of order that there having been a decision of the motion it was not in order, under the rule, to withdraw it.

After debate, the Speaker[1] overruled the point of order, holding that the action of the House on the motion having been reconsidered the decision was, in effect, nullified, and that the motion might be withdrawn.

Mr. Dockery thereupon withdrew his motion for the previous question, and also withdrew his motion to refer the pending matter to the Committee on Printing.

5358. The Member, having the right in the House to withdraw a motion before a decision thereon, has also the resulting power to modify the motion.—On September 16, 1890,[2] the Speaker announced as the regular order of business the further consideration of the resolution submitted by Mr. Benjamin A. Enloe, of Tennessee, on September 15, relating to certain unparliamentary language of a Member published in the Record of September 14.

Mr. Henry G. Turner, of Georgia, suggested a modification of the resolution submitted by Mr. Enloe, leaving out the words "requiring a message to be sent to the Senate," which modification was accepted by Mr. Enloe.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that it was not competent for the mover of a resolution to modify the same during its pendency before the House.

The Speaker[3] overruled the point of order on the ground that it had become the established practice of the House to permit the mover or proposer of a motion or resolution to modify the same at any time before an amendment thereto had been adopted or the previous question ordered thereon.[4]

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-first Congress, Journal, p. 1041; Record, p. 10105.

[3] Thomas B. Reed, of Maine, Speaker.

[4] In Committee of the Whole an amendment may not be withdrawn after it is once offered (see sec. 5221 of this volume), whence it results that the mover has no power to modify it after it is once offered.

Chapter CXVIII.

THE MOTION TO ADJOURN.

1. **Rule as to precedence and debate. Sections 5359–5361.**
2. **Fixing the hour of adjournment. Sections 5362–5364.**
3. **In relation to pending business. Sections 5365–5368.[1]**
4. **May not be made while a Member has the floor in debate. Sections 5369, 5370.**
5. **In order only in the simple form. Sections 5371, 5372.**
6. **Intervening business justifying repetition of motion. Sections 5373–5378.**
7. **Motion to fix the day to which the House shall adjourn. Sections 5379–5388.**

5359. The motion to adjourn is not debatable in the House.

The rules of the House give the motion to adjourn the place of highest privilege when a question is under debate.

Section 4 of Rule XVI[2] provides:

When a question is under debate, no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate.) * * *

5360. While a motion to adjourn takes precedence of other motions, yet it may not be put while the House is voting on another motion or while a Member has the floor in debate.

In the House the motion to adjourn may not be amended, as by specifying to a particular day.

There is no adjournment until the Speaker pronounces it, and no Member should leave his place until the Speaker has passed on.

Jefferson's Manual has the following provisions relating to adjournment:

In Section XXXIII: A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion can not be received after another question is actually put and while the House is engaged in voting.[3]

In Section XX: It might be asked whether a motion for adjournment or for the orders of the day can be made by one Member while another is speaking? It can not.

In Section L: A motion to adjourn, simply, can not be amended, as by adding "to a particular day;" but must be put simply "that this House do now adjourn;" and if carried in the affirmative,

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[1] In relation to conference reports. (Secs. 6451–6453 of this volume.)

Not in order in Committee of the Whole. (Sec. 4716 of Vol. IV.)

Use of the motion in the Senate sitting for an impeachment trial. (Secs. 2071–2074, 2041 of Vol. III.)

[2] For full form and history of this rule see section 5301 of this volume.

[3] The House once had a rule that the motion to adjourn should not be in order as against a pending question, before 4 p. m. The rule was rescinded March 13, 1824. (First session Eighteenth Congress, Journal, pp. 726, 310; Annals, p. 1776.)

it is adjourned to the next sitting day,[1] unless it has come to a previous resolution, "that at its rising it will adjourn to a particular day," and then the House is adjourned to that day. (2 Hats., 82.)

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, etc., it adjourns during pleasure (2 Hats., 305); or for a quarter of an hour.[2] (4 Grey, 331.)

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. (5 Grey, 137.) And from courtesy and respect, no Member leaves his place till the Speaker has passed on.[3]

5361. Neither a motion nor an appeal may intervene between the motion to adjourn and the taking of the vote thereon.—On January 28, 1847,[4] during proceedings incidental to a motion relating to closing of debate on the naval appropriation bill in Committee of the Whole House on the state of the Union, Mr. George Ashmun, of Massachusetts, moved that the House adjourn.

Mr. Edward W. McGaughey, of Indiana, moved that he be excused from voting on this question.[5]

The Speaker[6] decided that the motion of Mr. McGaughey was not in order, as no motion could intervene between a motion to adjourn and the taking of the question thereupon.

From this decision Mr. McGaughey proposed to appeal.

The Speaker, for the same reason above given, refused to entertain the appeal.

The question was then put on the motion of Mr. Ashmun.

5362. When the House has not fixed an hour for daily meeting, the daily motion to adjourn fixes the hour.—In 1841[7] the Congress assembled on May 31, and the House found a quorum present and elected a Speaker on that day. The organization of the House by the election of other officers and the adoption of rules was carried on through several days. The usual order or resolution fixing the hour of daily meeting of the House was not offered on the first day of the session, but the House went on for several days, determining the hour to which the House would stand adjourned in the motion to adjourn. On June 8 the following was agreed to:

Ordered, That the daily order to which the House shall stand adjourned be 12 o'clock meridian, until otherwise ordered.

The House had, on the preceding day, temporarily adopted rules, but the organization of the House had not been completed by the election of all the officers. The committees had been appointed.

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[1] This, of course, presupposed an established body meeting daily at an hour fixed by a standing order previously made, as is the case with the House of Representatives. In a body not meeting under these conditions the motion to adjourn must necessarily be amendable so as to fix the time to which it will adjourn.

[2] The motion to adjourn is never used this way in the House, the motion for a recess being used instead.

[3] The latter clause of this rule is not observed in the modern practice of the House.

[4] Second session Twenty-ninth Congress, Journal, pp. 255, 256; Globe, p. 282.

[5] The rules at this time gave to the motion to excuse a Member from voting a privileged condition. (See Rule 41, Journal, p. 538.)

[6] John W. Davis, of Indiana, Speaker.

[7] First session Twenty-seventh Congress, Journal, p. 62.

5363. On December 5, 1859,[1] before the election of a Speaker, Mr. William Kellogg, of Illinois, moved that when the House adjourn it adjourn to meet at 12 o'clock to-morrow.

Mr. Samuel R. Curtis, of Iowa, made a point of order that the motion was not in order.

The Clerk[2] said:

The Clerk will state to the gentleman from Iowa that there is no time fixed for the adjournment of the House until the standing rules of the House shall have been adopted.

The motion was thereupon put and agreed to.

5364. Before the adoption of rules a motion to adjourn until a given hour is not in order until a previous order fixing the hour of daily meeting has been rescinded.—On January 7, 1856,[3] before the election of a Speaker or the adoption of rules, Mr. Percy Walker, of Alabama, moved that when the House adjourn it should adjourn until Wednesday next, at 11 o'clock and 30 minutes a. m.

Mr. George W. Jones, of Tennessee, made the point of order that the motion was not in order without previously rescinding the order heretofore made, fixing the daily hour of meeting at 12 o'clock m.

And the question being put by the Clerk,[4] "Will the House entertain the motion of the gentleman from Alabama?" it was decided in the negative.

5365. A motion to adjourn is in order when a quorum fails, notwithstanding any terms of an existing special order of the House.—On April 2, 1894,[5] the proceedings relating to the Missouri and California election cases were still incomplete, when, no quorum appearing, Mr. Josiah Patterson, of Tennessee, moved that the House adjourn.

Mr. John F. Lacey, of Iowa, made the point of order that pursuant to the special order 11 of the 28th ultimo, under which the House was proceeding, the motion to adjourn was not now in order.

The Speaker[7] overruled the point of order, holding that when the House finds itself without a quorum a motion to adjourn or for a call of the House is in order.

5366. A motion to adjourn may be made after the yeas and nays are ordered and before the roll call has begun.—On Friday evening, February 19, 1897,[8] the House was proceeding under a call of the House, when Mr. Theodore L. Poole, of New York, moved that further proceedings under the can be dispensed with.

On this motion the yeas and nays were demanded and ordered.

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[1] First session Thirty-sixth Congress, Globe, p. 4.

[2] James C. Allen, Clerk.

[3] First session Thirty-fourth Congress, Journal, p. 266.

[4] John W. Forney, Clerk.

[5] Second session Fifty-third Congress, Journal, p. 299; Record, p. 3403.

[6] This special order provided for the consideration of certain election cases and for the exclusion of dilatory motions.

[7] Charles F. Crisp, of Georgia, Speaker.

[8] Second session Fifty-fourth Congress, Record, p. 2017.

Mr. Alfred Milnes, of Michigan, rising to a parliamentary inquiry, asked if a motion to adjourn was in order.

The Speaker pro tempore [1] replied:

A motion to adjourn is in order.[2]

5367. Under the latest decision the motion to adjourn may not be made after the House has voted to go into Committee of the Whole and the Speaker has announced the result.—On February 17, 1882,[3] Mr. Ezra B. Taylor, of Ohio, moved that the House resolve itself into the Committee of the Whole House for the consideration of the Private Calendar. This motion was agreed to.

Mr. William A. J. Sparks, of Illinois, moved that the House adjourn.

Mr. Julius C. Burrows, of Michigan, made the point of order that after the House had decided to go into Committee of the Whole House it was too late to make a motion to adjourn.

The Speaker [4] overruled the point of order.[5]

The motion to adjourn was decided in the negative, and then the House, in accordance with its previous order, resolved itself into the Committee of the Whole House.

5368. On January 22, 1887,[6] the House, by a yea and nay vote, decided to resolve itself into the Committee of the Whole House on the state of the Union, but after the Speaker had announced the vote, and before he had left the chair, Mr. Ormsby B. Thomas, of Wisconsin, moved to reconsider the vote. This motion to reconsider was laid upon the table, on motion of Mr. Albert S. Willis, of Kentucky, the vote being 161 yeas to 18 nays.

The Speaker having announced this result, Mr. William P. Hepburn, of Iowa, moved that the House adjourn.

Mr. Knute Nelson, of Minnesota, having made a point of order on this motion, the Speaker [7] ruled:

The point of order being made, the Chair can not entertain the motion. The House having resolved to go into Committee of the Whole on the state of the Union, it is the duty of the Speaker, under the rules, to vacate the chair, and the House is no longer in session as a House. The Chair thinks the point of order well taken.

5369. A Member may not make a motion to adjourn while another Member is in possession of the floor.—On December 2, 1890,[8] Mr. William E. Simonds, of Connecticut, had been recognized by the Speaker, when Mr. Albert J. Hopkins, of Illinois, moved that the House adjourn.

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[1] James S. Sherman, of New York, Speaker pro tempore.

[2] For other instances of motion to adjourn after ordering of yeas and nays see first session Fiftieth Congress, Record, p. 5607; first session Fifty-fourth Congress, Record, p. 3697; second session Fifty-fourth Congress, Record, p. 2221.

[3] First session Forty-seventh Congress, Journal, p. 609; Record, p. 1252.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] This ruling was followed in 1885. (Second session Forty-eighth Congress, Journal, p. 210; Record, P. 558.)

[6] Second session Forty-ninth Congress, Record, p. 917; Journal, p. 353.

[7] John G. Carlisle, of Kentucky, Speaker.

[8] Second session Fifty-first Congress, Journal, pp. and 15; Record, p. 35.

The Speaker[1] held the motion out of order on the ground that Mr. Hopkins had not the floor, Mr. Simonds having been recognized and being in possession of the floor.

On November 1, 1893,[2] Mr. William L. Wilson, of West Virginia, took the floor.

Mr. Henry C. Snodgrass, of Tennessee, submitted a motion to adjourn.

The Speaker[3] held that, Mr. Wilson having the floor, he could not be deprived of it by a motion to adjourn.

5370. On September 27, 1893,[4] the House proceeded, pursuant to the special order, to the consideration of the bill (H. R. 2331) to repeal all statutes relating to supervisors of elections and special deputy marshals, and for other purposes.

Mr. Thomas G. Lawson, of Georgia, took the floor and was recognized by the Speaker.

Mr. Elijah A. Morse, of Massachusetts, thereupon claimed the floor for the purpose of submitting a motion to adjourn.

The Speaker[3] held that a Member having the floor for debate could not be interrupted by a motion to adjourn.

5371. The motion to adjourn is in order only in its simple form.—On February 22, 1898,[5] Mr. Joseph G. Cannon, of Illinois, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering general appropriation bills.

Pending this Mr. Joseph W. Bailey, of Texas, moved "that the House, as a mark of respect to the memory of George Washington, do now adjourn."

The Speaker[1] held that such a motion was not in order.[6]

5372. On February 22, 1904,[7] Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if it would be in order to move that at the expiration of a certain time, or at the expiration of a certain contingency, the House adjourn.

The Speaker[8] replied in effect that it would not be in order.

Mr. Williams then moved that in memory of George Washington the House do now adjourn.

The Speaker said:

> That motion is not in order. It is in order to move that the House do now adjourn.

5373. There must be intervening business before a motion to adjourn may be repeated.—On July 6, 1850,[9] Mr. Jacob Thompson, of Mississippi, moved to reconsider the vote last taken and to lay that motion upon the table.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-third Congress, Journal, p. 162.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-third Congress, Journal, p. 117.

[5] Second session Fifty-fifth Congress, Record, p. 2024.

[6] The usual form is for the Member, before moving to adjourn, to announce that he is about to do so "out of respect," etc. Then he makes the simple motion. (Second session Fifty-fifth Congress, Record, pp. 135, 143.)

[7] Second session Fifty-eighth Congress, Record, p. 2208.

[8] Joseph G. Cannon, of Illinois, Speaker.

[9] First session Thirty-first Congress, Journal, p. 1092.

Mr. Charles M. Conrad, of Louisiana, moved to adjourn, which motion was disagreed to.

The question recurring upon the motion of Mr. Jacob Thompson,

Mr. William A. Sackett, of New York, moved that the House adjourn. (Seven minutes had elapsed since the last motion to adjourn.)

The Speaker[1] decided that, inasmuch as there had been Do intervening business since the House had refused to adjourn, the motion was not in order.

An appeal having been taken, the decision of the Chair was sustained.

5374. A motion to adjourn may be repeated after debate, although no question may have been put or decided in the meantime.—On May 22, 1834,[2] Mr. John McKinley, of Alabama, moved that the House do adjourn.

Thereupon an inquiry was made of the Chair whether that motion was in order, as no question had been put or decided since the House had voted on a motion to adjourn.

The Speaker pro tempore[3] decided that the motion was in order, and would be entertained, debate having taken place on a motion to postpone subsequent to the decision of the question on the motion made by Mr. Augustin S. Clayton, of Georgia, to adjourn.

In this decision the House acquiesced.

5375. The reception of a message from the Senate, the making of an announcement by a Member and the submitting of a motion in relation thereto were held to constitute sufficient intervening business to permit a motion to adjourn to be repeated.—On February 22, 1894,[4] a motion to adjourn was decided in the negative.

Then a message from the Senate, by Mr. Platt, one of its secretaries, announced that the Senate had agreed to a certain resolution.

Mr. George W. Hulick, of Ohio, stated that while absent under leave of the House he had received from the Sergeant-at-Arms a telegram announcing that his leave of absence had been revoked, and at the same time requesting him to accept service of a warrant for his arrest for failure to attend the session of the House.

Mr. Richard P. Bland, of Missouri, moved that Mr. Hulick be discharged; on which motion Mr. Bland demanded the previous question.

Pending this Mr. Daniel E. Sickles, of New York, moved that the House adjourn.

Mr. Bland made the point of order that there having been no intervening business since the last preceding motion to adjourn was voted upon, the motion to adjourn was not now in order.

The Speaker pro tempore[5] entertained the motion to adjourn.[6]

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Twenty-third Congress, Journal, p. 651.

[3] Henry Hubbard, of New Hampshire, Speaker pro tempore.

[4] Second session Fifty-third Congress, Journal, p. 191; Record, p. 2369.

[5] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[6] The Record shows that the Speaker pro tempore entertained the motion reluctantly, and with an expression of opinion that it might not be strictly in order.

5376. Ordering the yeas and nays is such intervening business as to justify a repetition of the motion to adjourn.—On April 4, 1888,[1] dilatory proceedings were going on in the House over the bill to refund the direct tax of 1861.

In the course of the proceedings a motion was made that the House do now adjourn.

Mr. Ezra B. Taylor, of Ohio, having made a point of order as to whether or not the motion was in order, the Speaker[2] said:

It is in order. It has been frequently decided, as gentlemen will find by looking at the Digest, that ordering the yeas and nays on a pending proposition is itself sufficient intervening business to justify a repetition of the motion to adjourn.

5377. On April 5, 1852,[3] the House was considering a resolution affirming the Missouri compromise, and a motion to adjourn had been made and decided in the negative. In the course of proceedings immediately following, Mr. Humphrey Marshall, of Kentucky, made the point of order that another motion to adjourn was not in order.

The Speaker[4] gave the following statement and decision:

A motion was made, and a vote taken upon the adjournment; following that, a motion was made to lay the resolution upon the table, and upon that proposition the yeas and nays were ordered. Then followed another motion to adjourn, which is now pending. The Chair has no doubt that the motion to adjourn is in order, for the reason that the House had taken such action as renders it perfectly in order for the House to adjourn; otherwise the House would never adjourn until some distinct vote was taken upon some measure before it. The Chair has no doubt of the correctness of the decision.

No appeal was taken.[5]

5378. A decision of the Chair on a question of order is such intervening business as permits the repetition of a motion to adjourn.—On

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[1] First session Fiftieth Congress, Record, pp. 2713, 2714.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Thirty-second Congress, Globe, p. 982.

[4] Linn Boyd, of Kentucky, Speaker.

[5] This ruling reversed an earlier ruling. On June 10, 1842 (second session Twenty-seventh Congress, Journal, p. 945; Globe, p. 617), the House was considering a resolution to close debate in Committee of the Whole on the tariff bill, when a motion was made that the House do adjourn.

Mr. Nathan Clifford, of Maine, moved that the motion lie on the table, and on Mr. Clifford's motion the yeas and nays were ordered.

The previous question was moved by Mr. Thomas D. Arnold, of Tennessee.

A call of the House was moved by Mr. Lewis Steenrod, of Tennessee, and the yeas and nays were moved on the question, "Shall there be a call?"

A motion was made by Mr. Hopkins L. Turney, of Tennessee, that the House do adjourn.

The Speaker (John White, of Kentucky, Speaker) decided that, as no vote had been taken, and no distinct action of the House had taken place since the question had been taken on a motion to adjourn, the present motion to adjourn was not in order.

From this decision Mr. Turney appealed, on the ground that, by the rule, a motion to adjourn was always in order; and, further, that the order for the yeas and nays on several propositions, made since the motion to adjourn had been decided, was such action on the part of the House as to make the present motion to adjourn in order.

The appeal was laid on the table, yeas 102, nays 72.

April 12, 1894,[1] the House being engaged in proceedings under a call of the House, Mr. Thomas B. Reed, of Maine, moved that the House adjourn.

Mr. William M. Springer, of Illinois, made the point that there being no intervening business since the preceding motion had been rejected, the motion to adjourn was, therefore, not now in order.

The Speaker pro tempore[2] overruled the point, holding that the decision of the Chair on questions of order constituted intervening business.

5379. Under the custom of the House, which differs somewhat from the general parliamentary law, the motion to fix the day to which the House shall adjourn is not debatable.

An opinion that the rule relating to motions in order when a question is under debate does not apply to a condition when there is no question under debate.

As to the extent of debate under the general parliamentary law on a motion to fix the day to which the House shall adjourn.

On April 17, 1897,[3] Mr. Nelson Dingley, of Maine, moved that when the House adjourn it adjourn to meet on Wednesday next.

Debate having arisen, and the Speaker having stated that the motion was not debatable, Mr. Jerry Simpson, of Kansas, made the point of order that the motion was debatable, quoting section 4 of Rule XVI.

The Speaker having overruled the point of order, Mr. Simpson appealed.

In stating the appeal, the Speaker[4] said:

The Chair desires to say that the clause in the rules to which the gentleman from Kansas alludes speaks of motions that are in order when a question is under discussion. No question is now under discussion; consequently that rule, according to the rulings of Speaker Randall,[5] is not applicable. The motion to fix the day to which the House shall adjourn may be made when a question is under discussion, or it may be made when there is no question under discussion. It is now made when there is no question under discussion. The question is, What has been the custom of the House? For many years in regard to such a motion the custom has been to regard it as not debatable, and no question as to the correctness of the practice has ever even been raised. It has been repeatedly declared that the motion was not debatable. That custom was borne in mind when the rules were changed, and they were changed with reference to it.

While the general rule of parliamentary law makes this a debatable question, it is debatable solely with reference to itself or what is involved in it; it does not permit irrelevant discussion. While that is the status of the motion under parliamentary law, the House of Representatives has adopted a different custom. The custom of the House is very different in many respects from what is ordinarily called parliamentary law. The Chair made this statement at the time the question was raised by the gentleman from Texas, but the gentleman from Kansas may not have had an opportunity to hear what was said.

The appeal was laid on the table.

5380. On April 10, 1897,[6] after the reading and approval of the Journal,

Mr. Nelson Dingley, of Maine, moved that when the House adjourn it adjourn to meet on Wednesday next.

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[1] Second session Fifty-third Congress, Journal, pp. 330, 331; Record, p. 3715.

[2] Benton McMillin, of Tennessee, Speaker pro tempore.

[3] First session Fifty-fifth Congress, Record, p. 743.

[4] Thomas B. Reed, of Maine, Speaker.

[5] See section 5419 of this volume.

[6] First session Fifty-fifth Congress, Record, p. 672.

Debate having begun and objection having been made that the motion was not debatable, Mr. Joseph W. Bailey, of Texas, submitted a question of order as to whether or not the motion was debatable.

The Speaker[1] said:

As a rule of general parliamentary law, the Chair thinks the motion is debatable. But the question presents itself to the mind of the Chair in this way: Originally this motion was included in the list of motions which, when a question was under discussion, should be decided without debate, leaving to the House its own method of dealing with the question when no subject was under discussion. But it has been the universal practice of the House to treat the motion as not debatable, even when it did not come within that rule. Hence the Chair would be inclined to hold, under the custom of the House, that it is not debatable, even when not included in the terms of the rule. * * * The Chair has been thinking somewhat about this question. The motion was originally left out of the list, because it was one of the motions that were used to delay public business, and the motive in leaving it out was to lessen the opportunities for such delay. But the House has come to other conclusions upon that subject; and very likely it would be wiser to have this matter explicitly determined by the rules, because it might be a question whether under our present system the motion is admissible when a subject is under discussion. Perhaps when the rules are gone over the House may think it wise to reestablish the former rule of proceeding, the objection to it having perished by common consent of all parties.

5381. No question being under debate, a motion to fix the day to which the House should adjourn already made was held not to give way to a motion to adjourn.—On February 10, 1898,[2] the House having just laid aside the bill (H. R. 7559) to make Rockland, Me., a subport of entry, Mr. Nelson Dingley, of Maine, moved that when the House adjourn it be to meet on Monday next.

Thereupon Mr. James D. Richardson, of Tennessee, moved that the House do now adjourn, and claimed that this motion took precedence of the motion of the gentleman from Maine, making the point that the motion to fix the day to which the House should adjourn was not privileged.

The Speaker[1] overruled the point of order, and entertained the motion made by Mr. Dingley.[3]

5382. The motion to fix the day to which the House shall adjourn may not be amended by substituting the day on which it would meet after agreeing to a simple motion to adjourn.—On November 1, 1893,[4] Mr. William J. Bryan, of Nebraska, moved that when the House adjourn to-day it be to meet on Friday next.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fifth Congress, Record, p. 1637.

[3] Section 4 of Rule XVI (see sec. 5301 of this work) provides, that "when a question is under debate" the motion to adjourn shall have the highest privilege. In this case no question was under debate. Formerly both the motions to adjourn and to fix the day were given high privilege by section 5 of Rule XVI, but this was eliminated in the revision of 1890. Under general parliamentary law the motion to fix the day "is in order against any pending motion, including the motion to adjourn itself. It does not, however, have privilege over the motion for a recess already pending. But if the assembly has already fixed the time for the regular meeting after adjournment, the motion to fix the time to which the assembly shall adjourn has no privilege or priority over pending motions." (Reed's Parliamentary Rules, sec. 171.)

[4] First session Fifty-third Congress, Journal, p. 162.

Mr. Henry C. Snodgrass, of Tennessee, moved to amend the latter motion by striking out Friday and substituting Thursday (to-morrow).

The Speaker[1] held that the amendment was not in order, inasmuch as the day named therein was the day to which the House would regularly adjourn on a simple motion to adjourn.

5383. When privileged, the motion to fix the day to which the House shall adjourn may be repeated after intervening business.

The motion to fix the day to which the House shall adjourn may be amended.

On February 21, 1893,[2] Mr. William C. Oates, of Alabama, moved that when the House adjourn to-day it be to meet on Friday next.

Mr. James D. Richardson, of Tennessee, moved to amend the motion of Mr. Oates by substituting Thursday for Friday.

Mr. Sereno E. Payne, of New York, made the point of order that the motion of Mr. Richardson was not in order, inasmuch as a motion that when the House adjourn to-day it be to meet on Friday next had heretofore to-day been disagreed to by the House, and that until that vote was reconsidered it was not in order to repeat or renew such motion.

The Speaker[1] overruled the point of order, holding that under clause 5 of Rule XVI,[3] and under the usage and practice of the House, said motion was in order at any time, and might be repeated on the same day after intervening business.

5384. On January 22, 1858,[4] Mr. John Hickman, of Pennsylvania, moved that when the House adjourn it adjourn to Monday next.

Mr. Benjamin Stanton, of Ohio, raised the question of order that, the same motion having been once made and voted down during the day, it was not in order to repeat it.

The Speaker[5] said:

> The Chair will report the rule:
>
> "A motion to adjourn, and a motion to fix the day to which the House shall adjourn, shall be always in order. These motions, and the motion to lie on the table, shall be decided without debate."
>
> The decision of the Chair is in conformity with the practice of the House certainly for the last ten years, with a single exception during that time, when the Speaker decided that it was in order to repeat the motion, and the House overruled the decision. That has been the uniform practice.

So Mr. Hickman's motion was held to be in order.

Mr. Stanton having appealed, the appeal was laid on the table.

Again, on February 9, during dilatory proceedings pending action on the message of the President relating to the Lecompton constitution of Kansas, the Speaker affirmed this ruling.[6]

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 104; Record, p. 1960.

[3] This rule has been so modified that the motion now is not privileged. (See sec. 5301 of this work.)

[4] First session Thirty-fifth Congress, Journal, pp. 232, 309 340; Globe, pp. 372, 598.

[5] James L. Orr, of South Carolina, Speaker.

[6] The motion to fix the day is not now among the privileged motions enumerated in the rule. Also, in earlier years the motion does not seem to have had privilege. On Friday, December 23, 1836, Mr. Abijah Mann, jr., of New York, moved that the rules might be suspended in order that he might make

5385. A motion to adjourn is not of itself such intervening business as to allow the repetition of a motion to fix the day to which the House shall adjourn.—On February 2,1885,[1] Mr. Samuel W. Moulton, of Illinois, moved that when the House adjourns to-day it be to meet on Wednesday next.

Mr. Patrick A. Collins, of Massachusetts, made the point of order that the motion was not in order, for the reason that it had just been voted on and rejected.

The Speaker pro tempore[2] sustained the point of order, on the ground that the motion to adjourn over was not in order to be repeated unless other business had intervened, and held that the motion to adjourn was not intervening business.[3]

Mr. Nathaniel J. Hammond, of Georgia, moved that when the House adjourns to-day it be to meet on Thursday next; which motion was disagreed to.

5386. On April 4, 1888,[4] the House had disagreed to the motion of Mr. William C. Oates, of Alabama, that when the House adjourn it be to meet on Monday next, and then had disagreed by a yea and nay vote to a motion made by Mr. Clifton R. Breckinridge, of Arkansas, that the House adjourn.

Thereupon Mr. J. B. Weaver, of Iowa, moved that when the House adjourned that day it be to meet on Monday next.

Mr. W. P. Taulbee, of Kentucky, made a point of order that the motion was not in order.

The Speaker[5] held that the motion was not in order upon the ground that the last vote preceding the one just taken was on a motion to adjourn over until Friday, and it had been decided, and had been the constant practice of the House since that decision, that although the motion to adjourn over might be repeated, some business should intervene before the motion could again be in order. And it had been held that a motion to adjourn was not such intervening business as would make a repetition of the motion to adjourn over in order.

5387. Under the former rule which made the motion to fix the day to which the House should adjourn "always in order" it was admitted during a division, i. e., before the result of a vote had been announced.—On January 31, 1840,[6] the House proceeded, viva voce, to the choice of the committee ordered on the preceding day on the subject of the printing of the House; and after the votes were given in, but before they were counted, or the result ascertained, or reported,

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a motion that when the House should adjourn it should adjourn to meet on Monday next. This motion was agreed to, the rules were suspended, the motion was made and agreed to by the House. (Second session Twenty-fourth Congress, Journal, p. 113.)

The House on December 14, 1857 (first session Thirty-fifth Congress, Journal, p. 65; Globe, pp. 31, 32)—

Resolved, That when this House adjourns to-morrow it will adjourn to meet in the new Hall of Representatives, in the south wing of the Capitol, on Wednesday, at noon.

[1] Second session Forty-eighth Congress, Journal, p. 428; Record, pp. 1176, 1177.

[2] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

[3] The motion to fix the day is not privileged now, as it was when this decision was made. (See sec. 5301 of this work.)

[4] First session Fiftieth Congress, Journal, p. 1461; Record, p. 2709.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] First session Twenty-sixth Congress, Journal, p. 266; Globe, p. 158.

A motion was made that when the House shall adjourn to-day it adjourn until Monday next;

Then Mr. David Petrikin, of Pennsylvania, raised the following question of order:

It is not in order for the Speaker to entertain any motion during the division of the House, or before the result is publicly announced by the Speaker.

The Speaker pro tempore [1] decided that, under the forty-second rule [forty-third rule],[2] as amended at the present session, and which provides that a motion to fix the day to which the House shall adjourn shall be always in order, the motion was in order.

On an appeal this decision was sustained.

5388. A motion fixing the hour as well as the day to which the House shall adjourn was held not privileged when the simple motion to fix the day was privileged.—On May 27, 1876,[3] Mr. Clinton D. MacDougall, of New York, moved that when the House adjourn, it adjourn to meet on Wednesday next at 11 a. m.

Mr. Samuel S. Cox, of New York, made the point of order that the House could not adjourn to meet at 11 o'clock without a suspension of the rules, which motion was not in order.

The Speaker pro tempore [4] sustained the point of order.[5]

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[1] Levi Lincoln, of Massachusetts, Speaker pro tempore.

[2] This motion is no longer privileged.

[3] First session Forty-fourth Congress, Journal, p. 1026, Record, p. 3364.

[4] William M. Springer, of Illinois, Speaker pro tempore.

[5] The motion to fix the day was then privileged. The House also had fixed the hour of meeting by standing order. When there is no standing order of this nature, the condition is obviously different.

Chapter CXIX.

THE MOTION TO LAY ON THE TABLE.

1. **Under parliamentary law and in the House. Sections 5389, 5390.**[1]
2. **In order before Member presenting a proposition is recognized for debate. Sections 5391–5396.**
3. **Applies to a privileged matter. Section 5397.**
4. **Repetition of the motion. Sections 5398–5402.**
5. **As applied to other motions. Sections 5403–5414.**[2]
6. **Not in order after previous question is ordered. Sections 5415–5422.**
7. **As to effect of when decided affirmatively. Sections 5423–5437.**[3]
8. **The motion to take from the table. Sections 5438, 5439.**[4]
9. **General decisions. Sections 5440–5442.**[5]

5389. Under the general parliamentary law the motion to lay on the table is used merely to put aside a matter which may be called for at any time.

Explanation of the usage by which the motion to lay on the table, as used in the House, has become the means of a final adverse disposition of a matter.

Jefferson's Manual, in Section XXXIII, provides:

> When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

Without any express rule, but by long practice, the House has given to the motion a use entirely different from this. It is now the motion by which the House puts away finally, without debate, a bill, a motion, an appeal, or other matter. A

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[1] See section 2804 of Volume IV.

As used in select or standing committees. (Sec. 1737 of Vol. III.)

Not in order in Committee of the Whole. (Sec. 4719 of Vol. IV.)

Not admitted as to conference reports. (Secs. 6538–6544 of this volume.)

[2] Relation to the motion to reconsider. Secs. 5628–5640 of this volume.)

[3] Effect of in relation to resolutions in election cases. (Sec. 461, 467, 618 of Vol. I.)

A proposition to impeach, after being laid on the table, may be presented again. (Sec. 2049 of Vol. III.)

A vetoed bill, although laid on the table, may be taken up. (Sec. 3550 of Vol. IV.)

[4] Motion to take from the table admitted only by suspension of rules. (Sec. 6288 of this volume.)

[5] Use of motion in Senate sitting for an impeachment trial. (Sec. 2103 of Vol. III.)

Affirmative vote to lay on the table may be reconsidered. (Sec. 6288 of this volume.)

Division of question not in order on motion to. (Secs. 6138–6140 of this volume.)

bill once laid on the table by vote of the House is practically passed on adversely. This exceptional practice of the House of Representatives has undoubtedly arisen from the fact that the rules governing the order of business give a privileged status to the motion to lay on the table, but not to the motion to take from the table. Hence if a motion to take from the table be made, a single Member, by objecting that the business should proceed in regular order, prevents the entertaining of the motion. And against such objection the motion might be entertained only on suspension of the rules by a two-thirds vote or on authorization reported by the Committee on Rules and concurred in by the House.

In 1806 [1] and 1809 [2] the old parliamentary law on this point was still in effect in the House, as is shown by the taking up of bills that had previously been laid on the table.[3] In 1841 [4] the present practice had become established, as is shown by the fact that Mr. Speaker White, in response to a parliamentary inquiry by Mr. Millard Fillmore, of New York, stated that if a pending report should be laid on the table it could be taken up again only on a suspension of the rules by a two-thirds vote.[5]

By June 13, 1834 [6] the motion to lay on the table was used to dispose adversely of a resolution coming from the Senate relating to deposits in the United States Bank.

5390. The motion to lay on the table is admitted under general parliamentary law.—On December 6, 1859,[7] before the election of Speaker or the adoption of rules, Clerk James C. Allen gave the opinion that, under the general parliamentary law, a motion to lay on the table did not preclude debate.[8]

5391. Under the latest rulings a motion to lay a proposition on the table is in order before the Member entitled to prior recognition for debate has begun his remarks.—On July 13, 1892,[9] Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, reported a resolution providing for the immediate consideration of the bill (H. R. 51) to provide for the free coinage of gold and silver bullion, and for other purposes.

The resolution having been read, Mr. Catchings addressed the Speaker.

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[1] First session Ninth Congress, Journal, pp. 407, 410; Annals, pp. 1079, 1082.

[2] Second session Tenth Congress, Journal, pp. 502, 504.

[3] As late as the Forty-fifth Congress a rule—Rule 144—provided that a certain class of measures should be laid on the table before final action was taken. On September 23, 1789, a conference report was ordered to lie on the table, and the next day was taken from the table and acted on (first session First Congress, Journal, pp. 151–153); again May 14, 1790, and May 17 (second session First Congress, Journal, pp. 108, 109); again June 14, 1798 (second session Fifth Congress, Journal, p. 564). and January 26, 1808 (second session Tenth Congress, Journal, pp. 324, 325).

[4] Second session Twenty-seventh Congress, Globe, p. 11.

[5] The "table" referred to in the motion to lay on the table is the Clerk's table, and is to be distinguished from the Speaker's table, to which messages from the President and Senate go, to be laid before the House or referred directly to committees under the rules.

[6] First session Twenty-third Congress, Journal, p. 749.

[7] First session Thirty-sixth Congress, Globe, p. 21.

[8] Under general parliamentary law at the present time the motion to lay on the table is not debatable. (See sec. 117 of Reed's Parliamentary Rules.)

[9] First session Fifty-second Congress, Journal, p. 290; Record, pp. 6126, 6127.

Mr. Thomas B. Reed, of Maine, claimed the floor for the purpose of making a motion that the resolution lie on the table, and made the point that he was entitled to recognition to make that motion before Mr. Catchings could be recognized for debate.

The Speaker,[1] overruling the point of order, held that Mr. Catchings, having presented the report from the Committee on Rules, was entitled to the floor under the practice of the House, and that neither a motion to lay on the table nor a motion to adjourn or to take a recess, all of which are highly privileged motions, can take off the floor a gentleman who has the floor.

The Speaker further held:

Under our rules and practice gentlemen who are recognized to move a proposition are entitled to one hour to present that proposition to the House. Under the rules of the House, as suggested by the gentleman from Maine, Mr. Reed, the previous question would cut off debate; but the present occupant of the chair has never heard it suggested that gentlemen in opposition to any proposition had the right to demand the previous question until they were entitled to the floor. For instance, the gentleman from Mississippi, Mr. Catchings, calls up this resolution. If the rule invoked by the gentleman from Maine, Mr. Reed, were correct, the gentleman from Maine would have the right to rise before the gentleman from Mississippi made any remarks, to take him off the floor and demand the previous question.

The Chair submits that the gentleman from Maine can not produce any authority to sustain that position. The motion to lay on the table is a motion that is not debatable, and that motion, like the motion for the previous question, can be made, where it is allowable under the rules to make it at all, whenever the gentlemen get the floor in their own right, or when it is yielded to them for the purpose of allowing the motion; and the Chair believes and has always thought that the motion to lay upon the table could only be made where it was allowable under the rules, like the demand for the previous question, when a gentleman had the floor to make it, and that he could not take the gentleman in charge of the proposition off the floor for that purpose.

The rules provide, for instance, that it shall always be in order to move to adjourn, to move to take a recess, to move to fix a day to which the House shall adjourn. Yet it has never been contended that a gentleman entitled to the floor in his own right could be taken off the floor by a motion of that sort. The motion can be made when a gentleman gets the floor for that purpose, or when the floor is yielded under the rules and some other gentleman is recognized. Therefore the Chair thinks the gentleman from Mississippi, Mr. Catchings, can not be taken off the floor by this motion of the gentleman from Maine, and the Chair recognizes the gentleman from Mississippi.

5392. On April 17, 1897,[2] Mr. Nelson Dingley, of Maine, had moved that when the House adjourn it be to meet on Wednesday next.

Mr. Jerry Simpson, of Kansas, having made a point of order that this motion was debatable, and the same having been overruled, Mr. Simpson appealed.

Mr. Dingley moved to lay the appeal on the table.

Mr. William H. Fleming, of Georgia, made the point of order that the gentleman from Maine did not have the floor to make the motion, since the gentleman from Kansas had not yielded it.

The Speaker[3] overruled the point of order, saying that the motion to lay on the table was a privileged motion.

5393. On April 23, 1897,[4] Mr. Richard P. Bland, of Missouri, appealed from a decision of the Chair, and announced his purpose to debate the appeal.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-fifth Congress, Record, p. 744.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fifth Congress, Record, pp. 823, 824; Journal, p. 73.

Mr. Dingley, being recognized, moved to lay the appeal on the table.

Mr. James D. Richardson, of Tennessee, made the point of order that the gentleman from Missouri, Mr. Bland, who had taken the appeal, was entitled to the floor to debate it, and could not be prevented by the motion to lay the appeal on the table.

The Speaker,[1] in overruling the point of order, said:

The appeal is debatable unless the House decides otherwise. * * * The gentleman from Missouri was only on the floor to submit his appeal. Whether he should be recognized afterwards as having the floor to address the House involves a different recognition. * * * A privileged motion could come in between the two recognitions. * * * The House may, if it chooses, vote down the motion to lay the appeal on the table. If the House does not wish to hear debate, it need not hear it. * * * The House is not at the mercy of the individual Member, or any Member whatever. The vote of the House must decide the question. * * * If the House desires to hear the gentleman, it will vote down the proposition to lay the appeal on the table. If it does not desire to hear him, * * * it will vote the other way.[2]

The question being taken on Mr. Dingley's motion there were ayes 86, nays 75, present 23; so the appeal was laid on the table.

5394. On May 23, 1900,[3] the House was considering the bill (H. R. 11719) amending section 5270 of the Revised Statutes of the United States, when Mr. D. A. De Armond, of Missouri, who had the floor for debate, proposed an amendment. It having been held that the amendment was not in order under the conditions of the debate then proceeding, Mr. De Armond appealed from this decision.

Mr. Sereno E. Payne, of New York, moved that the appeal lie on the table.

Mr. De Armond objected that he had the floor and it was urged by other Members that he was entitled to the floor to debate the appeal.

The Speaker pro tempore[4] held that the motion to lay the appeal on the table was then in order, and the motion was agreed to, yeas 129, nays 101.

5395. On February 27, 1903,[5] Mr. William H. Fleming, of Georgia, offered as a question of privilege the following:

Whereas it appears from the Congressional Record of February 26, 1903, that by actual count and announcement by the Speaker pro tempore a quorum of the House was not present when the resolutions were voted upon declaring that James J. Butler was not elected, and that George C. R. Wagoner was duly elected, a Representative in the Fifty-seventh Congress from the Twelfth Missouri district, and that the point of no quorum was duly raised upon the vote on each of said resolutions, and that the same in each instance was overruled by the Speaker pro tempore in violation of the Constitution, the rules of the House, and the practice of all parliamentary bodies:

Resolved, That the announcement by the Speaker pro tempore that said resolutions were adopted was in fact untrue, and that said James J. Butler is still entitled to his seat in this House, and that the said George C. R. Wagoner is not now entitled to the same.

Mr. Sereno E. Payne, of New York, moved to lay the resolution on the table.

Mr. Fleming claimed that he had the floor, and had not yielded.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] For similar ruling see first session Forty-seventh Congress, Record, p. 13.

[3] First session Fifty-sixth Congress, Record, p. 5919.

[4] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[5] Second session Fifty-seventh Congress, Record, p. 2759.

The Speaker[1] entertained the motion to lay on the table, saying:

This motion is clearly one that a Member of the House has a right to make, and it intervenes as a preferential motion.

5396. A committee report that a resolution lie on the table does not preclude debate until the Member in charge of the report makes the motion.—On January 27, 1904,[2] the House was considering a resolution of inquiry relating to expenditures for experiments with flying machines, which had been reported by Mr. James A. Hemenway, of Indiana, from the Committee on Appropriations, with a report recommending that it be laid on the table.

Debate having proceeded, Mr. James A. Tawney, of Minnesota, made the point of order that the motion to lay on the table was not debatable.

The Speaker[3] said:

That motion has not yet been entered. The resolution is reported back, and it would require a motion to be entered before a point of order would lie. * * * The report was read within the time of the gentleman from Indiana [Mr. Hemenway], no doubt, for the information of the House; but the reading of the report does not make the motion to lie upon the table. Now, the gentleman from Indiana [Mr. Hemenway] is recognized for an hour and has already addressed the House, and from his time yields to the gentleman from Nebraska [Mr. Hitchcock] five minutes. When the gentleman from Indiana or anybody else having the floor, with the right to make a motion to lie upon the table, makes that motion, then that motion is not debatable.

5397. Although a proposition may be privileged for consideration under the rules, yet a motion to lay it on the table is in order, such action being one form of consideration.—On June 6, 1902,[4] Mr. John A. T. Hull, of Iowa, from the Committee on Military Affairs, reported a resolution of inquiry relating to the compensation of the military governor of Cuba with the recommendation that it lie on the table.

Mr. Charles L. Bartlett, of Georgia, claiming that the proposition was debatable, said:

I raise the point of order and ask the Chair to decide whether or not, this being a privileged resolution and being under the rules a privileged resolution for consideration, a report recommending that the resolution lie on the table or a motion made by the chairman of the committee is one that must be considered by the House?

Mr. James D. Richardson, of Tennessee, raised the further question of order that the motion to lie on the table, being a privileged motion, might not be applied to another privileged motion.

The Speaker[1] said:

The gentleman from Tennessee must bear in mind that the matter reported by the committee is not a motion, but is a resolution. As the Chair was about to state, the question here presented is a very simple one and has been repeatedly decided. The rules give a committee one week within which to report back a resolution of this character—a resolution of inquiry addressed to the head of a Department. If, as in this case, a resolution of this character, referred to a committee, is not reported back within a week, the rule and the decisions contemplate that any Member of the House may protect

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-eighth Congress, Record, pp. 1259, 1260.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Fifty-seventh Congress, Journal, p. 780; Record, pp. 6389, 6390.

the interests of the House by calling up the resolution for consideration. That becomes a privilege of the House. But there is no decision that divests the committee or the Member representing the committee of the right, the privilege—the Chair might say the duty—of reporting the resolution when it can be done.

Now, while the matter does not bear at all upon the parliamentary situation, it is proper to say that the chairman of the Committee on Military Affairs was ready to report this resolution within the week. But the Chair was very anxious to keep the right of way for the Judiciary Committee, and, at the request of the Chair, the gentleman from Iowa [Mr. Hull], the chairman of the Committee on Military Affairs, postponed calling up the resolution. And it was again postponed yesterday morning on the joint consent of both the gentleman from Georgia [Mr. Bartlett] and the chairman of the Committee on Military Affairs. The only change that has been made in the rights of the Member representing the Committee on Military Affairs is that the House itself has the same privilege that he has—the privilege of bringing up the resolution if it is not reported.

Now, the gentleman from Iowa has brought in this resolution and moved to lay it on the table. Nothing has transpired that changes his right to make that motion; and there is nothing better settled in parliamentary law than that a motion to lay on the table is not debatable. The Chair also has no doubt that, under the usages of the House, the laying of the resolution on the table, like the postponing of it, is a consideration of the matter by the House. The Chair is therefore constrained to overrule the point of order and to hold that the motion made by the chairman of the Committee on Military Affairs is in order; and the question before the House is on that motion.

5398. The motion to lay on the table may be repeated after intervening business.—On April 16, 1852,[1] the House was considering a report from the Committee on Printing, and decided in the negative a motion to lay the report on the table.

The Speaker then stated the question to be on the pending amendment.

Mr. James L. Orr, of South Carolina, moved the previous question, pending which a motion to go into Committee of the Whole was made and disagreed to; the previous question was ordered, a motion to reconsider was made, and that motion was laid on the table; the Member reporting the matter under consideration claimed the floor to close the debate, and after a point of order had been decided was allowed to close. Then Mr. William H. Polk, of Tennessee, moved that the whole subject be laid on the table.

Mr. Volney E. Howard, of Texas, made the point of order that, inasmuch as the character of the question was unchanged since a similar motion was made and decided, it was not in order at this time to submit the motion.

The Speaker[2] stated that since the former motion to lay on the table there had not only been intervening motions, but farther debate. He therefore overruled the point of order.

Mr. Howard having appealed, the decision of the Chair was sustained.

5399. On April 5, 1852,[3] the House was considering a resolution affirming the Missouri compromise of the previous Congress, and a motion to lay the resolution and pending amendment on the table had been decided in the negative.

The question then recurred on a demand for the previous question made before the motion to lay on the table had been made, and the main question was ordered.

[1] First session Thirty-second Congress, Journal, p. 597; Globe, p. 1112.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Thirty-second Congress, Journal, p. 550; Globe, p. 980.

Mr. Thomas H. Averitt, of Virginia, moved that the bill and pending amendment be laid on the table.[1]

Mr. William H. Polk, of Tennessee, made the point of order that it was not in order to renew the motion to lay on the table at this stage.

The Speaker[2] said:

The Chair decides that it is in order for the gentleman from Virginia to make his motion, other action having intervened since the question was taken upon the previous motion to lie upon the table. That motion is a privileged question and in very many respects similar to the motion to adjourn.

5400. On May 15, 1854,[3] the House had decided in the negative a motion of Mr. Russell Sage, of New York, to lay on the table the pending resolution providing for closing debate in Committee of the Whole House on the state of the Union on the bill (H. R. 236) to organize the Territories of Kansas and Nebraska.

The question then recurred on ordering the previous question, which had been moved before Mr. Sage submitted his motion.

Mr. Sage moved that the House adjourn.

Pending this motion, Mr. E. Wilder Farley, of Maine, moved that when the House adjourn it adjourn to meet on Wednesday next. The question being put on this motion, it was decided in the negative by a yea and nay vote.

The question then recurred on Mr. Sage's motion to adjourn, and it was decided in the negative on a yea and nay vote.

The question then recurred on the motion for the previous question, which was seconded,[4] and the question then recurred on ordering the main question.

Mr. John Z. Goodrich, of Massachusetts, moved that the House adjourn.

Pending that motion, Mr. Elihu B. Washburne, of Illinois, moved that when the House adjourn it be to meet on Wednesday next. This motion was decided in the negative on a yea and nay vote.

Mr. Goodrich's motion to adjourn was then decided in the negative by a yea and nay vote.

The question was then put on ordering the main question, and it was ordered by a yea and nay vote.

The question then recurred on agreeing to the resolution, when Mr. Israel Washburn, jr., of Maine, moved that the resolution be laid on the table.

The Speaker[2] decided the motion to be out of order, a similar motion having already been voted on, and no action having since been had on the resolution except to order the previous question thereon.

Mr. Washburn having appealed, the decision of the Chair was sustained.

5401. The motion to lay a bill on the table having been decided in the negative, it was not admitted again on the same day after a call of the House, no actual proceedings on the bill having intervened.—On June 1,

[1] Under present practice the motion to lay on the table is not admitted after the previous question is ordered. (See secs. 5415–5422 of this chapter.)

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Thirty-third Congress, Journal, pp. 854–861; Globe, p. 1191.

[4] The previous question no longer requires a second.

1842,[1] the House was considering the amendment of the Senate to the bill (No. 112) entitled "An act to revive and extend the charters of certain banks in the District of Columbia."

A motion was made by Mr. Cuthbert Powell, of Virginia, to amend the amendment, and the previous question was moved by Mr. Powell.

A motion was then made by Mr. John B. Weller, of Ohio, that the bill do lie on the table.[2] This was decided in the negative—87 yeas to 91 nays.

Mr. Samuel S. Browne, of New York, moved a call of the House, and the motion was negatived—101 nays to 72 yeas.

A motion was then made by Mr. Browne that the bill lie on the table.

The Speaker[3] stated that, a motion having been already made that the bill do lie on the table, and decided in the negative, and no change or alteration having been made in the bill, and no proceeding directly touching its merits having taken place since that vote was taken, the present motion to lay on the table was not in order.

The Chair was sustained—122 yeas to 22 nays; Mr. Browne having appealed.

5402. The House having declined to lay a matter on the table, a question of order, an appeal, and a yea-and-nay vote thereon intervened, but this was held not sufficient to justify a repetition of the motion to lay on the table.—On March 23, 1880,[4] the House declined to lay on the table a motion to reconsider the vote whereby it had voted to lay on the table a motion to amend the Journal.

The Member who made the motion to reconsider proposed thereupon to withdraw it, but a question of order arising, it was decided that the motion might not be withdrawn. An appeal was then taken, and by a yea and nay vote the decision of the Chair was sustained.

Thereupon Mr. Richard W. Townsend, of Illinois, moved to lay the motion to reconsider on the table, claiming that there had been sufficient intervening business since the House had decided in the negative the former motion to lay on the table.

The Speaker[5] held that the appeal was not such intervening business as would justify the repetition of the motion to lay on the table.

5403. The motion to lay on the table may not be applied to a motion relating to the order of business.

Instance wherein the Speaker submitted to the House the decision of a question of order.

On June 4, 1878,[6] pending a motion that the House resolve itself into Committee of the Whole House on the state of the Union, Mr. James A. Garfield, of Ohio, moved that when that committee should next resume consideration of the pending tariff bill debate thereon should be limited to four hours.

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[1] Second session Twenty-seventh Congress, Journal, p. 890; Globe, p. 564.

[2] Under the former practice the motion to lay on the table might be made after the previous question had been ordered, but such is not the practice now.

[3] John White, of Kentucky, Speaker.

[4] Second session Forty-sixth Congress, Record, p. 1810.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] First session Forty-fifth Congress, Journal, p. 1221; Record, pp. 4094–4098.

Mr. Omar D. Conger, of Michigan, moved an amendment making the time two hours, and this amendment was agreed to by the House.

The question recurring on the motion of Mr. Garfield, as amended, Mr. Charles E. Hooker, of Mississippi, moved to lay the motion on the table.

Mr. Eugene Hale, of Maine, made the point of order that a motion relating to and fixing the order of business can not be laid on the table, and that the said motion of Mr. Hooker was not in order.

After debate on the point of order, the Speaker [1] said:

> The Chair can not help viewing this proposition as one in regard to the order in which the business of the House shall be done. Viewing the proposition in that light, the Chair is unwilling to decide the motion to be admissible, and he will submit the question to the House. Shall the proposition of the gentleman from Mississippi be received to be voted on by the House?

The House refused to receive the motion.

5404. On January 18, 1901,[2] a Friday, Mr. Charles H. Grosvenor, of Ohio, moved that the House resolve itself into Committee of the Whole House for the further consideration of the Private Calendar.

Mr. Allen L. McDermott, of New Jersey, moved to lay that motion on the table.

The Speaker [3] held that the motion to lay on the table was not in order.

5405. Under the later practice the motion to lay on the table may not be applied to a motion to suspend the rules.

The motion to suspend the rules was not debatable before the rule was made to allow the forty minutes of debate.

The motion to amend may not be applied to a motion to suspend the rules.

On February 9, 1846,[4] the Committee of the Whole House on the state of the Union were in session, considering the joint resolution No. 5 of notice to Great Britain to "annul and abrogate" the convention between Great Britain and the United States of the 6th of August, 1827, relative to the country "on the northwest coast of America, westward of the Stony Mountains," commonly called Oregon. Mr. John Quincy Adams, of Massachusetts, had spoken an hour, and the committee rose to enable Mr. C. J. Ingersoll, of Pennsylvania, to move a suspension of the rules, so that Mr. Adams might complete his speech. This motion was made in the form that the rule limiting debate to one hour for each Member be suspended for four hours, and on this Mr. Ingersoll called for the previous question.

The Speaker announced that a vote of two-thirds would be required to suspend the rule.

Mr. Robert C. Schenck, of Ohio, announced his purpose to propose an amendment.

The Speaker [5] replied that it would not be in order.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] Second session Fifty-sixth Congress, Record, pp. 1198, 1199.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Twenty-ninth Congress, Globe, p. 343; Journal, p. 363.

[5] John W. Davis, of Indiana, Speaker.

Mr. George S. Houston, of Alabama, did not understand, he said, that a demand for the previous question was in order on a mere motion to suspend the rules.

The Speaker said that the motion to suspend the rules was not debatable, inasmuch as it related to the priority of business.[1]

Mr. Armistead Burt, of South Carolina, inquired of the Speaker whether a motion to lay the motion to suspend the rule on the table would be in order.

The Speaker said it would, and Mr. Burt submitted that motion, which was decided in the negative, 71 yeas to 126 nays.

The House then proceeded to order the previous question on the motion to suspend the rules, and the latter motion was decided in the negative.

5406. On February 26, 1859,[2] the Committee of the Whole House on the state of the Union reported that the committee, having, according to order, had the state of the Union generally under consideration, and particularly the bill of the House (H. R. 712) making appropriations for the naval service for the year ending June 30, 1860, had come to no resolution thereon.

Mr. John S. Phelps moved that the five-minute rule be suspended so far as relates to the bill of the House No. 712.

Mr. James L. Seward, of Georgia, moved, at 4 o'clock and 30 minutes p. m., that the House adjourn; which motion was disagreed to.

Mr. Seward having proposed to move that the motion of Mr. John S. Phelps be laid on the table,

The Speaker[3] decided that the proposed motion was out of order.[4]

From this decision of the Chair Mr. Seward appealed. The appeal was laid on the table.

5407. It is in order to lay on the table a motion to discharge a committee.—On June 14, 1902,[5] Mr. James Hay, of Virginia, moved to discharge the Committee on Insular Affairs from the consideration of the following resolution:

Resolved by the House of Representatives, That the Secretary of War be, and he is hereby, directed to transmit to the Speaker of the House of Representatives a statement showing the amount of money expended by the United States Government since the 1st day of May, 1898, for the cost of the army serving in the Philippine Islands, for the maintenance of both the military and civil governments of said islands, for the transport service maintained between this country and the Philippine Islands, for the maintenance in the War Department of the Insular Bureau, and for any other purpose connected with the occupation and possession of the Philippine Islands by the United States.

As this resolution had been referred to the committee more than a week, the motion to discharge the committee was entertained as privileged.

Mr. Edgar D. Crumpacker, of Indiana, moved to lay on the table the motion to discharge the committee.

This motion was entertained and agreed to.

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[1] By special rule forty minutes' debate are now allowed. (See sec. 6820 of this volume.)

[2] Second session Thirty-fifth Congress, Journal, p. 510; Globe, pp. 1418, 1419.

[3] James L. Orr, of South Carolina, Speaker.

[4] On January 17, 1840, a motion to suspend the rules was laid on the table without question as to its propriety. (First session Twenty-sixth Congress, Journal, p. 1298.)

[5] First session Fifty-seventh Congress, Journal, p. 805; Record, p. 6811.

5408. The previous question being demanded on a resolution, and the yeas and nays ordered on that demand, a motion to lay the resolution on the table was held not in order.—On January 4, 1901,[1] the House was proceeding to consider a resolution relating to the basis of representation of the several States in the House of Representatives and the electoral college, when Mr. Marlin E. Olmsted, of Pennsylvania, demanded the previous question on the resolution.

The noes appearing to have it on a division, Mr. Olmsted demanded the yeas and nays, and the yeas and nays were ordered.

Thereupon Mr. James D. Richardson, of Tennessee, moved that the resolution be laid on the table.

The Speaker pro tempore[2] held:

The House has already ordered the yeas and nays on the motion of the gentleman from Pennsylvania for the previous question, and the motion of the gentleman from Tennessee is not in order. The Clerk will call the roll.

5409. On February 19, 1837, the House was considering resolutions relating to the proposed censure of Mr. John Quincy Adams, of Massachusetts, for having presented certain petitions, when Mr. Aaron Vanderpoel, of New York, moved the previous question on the resolutions, and in accordance with the usage at that time, the demand for the previous question was seconded by a majority of the members present. Thereupon, Mr. William Kennon, of Ohio, moved that the resolutions lie upon the table. This motion was entertained and voted on by the House.[3]

5410. The motion to lay on the table may not be applied to the motion for the previous question.—On January 28, 1847,[4] Mr. Seaborn Jones, of Georgia, moved that the votes by which the House that day agreed to the resolution terminating all debate upon the bill (No. 596) making appropriations for the naval service for the year ending the 30th of June, 1848, at 1 o'clock on the succeeding day, be reconsidered.

After several motions for a call of the House, to lay the motion on the table, etc., Mr. George W. Hopkins, of Virginia, moved the previous question on the motion made by Mr. Seaborn Jones to reconsider.

Mr. Joseph M. Root, of Ohio, moved that the motion for the previous question be laid upon the table.

The Speaker[5] decided that a motion to lay upon the table a motion for the previous question was not in order.

On an appeal the Chair was sustained by a vote of 134 yeas to 1 nay.

5411. On January 28, 1847,[4] the House was considering a motion to reconsider a vote limiting the time of debate on the naval appropriation bill in Committee of the Whole House on the state of the Union.

Mr. George W. Hopkins, of Virginia, moved the previous question on the motion.

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[1] Second session Fifty-sixth Congress, Record, p. 555.

[2] John Dalzell, of Pennsylvania, Speaker pro tempore.

[3] Second session Twenty-fourth Congress, Journal, p. 361.

[4] Second session Twenty-ninth Congress, Journal, p. 252; Globe, p. 282.

[5] John W. Davis, of Indiana, Speaker.

Mr. Joseph M. Root, of Ohio, moved that the motion for the previous question be laid on the table.

The Speaker[1] decided that a motion to lay on the table a motion for the previous question was not in order.

Mr. Root having appealed, the decision of the Chair was sustained, yeas 134, nays 1.

5412. The motion to lay on the table may not be applied to the motion to commit authorized after the previous question is ordered.—On April 22, 1892,[2] the House was considering the contested election case of Noyes *v.* Rockwell, from New York, and the question was on agreeing to the resolutions reported by the committee as amended by a substitute, the previous question having been ordered.

Mr. William J. Bryan, of Nebraska, moved that the resolutions be recommitted to the Committee on Elections, with certain instructions.

Mr. Joseph Wheeler, of Alabama, moved to lay the motion to recommit on the table.

The Speaker[3] held that the motion to lay on the table the motion to recommit was not in order.

5413. On March 19, 1900,[4] the House was considering the bill (H. R. 9047) to incorporate the Washington Telephone Company, etc., and had ordered it to be engrossed and read a third time, under the operation of the previous question.

The bill having been read a third time, Mr. William H. Moody, of Massachusetts, moved to recommit the bill with instructions.

Mr. Joseph W. Babcock, of Wisconsin, moved that this motion be laid on the table.

The Speaker[5] said:

The Chair thinks that the motion of the gentleman from Wisconsin is out of order.

Mr. Moody's motion having been decided in the negative, Mr. Henry D. Green proposed a motion to recommit with other instructions.

The Speaker said:

Only one motion to recommit is in order.

5414. On March 31, 1904,[6] the previous question had been ordered on the sundry civil appropriation bill to its final passage, and the bill had been ordered to be engrossed, and had been read a third time.

Mr. William Sulzer, of New York, moved to recommit the bill with instructions.

Mr. James A. Hemenway, of Indiana, moved to lay that motion on the table.

The Speaker[5] expressed doubt as to the admissibility of the motion to lay on the table, and it was not entertained.

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[1] John W. Davis, of Indiana, Speaker.

[2] First session Fifty-second Congress, Journal, pp. 154, 155; Record, p. 3540.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 3061.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Fifty-eighth Congress, Record, p. 4075.

[7] Joseph G. Cannon, of Illinois, Speaker.

5415. Under both the earliest and latest practice the motion to lay on the table is not in order after the previous question is ordered.—On December 27, 1814,[1] the bill to incorporate the Bank of the United States was under consideration, and the previous question had been ordered.

Mr. Daniel Webster, of New Hampshire, thereupon moved that the bill lie on the table.

The Speaker pro tempore[2] decided that this motion was not in order, as the previous question had been demanded, taken, and decided in the affirmative.

Mr. William Gaston, of North Carolina, having taken an appeal, the decision of the Chair was sustained, yeas 108, nays 36.

5416. On May 19, 1858,[3] Mr. Speaker Orr ruled that a motion to lay on the table was not in order after the previous question had been ordered.

5417. On February 27, 1844[4] the report of the Committee on Rules was before the House, and the previous question had been ordered on an amendment proposed by Mr. George C. Dromgoole, of Virginia, when Mr. James E. Belser, of Alabama, moved to lay the whole subject on the table.

Mr. John White, of Kentucky, raised the question of order:

> The previous question having been seconded and the main question ordered, a motion to lay the subject upon the table is not in order.

The Speaker[5] stated that under the forty-sixth[6] rule of the House a motion to lay on the table took precedence of the previous question; and as it had been the general practice, under this rule, to entertain a motion to lay on the table at any stage of the proceedings between the motion for the previous question and final action by the House, he decided against the point of order raised by Mr. White.

Upon an appeal the Chair was sustained by a vote of 99 to 76.

5418. On January 3, 1848,[7] Mr. Charles Hudson, of Massachusetts, offered a resolution relating to the Mexican war and the withdrawal of the American troops. Mr. Hudson moved the previous question; which was seconded, and the main question was ordered to be put.

Mr. Alexander H. Stephens, of Georgia, moved that the resolution be laid upon the table.

Mr. Howell Cobb, of Georgia, raised the following question of order: That a motion to lay upon the table was not in order after the previous question had been ordered.

The Speaker[8] decided that the uniform practice of the House for many years past, confirmed upon repeated appeals, left him no alternative but to pronounce the motion in order. He said that if this was an original question, the Chair would

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[1] Third session Thirteenth Congress, Journal, p. 621 (Gales and Seaton ed.); Annals, p. 995.

[2] Nathaniel Macon, of North Carolina, Speaker pro tempore (ex-Speaker).

[3] First session Thirty-fifth Congress, Journal, pp. 849, 850.

[4] First session Twenty-eighth Congress, Journal, p. 490; Globe, p. 332.

[5] John W. Jones, of Virginia, Speaker.

[6] Now section 4 of Rule XVI. (See sec. 5301 of this volume.)

[7] First session Thirtieth Congress, Journal, p. 175; Globe, p. 93.

[8] Robert C. Winthrop, of Massachusetts, Speaker.

have no difficulty in sustaining the position of the gentleman from Georgia; but the precedents were against him, the House having heretofore permitted a motion to lay on the table to be acted upon after the main question had been ordered. Repeated precedents might be quoted in cases which arose on decisions of the last three Speakers, where appeals were taken to the House from decisions of the Chair and reversed by votes of the House.

Mr. Howell Cobb said the Chair was undoubtedly right as regarded the precedents; but believing the precedents to be wrong, to try the sense of the House upon it, he would now appeal from the decision of the Chair. The Chair was sustained by a vote of 91 yeas to 85 nays.

5419. On May 17, 1878,[1] the House was considering the resolution offered by Mr. Clarkson N. Potter, of New York, for the investigation of alleged fraud in the State of Louisiana in the recent Presidential election.

Mr. Potter having demanded the previous question, the vote was being taken on seconding it,[2] when a quorum failed.

A call of the House having been had and a quorum having appeared, the Speaker put the question again on seconding the demand for the previous question.

Pending this, Mr. Eugene Hale, of Maine, moved to lay the resolution on the table.

The Speaker[3] declared that this motion was not in order, as the question was not "under debate" according to the terms of the rule.

Mr. Hale having appealed, the Speaker stated the appeal thus:

> The Chair has ruled that the condition does not exist in the House under which Rule 42 is operative; that, on the contrary, after a call of the House to secure a quorum shall have been disposed of, the House goes back to the situation in which it was originally when dividing on the motion of the gentleman from New York; and the Chair again recognizes the gentleman from New York for that motion.

The Chair was sustained, 143 yeas to 114 nays.

5420. On February 6, 1894,[4] the House, pursuant to the special order, proceeded to the consideration of the resolutions (Mis. Doc. 75) relating to Hawaiian affairs.

After debate, at 3 o'clock and 30 minutes p. m., the previous question being ordered by the special order on the resolutions and the amendments thereto, Mr. Julius C. Burrows, of Michigan, submitted the question of order whether it was in order now to move to lay the pending resolution on the table.

The Speaker[5] held that it was not now in order to make that motion.

5421. On March 1, 1897,[6] the House was considering a bill relating to the transmitting of pictures and descriptions of prize fights through the mails.

Mr. J. Frank Aldrich, of Illinois, who was in charge of the bill, having demanded the previous question, Mr. Alexander M. Dockery, of Missouri, as a parliamentary

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[1] Second session Forty-fifth Congress, Journal, p. 1090; Record, pp. 3438, 3521–3523.

[2] A second is no longer required for the previous question.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 139, 140; Record, p. 1969.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Fifty-fourth Congress, Record, p. 2589.

inquiry, asked if it would be in order, after the previous question was ordered, to move to lay the bill on the table.

The Speaker[1] held that it would not be in order.

5422. On February 9, 1899,[2] the House was considering the bill (H. R. 10969) for the erection of a public building at Blair, Nebr., upon which the previous question had been ordered to the final passage.

A motion to commit[3] having been decided in the negative, the question recurred on the passage.

Mr. Alexander M. Dockery, of Missouri, moved that the bill lie on the table.

The Speaker pro tempore[4] held that the motion was not in order after the previous question was ordered.

5423. A proposed amendment to a pending bill being laid on the table the bill goes there also.—On December 18, 1826,[5] the House was considering a resolution relating to the emigration of Indians, when Mr. George W. Owen, of Alabama, moved to lay a pending amendment on the table.

The Speaker[6] decided that if the amendment was laid on the table the resolution[7] must go there also.

5424. It is in order to lay upon the table Senate amendments to a House bill, and the bill in such a case goes to the table with the amendments.—On August 2, 1854,[8] the civil and diplomatic appropriation bill, which had been returned by the Senate with amendments, was before the House. The previous question had been ordered, but the pending question was on a motion by Mr. William Barksdale, of Mississippi, to lay the bill on the table. Mr. Barksdale having withdrawn the motion, it was renewed by Mr. John Wheeler, of New York.[9]

Mr. David T. Disney, of Ohio, thereupon made this point of order:

> That it is not competent for this House, having once passed a bill, and subsequently amendments having been made by a coordinate branch of the Government to that bill, to lay that bill upon the table. They have no power over the bill except to act upon the specific amendments made by the coordinate body. There has never been, I undertake to say, in the whole history of parliamentary legislation, any other practice allowed.

The Speaker[10] held:

> It is in order to move to lay the amendment of the Senate upon the table; and if the motion be agreed to, it carries the bill with it. The Chair has no doubt about his decision.

5425. The Senate has a rule that an amendment may be laid on the table without carrying the pending measure with it.—On February 27,

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Fifty-fifth Congress, Record, p. 1662.

[3] A motion authorized by special rule. (See sec. 5443 of this volume.)

[4] John F. Lacey, of Iowa, Speaker pro tempore.

[5] Second session Nineteenth Congress, Debates, p. 538.

[6] John W. Taylor, of New York, Speaker.

[7] A bill in this respect stands in the same position as a resolution.

[8] First session Thirty-third Congress, Journal, p. 1250; Globe, p. 2071.

[9] This motion was allowed at that time after the previous question was ordered. Under the present practice it is not allowable.

[10] Linn Boyd, of Kentucky, Speaker.

1904,[1] in the Senate, during the consideration of the bill (S. 2263) "to require the employment of vessels of the United States for public purposes," several amendments were offered and on motion were laid on the table, without taking the bill to the table. This action is in accordance with Rule XVII of the Senate, which provides that—

When an amendment proposed to any pending measure is laid on the table, it shall not carry with it or prejudice such measure.

5426. A bill being laid on the table, pending motions connected therewith go to the table also.—On January 27, 1853,[2] the bill (H. R. 277) relating to the fourth installment of public moneys was before the House, and Mr. Edward Stanly, of North Carolina, moved that the bill be committed to the Committee of the Whole House on the state of the Union and be printed.

Mr. Charles Sweetser, of Ohio, moved that the bill be laid on the table. And the question being put, it was decided in the affirmative. So the bill was laid on the table.

Mr. Stanly then called up the motion submitted by him to print the bill.

The Speaker[3] decided that the effect of the vote to lay the bill on the table had been to lay upon the table the motion to print, and all other motions connected therewith. It was too late, therefore, to call up the motion to print.[4]

Mr. Stanly having appealed, the appeal was laid on the table.

5427. On February 11, 1852,[5] Mr. Speaker Boyd ruled that a motion to print a proposition that had been laid on the table was in order, holding that a proposition on the table might be printed.

5428. A resolution may be laid on the table without carrying with it a connected resolution already agreed to or a preamble not yet acted on.— On April 14, 1864,[6] the House was considering a preamble reciting that Alexander Long, a Member of the House from Ohio, had uttered treasonable words in the Capitol and elsewhere, and two resolutions, the first providing that the said Long be declared an unworthy Member of the House, and the second that the preamble and resolutions be read to the said Long by the Speaker in the presence of the House.

The first resolution had been agreed to by the House, when Mr. William S. Holman, of Indiana, moved that the second resolution be laid on the table.

Mr. Thaddeus Stevens, of Pennsylvania, rising to a question of order, asked if the laying of the resolution on the table would carry anything further with it.

The Speaker pro tempore[7] held that it would not, the first resolution having been adopted.

The motion to lay on the table was then agreed to.

The preamble was next agreed to.

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[1] Second session Fifty-eighth Congress, Record, pp. 2458, 2468.

[2] Second session Thirty-second Congress, Journal, pp. 194, 195; Globe, p. 426.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Bills are now printed under the rule. In the old practice of the House the motions to lay on the table and print seem to have been combined. (Journal, first session Thirty-second Congress, p. 337; Globe, p. 531.)

[5] First session Thirty-second Congress, Journal, p. 337; Globe, p. 531. Printing is now done by rule or law.

[6] First session Thirty-eighth Congress, Journal, p. 523; Globe, p. 1634.

[7] Edward H. Rollins, of New Hampshire, Speaker pro tempore.

5429. A motion to lay a particular section of a bill on the table being entertained, it was held that the effect of an affirmative decision on it would be to take the whole bill to the table.—On May 20, 1879,[1] while the House was considering, by sections in the House as in Committee of the Whole, the bill (H. R. 564) relating to coin and bullion certificates, and for other purposes, Mr. Omar D. Conger, of Michigan, moved to lay the third section of the bill on the table.

Mr. S. S. Cox, of New York, questioned the propriety of the motion.

The Speaker[2] held the motion to be in order; and further held that the effect of the motion, if decided in the affirmative, would be to take the whole bill to the table with the amendment.

5430. A preamble may be laid on the table without affecting the status of accompanying resolutions already agreed to by the House.—On February 27, 1873,[3] the House was considering the preamble and resolutions reported from the select committee which had investigated the Crédit Mobilier. The resolutions had been acted on, when the question was put on the preamble.

Mr. Aaron A. Sargent, of California, moved to lay the preamble on the table.

Mr. Richard J. Haldeman, of Pennsylvania, raised a question as to the effect of such a motion if carried.

The Speaker[4] held that the motion to lay on the table, if agreed to, would carry to the table the whole subject—that is, the report of the committee—but would not carry the resolutions which had been agreed to, as they were not before the House.

5431. A motion to receive a petition being laid on the table, the petition itself does not go to the table.—On January 9, 1837,[5] Mr. John Quincy Adams, of Massachusetts, presented to the House a petition praying for the abolition of slavery in the District of Columbia.

A motion having been made that the petition be received, Mr. Gorham Parks, of Maine, proposed a motion to lay on the table the motion to receive, and inquired of the Chair the effect of such a motion if carried.

The Speaker[6] said that the effect of this motion, if carried, would be simply to arrest the action of the House on the petition, and not to lay the petition itself on the table.

A similar decision was again made on January 16.[7]

5432. On December 18, 1838,[8] the House was considering the question of receiving a petition praying Congress to open international relations with the Republic of Hayti.

Mr. Henry A. Wise, of Virginia, moved that the preliminary question on receiving the petition lie on the table.

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[1] First session Forty-sixth Congress, Record, pp. 1488, 1489.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Third session Forty-second Congress, Globe, pp. 1834, 1835.

[4] James G. Blaine, of1faine, Speaker.

[5] Second session Twenty-fourth Congress, Debates, p. 1316.

[6] James K. Polk, of Tennessee, Speaker.

[7] Debates, pp. 1397, 1398.

[8] Third session Twenty-fifth Congress, Globe, p. 44.

A question arising as to the effect of this motion to lay on the table, the Speaker[1] said that if the motion to lay on the table should be carried the petition would remain in the hands of the gentleman offering to present it; and the motion to receive would lie on the table, subject to be taken up at any future time the House might feel disposed to do so.

5433. On December 12, 1837,[2] the House voted to lay on the table the motion of Mr. John Quincy Adams, of Massachusetts, that a certain petition praying for the abolition of slavery in the District of Columbia be referred to the Committee for the District of Columbia.

5434. The motion to lay on the table an appeal from a decision of a question of order, does not, when decided in the affirmative, carry to the table the original matter as to which the question of order has arisen.— On March 6, 1840,[3] Mr. Millard Fillmore, of New York, moved to reconsider the vote whereby certain papers relating to the New Jersey contested election cases had been referred, and was debating this motion when Mr. David Petrikin, of Pennsylvania, made the point of order that it was not in order.

The Speaker[4] having overruled the point of order, Mr. Petrikin took an appeal.

A motion was made that this appeal do lie on the table, when Mr. Fillmore submitted, as a question of order, whether it was in order to make a motion that the appeal do lie upon the table.

The Speaker decided that the motion that the appeal do lie on the table was in order; and upon Mr. Fillmore's appeal from this decision the appeal, on motion of Mr. Linn Banks, of Virginia, was laid on the table by a vote of 97 yeas to 76 nays.

Mr. Fillmore inquired of the Chair if the decision just made, to lay his appeal on the table, deprived him of the right of going on with his speech on the motion to reconsider.

The Chair decided that the vote to lay Mr. Fillmore's appeal on the table took with it the original proposition to reconsider and all pending motions. From this decision Mr. Fillmore appealed in writing as follows:

> Mr. Fillmore had the floor and was speaking on a motion to reconsider a vote of the House. He was called to order. The Speaker decided he was in order. From this decision an appeal was taken. A motion was then made to lay that appeal on the table. On this a question was then raised whether the motion to lay on the table was in order. The Speaker decided it was. And on this an appeal was taken, and a motion was made to lay the appeal on the table, which was put and carried. The Speaker now decides that by this vote the original motion to reconsider is laid on the table and that Mr. Fillmore is deprived of his right to proceed in the debate. From this decision Mr. Fillmore appeals, insisting that the original judgment of the Chair stands, as it is not reversed, and that he is entitled to the floor on the original motion to reconsider.

After debate, the Speaker said that during the debate upon this appeal he had found previous decisions[5] that appeals were independent questions, whereupon he

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[1] James K. Polk, of Tennessee, Speaker.

[2] Second session Twenty-fifth Congress, Journal, p. 61.

[3] First session Twenty-sixth Congress, Journal, pp. 529, 530.

[4] Robert M. T. Hunter, of Virginia, Speaker.

[5] The Congressional Globe (first session Twenty-sixth Congress, p. 246) shows that one of the decisions was made on March 16, 1834 (first session Twenty-third Congress, Journal, pp. 1127, 1128), when the resolution relating to the selection of banks in which to deposit the public money was under consideration. Mr. Ely Moore, of New York, moved that the resolution and amendment lie on the

reviewed his decision and decided that, in conformity to the previous practice of the House, the laying the appeal on the table did not carry with it the whole subject.

5435. A proposed amendment to the Journal being laid on the table, the Journal does not accompany the amendment to the table.—On December 13, 1839,[1] while the organization of the House was deferred by the contest of the rival delegations from New Jersey, and while Mr. John Quincy Adams, of Massachusetts, was acting as chairman of the assembly, Mr. Charles F. Mercer, of Virginia, stated an appeal from the Chair, as follows:

A motion being made to amend the Journal of the House while that Journal is passing under the judgment of the House for correction, the Chairman decided that should a motion to amend the Journal be laid on the table, the Journal does not accompany it.

And the House decided to sustain the Chair in the decision that the Journal would not go to the table with the motion to amend.

5436. On April 23, 1834,[2] a motion to amend the Journal was laid on the table without any question being made as to its carrying the Journal with it.

5437. A bill laid on the table is not technically rejected.—On May 6, 1854,[3] Mr. Speaker Boyd, in the course of a ruling, took the ground that a Senate bill which had been laid on the table in the House, was not a "rejected" bill within the meaning of the joint rule which at that time forbade the introduction of a bill which had been rejected.

5438. A proposition involving a question of privilege being laid on the table, may be taken up at any time by a vote of the House.—On February 16, 1864,[4] while the House was considering the credentials of Mr. James M. Johnson, of Arkansas, a question arose as to the effect of a motion to lay the credentials on the table, and the Speaker[5] said:

This being a question of privilege, affecting the right of a Member to a seat, the credentials can be called up at any time if laid upon the table. * * * They can be taken up by a vote of the House at any time. * * * In that respect privileged questions differ from all other business.

5439. A vetoed bill, being privileged, may be taken from the table.— On May 4, 1822,[6] the President returned to the House with his objections the bill "for the preservation and repair of the Cumberland Road."

The House—

Ordered, That the message containing the objections of the President as aforesaid, together with the said bill, be laid on the table.

On May 6 the bill was taken up, and the question was taken in the mode prescribed in the Constitution of the United States—

That the House on reconsideration do-agree to pass the said bill.

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table. Over this a point of order arose, and an appeal was taken from the decision. Pending this appeal Mr. Moore withdrew his motion. But the Speaker pro tempore (Mr. Henry Hubbard, of New Hampshire) decided that the appeal did not fall by the withdrawal of the motion, and was pending.

[1] First session Twenty-sixth Congress, Journal, p. 28; Globe, pp. 46 and 47.

[2] First session Twenty-third Congress, Journal, pp. 554–557.

[3] First session Thirty-third Congress, Journal, p. 720; Globe, p. 1120.

[4] First session Thirty-eighth Congress, Globe, p. 684.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] First session Seventeenth Congress, Journal, pp. 561, 580; Annals, pp. 1803, 1874.

And the yeas being 68 and the nays 72, the bill was rejected.[1]

5440. The motion to lay on the table an appeal from a decision of the Chair may be made under general parliamentary law before the adoption of rules.—On January 21, 1890,[2] before rules had been adopted by the House and while the procedure was under general parliamentary law, Mr. Richard P. Bland, of Missouri, appealed from a decision of the Chair.

The Speaker stated the question, and, after debate, Mr. Joseph G. Cannon, of Illinois, moved to lay the appeal on the table.

Mr. Roger Q. Mills, of Texas, made the point of order that the motion was not in order, there being no rule of the House authorizing it and no rule in parliamentary law therefor.

The Speaker[3] overruled the point of order.

5441. Pending a motion to lay on the table, it is not in order to call for the reading of a paper offered as argument.—On June 23, 1822,[4] the House resumed consideration of the bill (H. R. 584) "to alter and amend the several acts imposing duties on imports," when Mr. William Fitzgerald moved that the House reconsider the vote of yesterday on an amendment relating to the duty on salt.

Mr. Benedict I. Semmes, of Maryland, moved to lay this motion on the table.

Thereupon Mr. Lewis Williams, of North Carolina, called for the reading of a letter from the Secretary of the Treasury to the Chairman of the Committee on Manufactures.

Objection being made, the Speaker pro tempore[5] decided that it was not in order, pending the question to lay the motion aforesaid on the table, to call for the reading of any paper not previously in possession of the House.

Mr. Semmes having appealed, the appeal was laid on the table.

5442. It has been held in the Senate that a motion to lay on the table may apply to two papers pending before the body.—On June 30, 1868,[6] in the Senate, two papers were under consideration—a resolution of the legislature of Florida and the credentials of Thomas W. Osborn as Senator from that State.

Mr. Charles D. Drake, of Missouri, as a parliamentary inquiry relating to the motion to lay on the table, said:

> The question is whether I can make a motion that relates to both of the papers or a separate motion for each paper.

The President pro tempore[7] said:

> There is no doubt the Senator can move to lay either or both on the table.

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[1] Also on December 22, 1840 (Second session Twenty-sixth Congress, Journal, pp. 91, 92; Globe, p. 47), as a privileged question, a motion to take the election case of Ingersoll *v.* Naylor from the table was made and agreed to. Objection was made, but the privilege of the motion was admitted.

[2] First session Fifty-first Congress, Journal, p. 144; Record, p. 749.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Twenty-second Congress, Journal, p. 935; Debates p. 3720.

[5] James K. Polk, of Tennessee, Speaker pro tempore.

[6] Second session Fortieth Congress, Globe, p. 3605.

[7] Benjamin F. Wade, of Ohio, President pro tempore.

Chapter CXX.

THE PREVIOUS QUESTION.

1. **The rule and its development. Sections 5443–5446.[1]**
2. **Failure of quorum after it is ordered. Section 5447.**
3. **Questions of order after it is demanded. Sections 5448, 5449.[2]**
4. **Under the Parliamentary law. Sections 5450–5455.**
5. **Use of for closing debate. Sections 5456, 5457.**
6. **Use during call of the House. Section 5458.**
7. **Applies to questions of privilege. Sections 5459, 5460.**
8. **General decisions as to application of. Sections 5461–5473.[3]**
9. **Rights of Member in moving. Sections 5474–5480.**
10. **Effect of in preventing debate and amendment. Sections 5481–5490.**
11. **In relation to reconsideration. Sections 5491–5494.[4]**
12. **The forty minutes of debate after it is ordered. Sections 5495–5509.**
13. **Precedence, after an adjournment, of a bill on which the previous question is ordered. Sections 5510–5520.**

5443. The motion for the previous question, when agreed to, has the effect of cutting off all debate (except forty minutes on questions not before debated) and of bringing the House to a vote.

The previous question may be moved on a single motion, on a series of allowable motions, on an amendment or amendments, and on a bill to its final passage or rejection.

Pending the vote on the passage of a bill under the operation of the previous question, a motion to commit to a standing or select committee, with or without instructions, is in order.

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[1] Form for putting the previous question. (Sec. 5754 (footnote) of this volume.)

[2] See, however, section 2532 of Volume III for a decision permitting debate on question of privilege arising after previous question has been ordered on another question.

[3] Not in order in Committee of the Whole. (Sec. 4716 of Vol. IV.)

In relation to the question of consideration. (Secs. 4965–4968 of this volume.)

The motion to lay on the table not in order after previous question is ordered. (Secs. 5415–5422 of this volume.)

Division of the question not in order after the previous question is ordered. (Secs. 6149, 6150 of this volume.)

Motion to recede not in order after previous question is moved on motion to adhere. Sec. 6310 of this volume.) But the motion to recede has been admitted after the demand for the previous question on the motion to insist.

[4] See also sections 5653–5663 of this volume.

The old and the present form for putting the previous question. Present form and recent history of section 1 of Rule XVII.

Section 1 of Rule XVII provides:

There shall be a motion for the previous question, which, being ordered by a majority of Members voting, if a quorum be present, shall have the effect to cut off all debate and bring the House to a direct vote[1] upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill[2] to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

This rule, of the greatest importance and of very frequent use in the House of Representatives, is the result of more than a century of development. In the earlier years its efficiency as a means of forwarding business was accompanied by much harshness and rigidity, which not only worked hardship on the Member, but interfered with a convenient and satisfactory disposal of business. In later years the harshness of the rule has been considerably lessened, while it has been given greater flexibility, which has enabled the House to follow its own wishes more fully in the consideration of amendments and in dealing with incidental questions.

The present form of the rule, with a few changes only, dates from the revision of 1880.[3] That form provided that the previous question might be ordered only to the engrossment and third reading, and then must be ordered again on the passage. In 1890[4] the rule was changed so that it might be ordered through to and including the passage. In 1890 also a clause allowing a motion to lay on the table on the second and third reading of a bill was dropped. In 1896[5] the words in the first clause, "being ordered by a majority of Members voting, if a quorum be present," were inserted in place of "being ordered by a majority of Members present, if a quorum," to conform to the practice of the House in regard to the presence of a quorum.[6]

In the revision of 1880[7] the rule, in taking on its present form, was broadened to apply to single motions or a series of motions as well as to amendments; and the motion to commit[8] pending the passage of the bill was authorized so as to afford "the amplest opportunity to test the sense of the House as to whether or not the bill is in the exact form it desires."

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[1] This is modified, however, by a clause of section 3 of Rule XXVIII (see sec. 6821 of this volume), which provides that there shall be forty minutes of debate after the previous question has been ordered on a question which has not been debated.

[2] The word "bill" is here used as a generic term for any legislative proposition. (See sec. 5572 of this volume.)

[3] Second session Forty-sixth Congress, Record, pp. 202, 206.

[4] First session Fifty-first Congress, Report No. 23.

[5] First session Fifty-fourth Congress, Journal, p. 107; Record, p. 586.

[6] See sections 2895–2904 of Vol. IV of this work.

[7] Second session Forty-sixth Congress, Record, p. 202.

[8] Before this it had been decided that the motion to commit was not in order after the previous question had been ordered. By Mr. Speaker Taylor, in 1827 (second session Nineteenth Congress, Debates, p. 985); Mr. Speaker Polk, in 1836 (first session Twenty-fourth Congress, Debates, p. 3329); Mr. Speaker Davis, in 1946 (first session Twenty-ninth Congress, Journal, p. 643, Globe, p. 622). Speaker pro tempore Armistead Burt, of South Carolina, in 1851 (second session Thirty-first Congress, Journal, p. 398), decided the motion in order, but was overruled by the House.

The old form, "Shall the main question be now put?" has disappeared from the practice of the House, and the Speaker now, after announcing that the Member demands the previous question, puts it: "As many as are in favor of ordering the previous question will say aye; as many as are opposed will say no."

5444. On February 5, 1902,[1] Mr. E. Stevens Henry, of Connecticut, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 10847) relating to oleomargarine and other imitation dairy products.

Pending that motion, Mr. Henry moved that general debate be closed at 5 o'clock; and on this motion demanded the previous question.

Mr. John S. Williams, of Mississippi, asked recognition for debate, on the supposition that the rule allowed a certain time on each side after the previous question had been demanded.

The Speaker[2] said:

The gentleman has no right to be heard on the motion for the previous question.

5445. History of the process by which the House changed the previous question of Parliament into an instrument for closing debate and bringing a vote on the pending matter.

An early comparison of the decorum of the House of Representatives with that of the House of Commons.

History of section 1 of Rule XVII continued.

In the Parliament of England the previous question had been a device for removing from consideration a question which might seem to the majority undesirable to discuss further or act upon.[3] The Continental Congress, which used the Lex Parliamentaria for its guide, adopted this device in a rule of 1778,[4] which was amplified to this form in 1784:[5]

The previous question (which is always to be understood in this sense, that the main question be not now put) shall only be admitted when in the judgment of two Members, at least, the subject moved is in its nature, or from the circumstances of time or place, improper to be debated or decided, and shall therefore preclude all amendments and further debates on the subject until it is decided.

The object of this rule was evidently the same as that of the practice of Parliament, and there was no intention of providing thereby a means of closing debate in order to bring the pending question to an immediate vote.

The rules of the first Congress under the Constitution, which were adopted at the suggestion of Members who had seen service in the Continental Congress,[6] had this

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[1] First session Fifty-seventh Congress, Record, p. 1349.

[2] David B. Henderson, of Iowa, Speaker.

[3] See Reed's Parliamentary Rules, sections 123–125. Jefferson's Manual also refers to this use of the previous question in the early legislative history of this country. Section XXX of the Manual.

[4] Journal of Continental Congress, May 26, 1778.

[5] Journal of July 8, 1784.

[6] The members of this committee were: Nicholas Gilman, of New Hampshire; Elbridge Gerry, of Massachusetts; Jeremiah Wadsworth, of Connecticut; Elias Boudinot, of New Jersey, who had been President of Congress; Thomas Hartley, of Pennsylvania; William Smith, of Maryland; Richard Bland Lee, of Virginia; Thomas Tudor Tucker, of South Carolina; James Madison, of Virginia; Roger Sherman, of Connecticut; and Benjamin Goodhue, of Massachusetts. All but Messrs. Hartley, Lee, and Goodhue had served in the Continental Congress.

form of previous question, the formula for putting the question being reversed by the omission of the word "not."

The previous question shall be in this form: "Shall the main question be now put?" It shall only be admitted when demanded by five Members; and, until it is decided, shall preclude all amendment and further debate of the main question. On a previous question no Member shall speak more than once without leave.[1]

After the question had been called for by five Members it was debatable, but the merits of the main question might not be touched upon, and if decided in the negative the House proceeded to other business.[2] If decided in the affirmative it stopped discussion on the merits of the main question, theoretically at least;[3] but with a small body of Members the use of the rule was not frequent, and the practice does not seem to have been fixed.[4]

On December 17, 1805,[5] at the instance of Messrs. John Smilie, of Pennsylvania, and Peter Early, of Georgia, the provision that no Member should speak more than once without leave was changed by inserting "there shall be no debate." This referred only to debate on the expediency of ordering the main question.

On December 15, 1807,[6] the House came face to face with the question whether or not an affirmative vote on the previous question precluded all further debate on the main question. The Speaker[7] precipitated the matter by calling to order Mr. William Ely, of Massachusetts, who was proceeding to debate after the main question had been ordered. From this decision Mr. John Randolph, of Virginia, appealed, and a long debate ensued as to whether or not the Speaker had interpreted the rule correctly. Much diversity of opinion existed. The Speaker expressed a wish for an interpretation of the word "now" as it occurred in the form, "Shall the main question be now put." Mr. Randolph said that nothing could be plainer. It meant "at this time." It implied that the main question should be immediately put, but though the question was to be immediately put yet it was competent for any Member, as in other cases, to rise and debate the subject. The question before the House was the meaning of words; it was a question of language.[8]

The Speaker was finally overruled by the overwhelming vote of 103 nays to 14 yeas. The question arose again on December 1, 1808, and the Speaker said he was of the opinion individually that debate was inadmissible after an affirmative decision of the previous question; but as the House at the last session overruled his opinion, he felt obliged to yield and decide that debate was in order.

During the next three or four years debates were very much prolonged, the sessions sometimes lasting until morning before a vote could be obtained.[9] Finally,

[1] First session First Congress, Journal, p. 9.
[2] Second session Sixth Congress, Journal, p. 811.
[3] First session Fifth Congress, Annals, February 20, 1798, p. 1067.
[4] See remarks of Mr. Pitkin in 1811, first session Twelfth Congress, Annals, pp. 569–581.
[5] First session Ninth Congress, Annals, pp. 284, 286.
[6] First session Tenth Congress, Journal, p. 79.
[7] Joseph B. Varnum, of Massachusetts, Speaker.
[8] First session Tenth Congress, Annals, December 15, 1807, p. 1183.
[9] First session Twelfth Congress, Annals, pp. 569–581.

on February 27, 1811,[1] in the last days of the Eleventh Congress, while the majority were attempting to pass the bill to interdict commercial intercourse between the United States, Great Britain, and France, and their dependencies, the previous question was ordered. Then Mr. Barent Gardenier, of New York, who opposed the bill, took the floor. Mr. Gardenier was remarkable for his capacity to make long speeches, being able to keep the floor for days.[2] Question being raised as to the right to debate after the previous question had been ordered, the Speaker, the same who had been overruled on the subject in 1807, held that Mr. Gardenier was in order. Thereupon an appeal was taken, and the Speaker was overruled, 66 nays to 13 yeas. So it was decided finally that there could be no debate after the previous question was ordered. This decision of the House was followed by the Speaker in a ruling made March 2, 1811.[3]

At the next session of Congress, on December 23, 1811, the previous question, as revolutionized by these rulings, was the subject of animated debate; and a rule was adopted providing that one-fifth of the members present, instead of five, should be required to call for the previous question.[4]

On February 24, 1812, at the instance of Messrs. Burwell Bassett, of Virginia, and Richard Stanford, of North Carolina, and in order to make the rule more acceptable, the number required to call for the previous question was changed from one-fifth to a majority,[5] and this requirement[6] of a majority to second the motion, although denounced as a useless incumbrance by Mr. Howell Cobb, of Georgia, in 1856,[7] was not stricken out until the revision of 1880.[8] This was later called the seconding of the previous question, and remained as a requirement until the revision of 1880.

On January 19, 1816,[9] Mr. Stanford made an unsuccessful effort to abolish the previous question, and was vigorously seconded by Mr. John Randolph, of Virginia, who called it a "gag law," and by Mr. William Gaston, of North Carolina, who entered into an elaborate historical argument. Mr. Henry Clay, of Kentucky, defended the

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[1] The membership of the House at this time was 141. The increase of membership, which has an important bearing on the restriction of debate, has been constant. In 1789 it was 65; 105 in 1794; 141 from 1803 to 1813; about 185 from 1813 to 1823; 213 from 1823 to 1833; about 242 from 1833 to 1843; between 223 and 237 (a reduction) from 1843 to 1861; between 178 and 193 from 1861 to 1869 (secession period) 243 from 1869 to 1873; 293 from 1873 to 1883; 325 to 333 from 1883 to 1893; 356 to 357 from 1893 to 1903; 386 to 391 since 1903. (For political divisions see Manual and Digest (McKee), first session Fifty-fourth Congress, p. 640.

[2] Statement of John C. Calhoun, Benton's Thirty Years' View, Vol. II, p. 256.

[3] Third session Eleventh Congress, Journal, p. 611.

[4] First session Twelfth Congress, Journal, pp. 88, 92 (Gales & Seaton ed.); Annals, pp. 569–581.

[5] First session Twelfth Congress, Journal, pp. 402, 406 (old edition) 195, 197 (Gales & Seaton ed.); Annals, Part I, p. 1086.

[6] Shortly before this, on January 16, 1810 (second session Eleventh Congress, Journal, p. 175, Annals, pp. 1207–1215) the Committee on Rules (Nathaniel Macon, of North Carolina, Chairman) had reported a rule that on an affirmative vote on the previous question, the main question should be instantly put without amendment or further debate; but strenuous objection to this restriction of debate caused the proposed rule to be abandoned.

[7] First session Thirty-fourth Congress, Journal, p. 1014; Globe, p. 1271.

[8] First session Forty-sixth Congress, Journal, p. 633; second session, Journal, p. 1546.

[9] First session Fourteenth Congress, Annals, pp. 696–718.

rule,[1] saying that it had not been resorted to until the abuses of debate rendered it expedient, reminding the House of the remarkable circumstance of a certain gentleman having, for the purposes of delay, spoken four and twenty hours without stopping. No comparison could be made with the British House of Commons, for under all considerations there was the superior freedom in our House. In the Commons there was no protracting a debate beyond the rising of the House, and they often stopped a Member speaking by making noises to drown his voice. In manners in debate, especially in the use of personal invective, the comparison was also much in favor of the American House.

5446. The development through which the previous question has become a flexible, reasonable, and efficient instrumentality for restricting debate and forwarding business.

History of section 1 of Rule XVII continued.

Although the previous question survived the efforts made against it in 1816, it was in its early form a clumsy device, if comparison be made with the present perfected form of the rule. Two difficulties attended its use: The first relating to the results of an affirmative decision of the motion for the previous question and the second relating to the results of a negative decision.

1. The motion for the previous question might only be applied to the main question, Mr. Speaker Varnum having ruled on December 4, 1807,[2] that it could not be demanded on an amendment, a decision which the House sustained, yeas 111, nays 16. In 1812[3] Mr. Speaker Clay held, when a motion was pending to postpone a bill with Senate amendments, that the effect of the previous question if ordered would be to bring a vote, not on the motion to postpone, but on concurring in the amendments. And the next Congress, in 1813,[4] the same Speaker decided that the effect of ordering the previous question was to cut off pending amendments and bring a vote on the engrossment of the pending bill. And this continued to be the practice, Mr. Speaker Stevenson, on March 1, 1830,[5] holding that even in a case where the Committee of the Whole had reported a bill with an amendment striking out the enacting clause, the effect of ordering the previous question would be to cut off that amendment.

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[1] Mr. Benton intimates that Mr. Clay was instrumental in establishing the previous question in the House as a method of closure, although he was in 1811 a Member of the Senate.—Thirty Years' View, Vol. II, p. 257. The Senate, which for a time had the old previous question with its ancient function only, has declined to adopt for its ordinary business this or any other method of closure for debate. A notable attempt was made by Mr. Stephen A. Douglas, of Illinois, on August 28, 1850 (first session Thirty-first Congress, Globe, p. 1688), to introduce the previous question, but it was defeated. On February 18, 1903 (second session Fifty-seventh Congress, Record, pp. 2336–2341), the propriety of a previous question was debated in the Senate. On the same day in the House, Mr. Joseph G. Cannon, of Illinois, said: "In this body, close to the people, we proceed under rules. In another body—and I think I can say it within parliamentary lines—legislation is by unanimous consent. And when I say that, gentlemen understand what it means." (Record, p. 2347.)

[2] First session Tenth Congress, Journal, p. 61; Annals, pp. 1048, 1049.

[3] First session Twelfth Congress, Journal, p. 533.

[4] First session Thirteenth Congress, Journal, pp. 75, 76, 156; Annals, p. 398. Ex-Speaker Macon made a similar decision December 27, 1814. (Third session Thirteenth Congress, Journal, p. 622; Annals, p. 995.)

[5] First session Twenty-first Congress, Journal, p. 987.

This situation prompted Messrs. Charles F. Mercer, of Virginia, and George McDuffie, of South Carolina, to propose on June 30, 1832,[1] a rule as follows:

Resolved, That the previous question may be moved on any amendment, or amendment of any amendment, of any bill, resolution, or motion depending before the House; that when so expressly moved and seconded by a majority of the House its effect, if sustained by a majority, shall be simply to terminate debate on the amendment, or the amendment of the amendment, to which it applied, and to cause the question thereon to be immediately put: *Provided,* That if the previous question on the bill, resolution, or motion be, at the same time, moved and seconded by a majority of the House it shall have priority.

The House rejected the rule by a vote of 89 to 82, the inconvenience of the situation being admitted, but being regarded as not of sufficient magnitude to justify a change of rule. But on February 12, 1833,[2] a tariff bill had been reported from the Committee of the Whole with amendments, and a motion was made to recommit with instructions. For the purpose of getting a vote on the motion to recommit, the previous question was moved; but Mr. Speaker Stevenson informed the House that the effect of the previous question, if ordered, would be to set aside the motion to recommit and also all the amendments reported by the Committee of the Whole and bring the House to a vote on the bill only. On January 5, 1836,[3] the Committee on Rules[4] reported a rule providing that after the ordering of the previous question "the question shall be taken on the amendments, in order, if amendments be pending, and then on the main question."

The House did not agree to the rule, however, and a little later, on May 25, 1836,[5] when the pending question was a motion to print and recommit a report on the abolition of slavery in the District of Columbia, Mr. Speaker Polk, sustained by the House, overruled the contention of Mr. John Quincy Adams, of Massachusetts, that the effect of ordering the previous question would be to bring a vote on the motion to print, and held that the effect would be to cause a vote on the resolutions accompanying the report. The next year, in 1837,[6] the Committee on Rules renewed the recommendation of the year before, but the House decided against it, yeas 106, nays 102; but on January 14, 1840,[7] Mr. Adams prevailed on the House to adopt the rule, defining the effect of an affirmative vote on the motion for the previous question:

* * * Its effects shall be to put an end to debate, and bring the House to a direct vote upon amendments reported by a committee, if any, upon pending amendments, and then upon the main question.

On December 16, 1845,[8] after the joint resolution for the admission of Texas had been passed to be engrossed and read a third time, a motion was made to recommit with instructions to report it with a proviso prohibiting slavery. The previous

[1] First session Twenty-second Congress, Journal, pp. 1042, 1064, 1158; Debates, pp. 3832, 3839, 3850.

[2] Second session Twenty-second Congress, Debates, p. 1701.

[3] First session Twenty-fourth Congress, Report No. 83.

[4] This committee included Messrs. Abijah Mann, jr., of New York, John Quincy Adams, of Massachusetts, Lewis Williams, of North Carolina, and Edward Everett, of Massachusetts.

[5] First session Twenty-fourth Congress, Journal, p. 874; Debates, p. 4029.

[6] First session Twenty-fifth Congress, Journal, p. 56.

[7] First session Twenty-sixth Congress, Globe, p. 121.

[8] First session Twenty-ninth Congress, Journal, pp. 111–113; Globe, p. 64.

question being ordered, Mr. Speaker Davis held that the question should be taken on the motion to recommit, but the House overruled him and decided that the motion to recommit was removed.

Probably as a result of this decision the rule adopted in 1840 was amended on August 5, 1848,[1] by inserting after the words "direct vote "the following: "upon a motion to commit, if such motion shall have been made; and if this motion does not prevail, then"

By these changes the operation of the rule was much improved, but the House still found itself in difficulties occasionally. If the motion to postpone the bill should be offered the previous question would cut it off[2] and bring the House to a direct vote on the amendments and the bill. Thus if the motion to postpone was made when the bill was presented, the House either must hear an interminable debate on the subject of postponement, or order a direct vote on the bill, which had not been debated at all.[3]

Finally, on February 27, 1852,[4] Mr. Speaker Boyd ruled that the ordering of the previous question did not out off the motion to postpone, and this decision was sustained by the House. In the revision of 1860,[5] the principle was established in the rules.

There was also another difficulty traceable to the amendment of 1840. An amendment might be offered to the first section of a bill, and an amendment to that amendment. On these a long debate might spring up, which could be stopped only by the previous question. But that precluded all further amendment, although there might be several sections untouched. Therefore, in 1860,[6] at the suggestion of Mr. John S. Millson, of Virginia, a provision was adopted enabling the House to order the previous question on a pending amendment, or an amendment thereto, without precluding further debate or amendment of the bill, and giving the same facility of amendment that was enjoyed in Committee of the Whole.

2. As to the effect of a negative decision of the motion for the previous question, the House labored under a difficulty for many years.

On March 15, 1792,[7] a motion relating to evidence in the election case of Jackson *v.* Wayne was before the House, and the Journal has this entry:

> On which motion, the previous question being called for by five Members, to wit: "Shall the main question to agree to the said motion be now put?" it was passed in the negative. And so the said motion was lost.

The Journal shows that the effect of this was to remove the pending question from before the House, and while the main issue of the election case was passed on, this question as to evidence did not again come up.

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[1] First session Thirtieth Congress, Journal, p. 1164; Globe, p. 1039.

[2] Mr. Speaker Polk had so held in 1837 (second session Twenty-fourth Congress, Debates, p. 1350), and Mr. Speaker Stevenson in 1833 (second session Twenty-second Congress, Debates, p. 1757).

[3] Remarks of Mr. Washburn, Congressional Globe, first session Thirty-sixth Congress, March 15, 1860, p. 1209.

[4] First session Thirty-second Congress, Journal, pp. 401, 402; Globe, p. 648.

[5] First session Thirty-sixth Congress, Journal, p. 530.

[6] First session Thirty-sixth Congress, Globe, p. 1209.

[7] First session Second Congress, Journal, p. 536.

On March 18, 1802,[1] Mr. Speaker Macon held, after a negative decision on a motion for the previous question, that it would not be in order to put the question on an amendment to or on the engrossment of the pending bill during the day. In 1810[2] a rule was proposed that after a negative decision on the previous question business should proceed as if the previous question had not been moved, but the House did not agree to it. And in 1812[3] Mr. Speaker Clay, and in 1828[4] and 1830[5] Mr. Speaker Stevenson continued to hold that after a negative decision of the previous question the consideration of the pending bill would go over to the next day. In 1832,[6] when an attempt was made to remedy another difficulty arising from the existing rule, this provision was proposed:

> * * * and provided also that a determination against the previous question, or any amendment, or on any amendment of an amendment, in the original bill, resolution, or motion shall not have the effect of postponing to another day the amendment, bill, resolution, or motion, but the same shall remain before the House in the same state as if the previous question had not been moved.

The House, largely because of provisions in other portions of the proposed rule, declined to agree to it, and the old practice continued,[7] Mr. Speaker Cobb ruling in 1851[8] as Mr. Clay had ruled in 1812. In 1858[9] the Committee on Rules proposed a provision that a negative decision of the previous question should leave the pending main question in the same status it would have been in had the previous question not been demanded; but it was not until the revision of 1860[10] that such an amendment was actually adopted.

5447. A call of the House is not in order after the previous question is ordered unless it appears on an actual count by the Speaker that a quorum is not present.

Present form, and history of section 2 of Rule XVII.

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[1] First session Seventh Congress, Journal, pp. 147, 148; Annals, pp. 1045–1047.

[2] Second session Eleventh Congress, Journal, p. 175; Annals, pp. 1207–1215.

[3] First session Twelfth Congress, Journal, pp. 193, 533; Annals, p. 1082.

[4] First session Twentieth Congress, Journal, p. 1042; Debates, p. 2613.

[5] First session Twenty-first Congress, Journal, pp. 468, 722, 988.

[6] First session Twenty-second Congress, Annals, pp. 3832, 3840, 3850.

[7] In 1842 occurs an interesting illustration of the former practice whereby a negative decision of the previous question removed the main question from before the House for that day. On December 6 the House was considering Mr. John Quincy Adams's motion to rescind the famous twenty-first rule of the House forbidding the reception of antislavery petitions. The previous question was moved and the vote being taken, there appeared yeas 84, nays 99. Therefore the subject was removed from before the House for one day. On the next day the motion was again considered, and the previous question being again moved, there were yeas 91, nays, 93. And the subject was removed from before the House for a day. On December 8 the motion again was considered and again was removed from before the House by a negative decision of the previous question. Finally, on December 12, the motion was laid on the table. (Third session Twenty-seventh Congress, Journal, pp. 8, 10, 11, 13, 32, 37; Globe, pp. 31, 37.) On July 30, 1788, in the constitutional convention of North Carolina, the previous question was moved, evidently with the intention of avoiding a decision on the main question. The motion was debated after it was made, and, being carried, evidently removed the main question. (Elliot's Debates, vol. 4, pp. 217–222 (edition of 1836).)

[8] Second session Thirty-first Congress, Globe, p. 367.

[9] Second session Thirty-fifth Congress, Report No. 1.

[10] First session Thirty-sixth Congress, Journal, p. 530.

Section 2 of Rule XVII provides:

A call of the House shall not be in order after the previous question is ordered, unless it shall appear upon an actual count [1] by the Speaker that a quorum is not present.

The Committee on Rules proposed this rule in 1858,[2] but it was actually adopted on March 16, 1860.[3] The object of the rule was to allow a call of the House to be ordered under such circumstances only when necessary. The form of 1860 made the call not in order after the previous question was seconded. The second was dropped in the revision of 1880,[4] so the phraseology was modified to correspond.

5448. After the motion is made for the previous question all incidental questions of order, whether on appeal or otherwise, are decided without debate.

Present form and history of section 3 of Rule XVII.

Section 3 of Rule XVII provides:

All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

This rule dates from September 15, 1837,[5] and was intended to prevent long debates on points of order after the previous question had been moved. It merely put in form as a rule the substance of a decision made on March 29, 1836 [6] by Mr. Speaker Polk, and sustained by the House.

5449. On May 23, 1900,[7] the bill (H. R. 11719) amending section 5270 of the Revised Statutes of the United States, had been engrossed and read a third time under the operation of the previous question, when Mr. D. A. De Armond, of Missouri, moved to recommit the bill with instructions.

Mr. George W. Ray, of New York, having made the point of order that the instructions were not germane, Mr. De Armond proposed to debate the point of order.

The Speaker pro tempore [8] held that debate was in order only by unanimous consent, under section 3 of Rule XVII.

5450. Before the adoption of rules, while the House proceeds under general parliamentary law, the motion for the previous question is admissible.

Before the adoption of rules, and consequently before there is a rule prescribing an order of business, a Member may offer for immediate consideration a special order.

On August 29, 1893,[9] the House, before the adoption of rules, had proceeded to the consideration of the proposed rules of the House, when Mr. Thomas C. Catchings, of Mississippi, submitted the following resolution:

Resolved, That the House proceed to the consideration of the report of the Committee on Rules; that the rules proposed by the committee shall be read by paragraphs; that any Member shall be allowed

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[1] See Section 2909 of Vol. IV.

[2] Second session Thirty-fifth Congress, Report No. 1.

[3] First session Thirty-sixth Congress, Globe, pp. 1180, 1205.

[4] Second session Forty-sixth Congress, Record, p. 206.

[5] First session Twenty-fifth Congress, Globe, pp. 31–34. (See also sec. 5443 of this chapter.)

[6] First session Twenty-fourth Congress, Journal, p. 588; Debates, p. 3008.

[7] First session Fifty-sixth Congress, Record, p. 5922,

[8] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[9] First session Fifty-third Congress, Journal, p. 23; Record, p. 1027.

five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon.

Mr. Catchings demanded the previous question.

Mr. Thomas B. Reed, of Maine, made the point of order that the demand for the previous question on the proposed resolution was not in order, as the resolution was in effect a mere incidental motion and had to be decided without debate of itself.

The Speaker[1] held that the demand for the previous question was in order.

5451. Before the adoption of rules the previous question has been admitted, although in the earlier practice it was conceived to differ somewhat from the previous question of the rules.—On December 19, 1839,[2] the Speaker having been elected, and most of the Members having been sworn in, the previous question was moved on a resolution relating to the administration of the oath to certain Members from New Jersey, whose seats were contested.

Mr. William Cost Johnson, of Maryland, made the point of order that the previous question was not in order until the rules of the House were adopted, and when there were Members present and desiring to be sworn in.

The Speaker[3] decided that, according to the parliamentary law, a previous question was in order before the adoption of particular rules for the government of the proceedings of the House.[4]

5452. On December 6, 1841,[5] the House was considering a motion for the adoption of rules,[6] when the previous question was moved.

Mr. John Quincy Adams, of Massachusetts, objected on the ground that, in the absence of rules, the previous question could not be recognized or moved.

The Speaker[7] stated that, in the absence of written rules, it had, in all cases, been the practice of the House of Representatives to be governed by the Lex Parliamentaria, in which the previous question was recognized; that, in cases precisely analogous to the present, the previous question had been moved, recognized, and put in the House, and that he therefore should receive the motion for the previous question.

Mr. Adams having appealed, and the appeal having been sustained, yeas 147, nays 17, the Speaker notified the House that, according to the Lex Parliamentaria, an amendment of the main question being first moved, and afterwards the previous question, the question of amendment must be first put.

5453. On December 26, 1855,[8] before the election of a Speaker or the adoption of rules the House was considering a resolution in relation to the procedure in voting for Speaker.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Twenty-sixth Congress, Journal, p. 88.

[3] Robert M. T. Hunter, of Virginia, Speaker.

[4] The Globe (p. 64) quotes the Speaker as saying also that the previous question under the general law was a different thing from the previous question under the rules of the last House.

[5] Second session Twenty-seventh Congress, Journal, pp. 7, 9.

[6] At the first session rules had been adopted only for that session. The difficulty in adopting permanent rules was occasioned by differences of opinion in regard to the rule prohibiting the reception of petitions for the abolition of slavery.

[7] John White, of Kentucky, Speaker.

[8] First session Thirty-fourth Congress, Globe, p. 82.

Mr. Israel Washburn, jr., of Maine, moved the previous question on the resolution. Mr. James L. Orr, of South Carolina, raised the question of order as to the applicability of the previous question to the body in its deliberations.

The Clerk [1] held that it did apply, referring in support of this ruling to a precedent of the Thirty-first Congress.

5454. On June 3, 1841,[2] the House was considering a resolution to adopt the rules of the last House as the rules of the present, when Mr. George W. Hopkins, of Virginia, moved the previous question, which motion was seconded by a Member.

Here the Speaker [3] stated that as the House, in the absence of written rules, was governed by the common parliamentary law, it did not, under that law, require a majority of the Members present to demand the previous question,[4] but that it could be put upon the demand of one Member, seconded by another Member.

The previous question being put, was decided in the negative, and the subject was thereby postponed until the next day.

5455. On December 24, 1849,[5] before the adoption of rules, Mr. Speaker Cobb held that under the parliamentary law the previous question itself was debatable but not the main question.

5456. The only motion used for closing debate in the House (as distinguished from the Committee of the Whole) is the motion for the previous question.—On February 13, 1882,[6] the House was considering the bill (H. R. 3550) making apportionment of Representatives in Congress among the several States under the Tenth Census.

Mr. Horace F. Page, of California, moved that general debate be closed at 3 o'clock on the succeeding day, and that one hour be given for the consideration, as in Committee of the Whole, of amendments under the five-minute debate.

Mr. J. Proctor Knott, of Kentucky, made the point of order that debate on a proposition could not be limited by motion, and that under the rules and practice of the House debate could only be closed by the previous question.

The Speaker [7] sustained the point of order, and held that the motion could only be entertained by unanimous consent.

5457. The motion for the previous question may not include a provision that it shall take effect at a certain time.—On May 13, 1896,[8] during consideration of the Illinois contested election case of Rinaker v. Downing, Mr. William H. Moody, of Massachusetts, moved "that the previous question be considered as ordered at quarter past 5 o'clock."

Mr. Joseph G. Cannon, of Illinois, made a point of order against the motion.

The Speaker [9] said:

The gentleman can not make that motion. It can only be done by consent of the House. If the gentleman is desirous of submitting the request for unanimous consent, the Chair will put it to the House.

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[1] John W. Forney, Clerk.

[2] First session Twenty-seventh Congress, Journal, p. 36; Globe, p. 18.

[3] John White, of Kentucky, Speaker.

[4] The rules of the House no longer make this requirement.

[5] First session Thirty-first Congress, Globe, p. 68.

[6] First session Forty-seventh Congress, Journal, p. 564; Record, pp. 1096, 1097.

[7] J. Warren Keifer, of Ohio, Speaker.

[8] First session Fifty-fourth Congress, Record, p. 5200.

[9] Thomas B. Reed, of Maine, Speaker.

5458. Less than a quorum may order the previous question on a motion incident to a call of the House.—On April 12, 1894,[1] during a call of the House, Mr. T. C. Catchings, of Mississippi, offered a resolution revoking leaves of absence, directing the Sergeant-at-Arms to notify absent Members that their attendance was required, and providing that further proceedings under the call be dispensed with.

The previous question having been demanded, the vote was taken by yeas and nays, and there were—yeas 123, nays 3, not voting 227.

Mr. Thomas B. Reed, of Maine, made the point of order that no quorum had voted and that a quorum was required.

The Speaker pro tempore[2] overruled the point of order, holding that this being a proceeding to secure the attendance of absentees a quorum was not required.

5459. The previous question may be moved on a proposition to censure a Member, although the effect of it might be to prevent him from making explanation or defense.—On May 6, 1844,[3] Mr. Romulus M. Saunders, of North Carolina, as a matter of privilege, from the select committee appointed on the 23d day of April last to inquire into the circumstances of the rencounter on the floor of the House between Mr. Rathbun and Mr. White, and into the expediency of reporting a bill or resolution providing for the exemplary punishment of any offenses within the walls of the Capitol or on the public grounds, and also to inquire into the assault made upon one of the police of the Capitol by William S. Moore during the rencounter, made a report in part thereon, accompanied by the following resolution:

Resolved, That it is not expedient to have any further proceedings in the case of William S. Moore for an assault upon the person of John L. Wirt, one of the police of the Capitol, and that he be discharged and left to the judicial authorities of the District of Columbia.

Mr. White moved that the first branch of the report be recommitted to the select committee. Alter debate a motion was made by Mr. John P. Hale, of New Hampshire, to amend the motion made by Mr. White by adding thereto the following:

With instructions to report a resolution declaring that, in view of the facts disclosed by them, in their report, Messrs. White and Rathbun did fight willingly on this floor—a public place. That in doing so they have violated the order of the House, have been guilty of an affray, and deserve, therefore, the censure of this House. And that John White, a Member of this House from the State of Kentucky, in applying to George Rathbun, a Member of this House from the State of New York, language imputing falsehood to said Rathbun while the House was in session in Committee of the Whole, merits and should receive the severest censure of the House.

Mr. Hale moved the previous question thereon.

Mr. Robert C. Schenck, of Ohio, raised the following question of order:

That the instructions to the committee being imperative, if they are agreed to by the House, the committee must, in compliance therewith, report resolutions of censure. And if the previous question is now admitted, the Member thus censured will be precluded from any defense. Therefore the previous question is not now in order.

The Speaker[4] decided against the point of order raised by Mr. Schenck, and on an appeal was sustained by the House.[5]

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[1] Second session Fifty-third Congress, Journal, p. 3301; Record, pp. 3705, 3716.

[2] James D. Richardson, of Tennessee, Speaker pro tempore.

[3] First session Twenty-eighth Congress, Journal, p. 882; Globe, pp. 579, 609.

[4] John W. Jones, of Virginia, Speaker.

[5] See section 1256 of Volume II of this work for a similar ruling.

5460. The previous question applies to a question of privilege as to any other question.—On December 13, 1904,[1] the House was considering this resolution:

Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

Mr. Henry W. Palmer, of Pennsylvania, having proposed to move the previous question, Mr. Richard Wayne Parker, of New Jersey, raised the point of order that the previous question might not be ordered on a question of privilege like the pending question.

The Speaker[2] said:

The Chair sees no reason, even without the precedents, why the House can not, if the majority desires, by vote order the previous question; but the Chair is informed that the precedents are numerous upon this subject. The previous question is in order.

5461. A single motion for the previous question may be applied only to one bill, and only by unanimous consent may the previous question be moved on several bills at one motion.—On June 23, 1898,[3] the regular order presented to the House was the consideration of a number of pension bills which had come over from the Friday evening session with the previous question ordered on them.

Mr. Eugene F. Loud, of California, having raised a question of order as to the regularity of this procedure, the Speaker[4] said:

The Chair desires to say, before the matter passes from the House, that the proceeding is entirely in accordance with the language of the rules. It is not in regard to pension cases only, but in regard to all others—that when the previous question had been ordered upon a bill to the passage it then becomes the order of the House, and supersedes almost everything. But of course, the rule actually contemplated that this should be done in regard to a single bill. Now, it seems to have been done with regard to seventy in a lump. The only way in which that could have been done was by the unanimous consent of all the Members present, and there was no way by which this business could have been brought before the House at this time if a single man had objected. * * * Nevertheless, the practice is not by any means a desirable one. The business of the House ought not to be forestalled by consent given in that way. The Chair knows no way to prevent it, except by some Member being present and insisting upon a proper course of action. If the proper course of action had been taken, there could have been but a single bill with the previous question ordered beforehand.

As to this matter not having been taken up before, the Chair can only say that he was not aware that these bills were in this condition until now. * * * It is the first time in this Congress that the previous question has been ordered in this way. They would come up as unfinished business if the previous question was not ordered; but whenever the previous question is ordered it is equivalent to a direction to lay aside all business and proceed to the consideration of these special bills.

5462. On the legislative day of December 18, 1900,[5] but the calendar day of December 19, the Committee of the Whole House on the state of the Union rose and reported through its Chairman two bills (S. 1929 and S. 2329) relating to grade crossings on railroads in the District of Columbia, with amendments to each and the recommendation that each bill as amended do pass.

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[1] Third session Fifty-eighth Congress, Record, p. 248.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 6289.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-sixth Congress, Record, p. 454.

The report having been received, Mr. Joseph W. Babcock moved "the previous question on the pending bills and amendments to their final passage."

The Speaker[1] said:

The Chair is of the opinion that each bill should have a separate motion.

Thereupon the previous question was asked and ordered on the bill S. 1929, and it was put on its passage.

Then in the same way the previous question was ordered on S. 2329.

5463. On January 30, 1903,[2] the Committee of the Whole House rose and the Chairman reported a series of bills relating to the payment of private claims.

Thereupon Mr. Joseph V. Graff, of Illinois, rising to a parliamentary inquiry, asked if it would be in order to move the previous question on all the bills to their passage.

The Speaker pro tempore[3] replied that it would not be in order.

5464. On June 2, 1860,[4] Speaker pro tempore John S. Phelps, of Missouri, held that the House could by unanimous consent order the previous question on several bills at the same time. On appeal this decision was sustained.

5465. A single motion for the previous question may not apply to a motion to agree to a conference report and also to a motion to ask a further conference on amendments not included in the report.—On March 2, 1891,[5] the House was considering the report of the committee of conference on the bill (H. R. 10881) relating to copyrights, which report included agreements as to all the amendments of the Senate, except those numbered 5 and 6.

Mr. William E. Simonds, of Connecticut, moved the previous question on agreeing to the report and for a conference with the Senate on the amendments to the bill numbered 5 and 6.

Mr. William M. Springer, of Illinois, made the point of order that the latter part of the motion was not in order until the first motion was disposed of.

The Speaker[6] held that the previous question was in order only on the question of agreeing to the conference report.

5466. The previous question may be moved on both the motion to refer and on the pending resolution.—On December 10, 1903,[7] the House was considering a resolution relating to the proposed impeachment of Judge Charles Swayne.

Mr. John F. Lacey, of Iowa, moved to refer the resolution to the Committee on the Judiciary.

After debate Mr. Lacey moved the previous question on both the motion to refer and on the resolution itself.

The Speaker[8] entertained the motion and the previous question was ordered as moved.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-seventh Congress, Record, p. 1492.

[3] John Dalzell, of Pennsylvania, Speaker pro tempore.

[4] First session Thirty-sixth Congress, Journal, pp. 986, 987; Globe, p. 2581.

[5] Second session Fifty-first Congress, Journal, p. 346; Record, p. 3711.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Fifty-eighth Congress, Record, p. 103.

[8] Joseph G. Cannon, of Illinois, Speaker.

5467. The previous question covers the main question, but does not apply to incidental questions arising therefrom.—On May 26, 1836,[1] the House, under the operation of the previous question, agreed to certain resolutions relating to the agitation for the abolition of slavery in the District of Columbia. During the voting on these resolutions several Members declined to respond or asked to be excused from voting when their names were called. The Speaker had determined that the settlement of the questions arising out of these occurrences should take place after the voting on the resolutions had been concluded.

Accordingly, after the vote on the last resolution, the question recurred on the request of Mr. Thomas Glascock, of Georgia, that he be excused from voting. As Mr. Glascock was addressing the House he was called to order by Mr. Albert G. Hawes, of Kentucky, who reduced his call to writing, as follows:

Mr. Hawes calls the gentleman from Georgia to order because the question before the House is not debatable, the previous question having been demanded upon the resolutions under which the matter before the House arose.

The Speaker[2] decided that, as the resolutions which constituted the main question upon which the previous question had been ordered, had been acted on by the House, the previous question had had its full operation; and that the question which had arisen, and was now under consideration, did not come within the operation of the previous question, which, by the rules of the House, precludes debate.

Mr. Lewis Williams, of North Carolina, having taken an appeal, the appeal was laid on the table.

6468. The previous question may be moved on a series of resolutions; but after it is ordered a separate vote may be had on each resolution.— On July 5, 1848,[3] the previous question was moved on a series of five resolutions, including a proposed amendment to one of these resolutions. The previous question was ordered on all these at one vote, but after the vote on the amendment had been agreed to, a division of the question was demanded, and the question was taken separately on each resolution.

5469. An early decision, since reversed, held that the previous question, when ordered on a resolution with a preamble, did not apply to the preamble (footnote).—On July 15, 1856,[4] the House was considering the resolutions relating to the assault on Senator Charles Sumner on May 22, 1856, by Representative Preston S. Brooks. The resolutions having been voted on under the operation of the previous question, the Speaker stated the question to be upon agreeing to the preamble.

An amendment was then offered to the preamble, whereupon Mr. George W. Jones, of Tennessee, raised the question of order that the main question having been ordered upon the preamble and resolutions, the previous question was not yet exhausted, and that the amendment was consequently out of order.

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[1] First session Twenty-fourth Congress, Journal, p. 885.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Thirtieth Congress, Journal, pp. 983–986.

[4] First session Thirty-fourth Congress, Journal, p. 1217; Globe, p. 1642.

The Speaker[1] overruled the question of order, on the ground that the previous question only covered the resolutions, and that the preamble (like the title to a bill) being the last thing to be considered, was now open to amendment.[2]

On an appeal the decision of the Chair was sustained.

5470. On February 28, 1900,[3] the House was considering the Porto Rican tariff bill (H. R. 8245), and the previous question was ordered on the bill and amendments to the passage. The amendments to the text of the bill were agreed to, and the bill was ordered to be engrossed and read a third time.

At this point, before the bill had been read a third time, the Speaker[4] called attention to the preamble which it was proposed to insert after the title, and which had been offered and agreed to in Committee of the Whole.

On motion of Mr. Sereno E. Payne, of New York, the previous question was ordered on the preamble, and it was agreed to.

The bill was then read a third time.

Then, a motion to recommit having been decided in the negative, the bill was passed.

5471. The ordering of the previous question to the final passage of a bill was held to exclude a motion to strike out the title.—On May 18, 1906,[5] the House was considering the bill (H. R. 850) for the relief of the estate of Samuel Lee, on which the previous question had been ordered to the final passage.

The bill having been passed, an amendment to the title was agreed to.

Thereupon Mr. John S. Williams, of Mississippi, rising for a parliamentary inquiry, asked if it would be in order to move to strike out the title.

The Speaker[6] said:

It seems to the Chair not. In the opinion of the Chair, while the question has not arisen for decision, it would not be in order, the previous question having been ordered and operating.

On May 19,[7] the succeeding day, when a motion was entered to reconsider the vote by which the bill was passed, Mr. John S. Williams, of Mississippi, asked:

Would it be in order, the title of the bill having been perfected, to move to strike out the title?

The Speaker said:

The Chair thinks not.

5472. Instance wherein a substitute amendment was offered to a bill reported from the Committee of the Whole with amendments, and the previous question was ordered on all the amendments and the bill to a final passage.—On April 29, 1898,[8] the House was considering the bill (H. R. 10100) to provide ways and means for war expenditures under the terms of a special

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] The Globe shows that the Speaker based his decision on Jefferson's Manual. On August 10, 1876, Speaker pro tempore Milton Sayler, of Ohio, held that the previous question when ordered on a resolution with a preamble applied to the preamble. (First session Forty-fourth Congress, Journal, p. 1419.)

[3] First session Fifty-sixth Congress, Record, p. 2429.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Fifty-ninth Congress, Record, p. 7102.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] Record, p. 7105.

[8] Second session Fifty-fifth Congress, Record, p. 4451.

order which provided the Committee of the Whole should report the bill to the House at 4 p. m. that day with all amendments, and that a vote should then be taken.

The Committee accordingly rose at the hour named, and the Chairman reported the bill to the House with one amendment.

This report having been made, Mr. Nelson Dingley, of Maine, said:

I desire, on behalf of the Committee on Ways and Means, before moving the previous question, to offer an amendment in the nature of a substitute for the entire bill, but making no changes in the bill except certain amendments which have been agreed to by the majority of the Ways and Means Committee.

Mr. James D. Richardson, of Tennessee, reserved a point of order; and Mr. Joseph W. Bailey, of Texas, asked of the Chair if the substitute was in order.

The Speaker,[1] gave his opinion that it was in order.

5473. The previous question may be applied to the nondebatable motion to limit general debate in Committee of the Whole, in order to prevent amendment.—On May 26, 1906,[2] Mr. Robert Adams, jr., of Pennsylvania, moved that the House resolve itself into Committee of the Whole House on the state of the Union for consideration of the consular and diplomatic appropriation bill, and, pending that motion, moved that the time of general debate be limited to a specified time. On this motion Mr. Adams proposed the previous question.

Question arising as to a demand for recognition for debate, the Speaker[3] said:

The motion to go into the Committee of the Whole is not debatable or amendable, but the motion to limit the time of general debate is amendable, in the opinion of the Chair. The gentleman from Pennsylvania moves the previous question upon the motion.

5474. A Member who, having the floor, moved the previous question, was permitted to resume the floor on withdrawing the motion.—On September 4, 1850,[4] the House took up the bill of the Senate (No. 307) proposing to the State of Texas the establishment of her northern and western boundaries, etc., the pending question being on the motion of Mr. Robert M. McLane, of Maryland, to commit the bill and pending amendments to the Committee of the Whole House on the state of the Union, and print, upon which he had moved the previous question.

Mr. McLane withdrew his demand for the previous question, and was proceeding to debate, when Mr. Joseph M. Root, of Ohio, made the point of order that the gentleman from Maryland, having made a speech on the preceding day, and concluded by moving the previous question, it was not competent for him under the rule (notwithstanding his withdrawal of the previous question) to address the House while any other gentleman who had not spoken desired the floor.

The Speaker[5] stated that a Member who had moved the previous question had an undoubted right, at any time before it was seconded, to withdraw his motion, and, having withdrawn it, he was clearly of the opinion that it was

[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 7473.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Thirty-first Congress, Journal, pp. 1367, 1368; Globe, pp. 1746, 1747.

[5] Howell Cobb, of Georgia, Speaker.

competent for him to retain the floor and speak out his hour. He therefore overruled the point of order.

Mr. Root having appealed, the appeal was laid on the table.

5475. If, after debate, the Member in charge of a measure does not move the previous question, another Member, having the floor, may do so.—On May 13, 1896,[1] the House was considering the contested election case of Rinaker *v.* Downing, which had been called up on the preceding day by Mr. Edward D. Cooke, of Illinois, and had been under consideration until near the close of the session on May 13.

Then Mr. William H. Moody, of Massachusetts, who represented the minority of the committee which had reported on the case, asked for the previous question, after having attempted to arrange with those representing the majority of the committee a time at which to take a vote.

Mr. Joseph G. Cannon, of Illinois, made the point of order that it was not in order for the gentleman from Massachusetts to move the previous question, as it was the unbroken practice of the House for years that the gentleman in charge of the measure should always be recognized at the close of the debate to move the previous question.[2]

The Speaker[3] ruled:

> The Chair does not remember any case where the right to move the previous question has been refused to a member. The remedy seems to be very simple. If the House does not desire the previous question ordered, it can vote the motion down. The gentleman in charge of the bill was recognized originally and was in charge of it. He has not seen fit to move the previous question, but if some one else moves it and the House does not desire to have it ordered, it can vote down the motion.

5476. A Member opposed to a bill, having the floor, may make a motion for the previous question, although the effect of the motion may be to deprive the Member in charge of his control of the bill.—On April 30, 1900,[4] the House was considering the joint resolution (H. J. Res. 1) proposing amendments to the Constitution in relation to polygamy, called up under the call of committees by Mr. John B. Corliss, of Michigan, Chairman of the Committee on the Election of President, Vice-President, and Representatives in Congress.

Both Mr. Corliss and Mr. C. E. Snodgrass, of Tennessee, spoke for the bill, and then surrendered the floor, reserving their time.

Mr. William H. King, of Utah, was then recognized in opposition to the bill. Having spoken, Mr. King yielded time to Mr. George W. Ray, of New York, who in turn yielded to Mr. Samuel W. T. Lanham, of Texas. Mr. Lanham, with the assent of Messrs. Ray and King, moved that the bill be committed to the Committee on the Judiciary, claiming that the jurisdiction rightly belonged to that committee. On the motion to commit Mr. Lanham demanded the previous question.

Messrs. Corliss and Snodgrass raised the question that an opponent of the bill might not thus deprive them of the control of the floor and the bill.

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[1] Cong. Record, First session Fifty-fourth Congress, Record, p. 5203; Journal, p. 484.

[2] It is very rare that a representative of the minority desires to stop debate. Usually the majority are the movers of the previous question, while the minority resist. In this case the conditions were reversed, as the House seemed likely, as it finally did, to favor the minority views.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 4864.

The Speaker pro tempore[1] held that Mr. Lanham having the floor for motions as well as for debate might take the action which he proposed.

The previous question was ordered and the bill was committed to the Committee on the Judiciary.

5477. It is in order for a Member to make a motion and thereupon to demand the previous question on the motion.—On July 9, 1838,[2] Mr. Henry A. Wise, of Virginia, moved that the House reconsider its vote whereby it had agreed to the following resolution:

Resolved, That the sixteen Members reported by the Sergeant-at-Arms be called on, when they next appear in this Hall, to render a reason why they disobeyed the order of this House.

Mr. Wise moved the previous question.

Mr. Charles F. Mercer, of Virginia, rose to a point of order, which he reduced to writing in the words following:

Mr. Wise, of Virginia, moved to reconsider a resolution of the House adopted at its last session, and at the same time, and in the same sentence, the previous question; and the Speaker, on exception being taken thereto, pronounced the motion of Mr. Wise in order. Upon which Mr. Mercer appealed from the judgment of the Chair on the ground that the two motions could not be entertained at the same time.

The Speaker[3] decided that the motion to reconsider having been made, and being in possession of the House, it was in order for Mr. Wise, who had possession of the floor, to move the previous question.

The question being taken on the appeal of Mr. Mercer, the decision of the Chair was sustained.

5478. On June 1, 1840,[4] Mr. F. O. J. Smith, of Maine, offered a resolution to modify one of the rules of the House so that a majority might suspend the rules to enable the House to go into Committee of the Whole House on the state of the Union.

Having offered this resolution, Mr. Smith moved the previous question on it.

Mr. John Bell, of Tennessee, submitted the following question of order:

The gentleman from Maine offered a resolution; and, before it was read or stated from the Chair, moved the previous question. The point of order was that it was not in order to offer a resolution and move the previous question before it was read or stated from the Chair.

The Speaker[5] stated that it was in conformity with the former decision and practice of the House to move the previous question when the resolution was moved; for the reason that the Member who offered the resolution was entitled to the floor on it before any other could claim it; and therefore it saved time, without violating the rights of any other Member, to enable him to move the resolution and call the previous question at the same instant, without going through the form of announcing the proposition, before the floor was given him to demand the previous question upon it.

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[1] Sereno E. Payne, of New York, Speaker pro tempore.

[2] Second session Twenty-fifth Congress, Journal, p. 1303; Globe, p. 505.

[3] James K. Polk, of Tennessee, Speaker.

[4] First session Twenty-sixth Congress, Journal, pp. 1064–1067; Globe, p. 432.

[5] Robert M. T. Hunter, of Virginia, Speaker.

An appeal being taken, the decision of the Chair was sustained, yeas 118, nays 85.

Mr. Bell demanded the question of consideration, and the Speaker decided that the call for the previous question did not deprive the Member of his right to demand the question of consideration.

5479. On March 11, 1844,[1] Mr. Cave Johnson, of Tennessee, moved a resolution relating to the rules of the House and immediately demanded the previous question thereon.

Mr. Robert C. Schenck, of Ohio, raised the question of order that it was not in order for a Member to offer a resolution and at the same time move the previous question thereon.

The Speaker[2] decided that, in accordance with numerous decisions and the common practice of the House, the motion for the previous question was in order.

Mr. Schenck having appealed, the decision of the Chair was sustained.

5480. The Member in charge of the bill and having the floor may demand the previous question, although another Member may propose to offer a motion of higher privilege; but the motion of higher privilege must be put before the previous question.—On July 12,1892,[3] Mr. J. Logan Chipman, of Michigan, called up for consideration a joint resolution (H. J. Res. 90) relating to election of Senators by the people.

And after debate thereon, Mr. Chipman demanded the previous question on the joint resolution to its engrossment and third reading.

Mr. Thomas B. Reed, of Maine, made the point of order that he, having risen to move for a recess, the Speaker should have entertained his motion before entertaining the demand for the previous question.

The Speaker[4] overruled the point of order, holding that Mr. Chipman, having the floor, had the right to demand the previous question before relinquishing; but that a motion for a recess, though made after the demand for the previous question, would take precedence over the question on ordering the previous question.[5]

5481. After the previous question is moved, there may be no further debate, not even the asking of a question.—On June 4, 1844,[6] the previous question having been moved on a resolution for closing all debate in Committee of the Whole House on the state of the Union on the civil and diplomatic appropriation bill Mr. Daniel D. Barnard, of New York, rose and commenced putting an interrogatory to the chairman of the Committee on Ways and Means, when he was called to order by Mr. John B. Weller, of Ohio.

The Speaker[2] decided that, the previous question having been moved, no debate was in order.

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[1] First session Twenty-eighth Congress, Journal, p. 558; Globe, p. 376.

[2] John W. Jones, of Virginia, Speaker.

[3] First session Fifty-second Congress, Journal, p. 288; Record, pp. 6061, 6080.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] The motion for a recess was then privileged. The rule is somewhat different now.

[6] First session Twenty-eighth Congress, Journal, p. 1003.

From this decision Mr. Barnard appealed on the ground that the mere asking a question was not debate, and that under the practice of the House he had a right, notwithstanding the pendency of the previous question, to put a question to the mover of the resolution.

The decision of the Speaker was sustained.

5482. After the previous question is ordered on a pending proposition, modifications or amendments may be made only by unanimous consent.— On April 17, 1844,[1] the House was considering the bill (H. R. 126) making appropriations for the improvement of certain harbors and rivers, the question being upon agreeing to the amendments to the bill reported from Committee of the Whole House on the state of the Union.

After debate a motion was made by Mr. Andrew Kennedy, of Indiana, to amend the bill by striking out all after the enacting clause and inserting a new bill.

The previous question was then ordered, and the amendments reported from committee were disposed of first.

Then the question was put on Mr. Kennedy's amendment, and Mr. Kennedy proposed to modify it.

The Speaker pro tempore[2] decided that it was not in order at this stage of the proceedings for Mr. Kennedy to modify his amendment.

Mr. Kennedy then stated that the amendment was proposed by him under circumstances which rendered it impossible for the moment for him to examine it; and that it contained matter which he should not have offered if he had read it. He therefore proposed to correct the amendment proposed by him to correspond with what he supposed it was when he offered it.

Objection being made,

The Speaker pro tempore decided that, the previous question having been moved and seconded,[3] the amendment could not be modified, corrected, or changed, except by the unanimous consent of the House.

On appeal, the Chair was sustained.

5483. On May 3, 1842,[4] the House was considering the bill (H. R. 73) for the apportionment of Representatives under the Sixth Census, when Mr. Richard W. Thompson, of Indiana, moved to amend by inserting a different ratio. The previous question was then demanded, put, and carried.

Thereupon Mr. Thompson proposed to modify his amendment.

The Speaker[5] decided that the amendment could not be modified at this stage of the proceeding, the previous question having been ordered thereon.

Mr. Edward Everett, of Massachusetts, having appealed, the appeal was laid on the table.

5484. On January 4, 1848,[6] the House was considering a resolution offered by Mr. William L. Goggin, of Virginia, requesting the President to communicate to

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[1] First session Twenty-eighth Congress, Journal, p. 811; Globe, p. 530.

[2] George W. Hopkins, of Virginia, Speaker pro tempore.

[3] The previous question is no longer seconded.

[4] Second session Twenty-seventh Congress, Journal, p. 776.

[5] John White, of Kentucky, Speaker.

[6] First session Thirtieth Congress, Journal, pp. 193–197; Globe, p. 104.

the House any instructions that might have been given to army or navy officers in regard to the return of Gen. Santa Anna to Mexico, etc.

Mr. Robert M. McLane, of Maryland, proposed to amend by adding:

Provided, That said orders, instructions, and correspondence, have not heretofore been furnished to Congress by the President.

Mr. Goggin moved the previous question, which was seconded,[1] and the previous question was stated, "Shall the main question be now put?"

This motion was decided in the affirmative, and the main question was put first on the motion of Mr. McLane.

Thereupon Mr. McLane proposed to modify the amendment by adding thereto the following:

and that the same is not incompatible with the public interest.

A question was raised as to whether any modification of the amendment was in order at this stage of the proceeding.

The Speaker[2] stated that he was not aware of anything in the rules or orders of the House which prevented a Member from withdrawing or modifying his own proposition at any time before a decision or amendment. The rule to this effect was express as to the power of withdrawing, and he had always regarded the right to modify as an incident to the right to withdraw. He therefore decided the proposed modification would be in order.

Mr. Robert Toombs, of Georgia, having appealed, the decision of the Chair was reversed, yeas 51, nays, 105.

5485. On September 5, 1850,[3] the House was considering a motion of Mr. John Wentworth, of Illinois, to recommit with instructions the bill of the Senate (No. 307) proposing to the State of Texas the establishment of the northern and eastern boundary.

The previous question having been ordered on this motion, Mr. Wentworth asked leave to modify his motion by withdrawing a part of the instructions.

The Speaker[4] decided that it was not competent, unless by unanimous consent, for a Member to modify his motion, the previous question having been ordered since the motion was made. The Speaker referred to a previous case in which this decision had been made.

Mr. Wentworth having appealed, the decision of the Chair was sustained.

5486. After the previous question has been moved or ordered on a bill and pending amendments, further amendments may not be offered.—On December 17, 1890,[5] the House was considering the apportionment bill (H. R. 12500), and the question was on agreeing to an amendment which had been submitted by Mr. Roswell P. Flower, of New York.

Mr. Joseph E. Washington, of Tennessee, claimed the right to submit a substitute therefor.

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[1] The second for the previous question is no longer required.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] First session Thirty-first Congress, Journal, pp. 1396, 1397; Globe, p. 1756.

[4] Howell Cobb, of Georgia, Speaker.

[5] Second session Fifty-first Congress, Journal, p. 63; Record, p. 606.

Mr. Thomas M. Bayne, of Pennsylvania, made the point of order that the previous question having been ordered on the previous day on the bill and pending amendments after two hours' debate on this day (which time had been occupied), no further amendment was in order except by unanimous consent.

After debate, the Speaker pro tempore [1] sustained the point of order, on the ground that no exception being made as to further amendments being offered the effect of the previous question was to include only pending amendments and exclude further amendments.

5487. On August 8, 1893,[2] Mr. Charles T. O'Ferrall, of Virginia, called up the resolution submitted by him on the preceding day:

Resolved, That George F. Richardson be now sworn in as a Representative in this Congress from the Fifth district of the State of Michigan.

On which, and upon the substitute submitted therefor by Mr. Julius C. Burrows, of Michigan, Mr. O'Ferrall had demanded the previous question, and upon which, by unanimous consent, debate for two hours was permitted.

After debate, Mr. William C. Oates, of Alabama, submitted as a substitute for the pending resolution and the amendment thereto submitted by Mr. Burrows the following:

That the question of the prima facie right to a seat in the House, for the Fifth district of Michigan, and all papers relating thereto, be committed to the Committee on Elections, when appointed, with instructions to report thereon at the earliest day practicable.

Mr. O'Ferrall submitted the point of order that the amendment in the nature of a substitute proposed by Mr. Oates was not in order, for the reason that his demand for the previous question was pending upon the original resolution and the amendment thereto offered by Mr. Burrows.

The Speaker [3] sustained the point of order.

5488. The previous question being demanded or ordered on a motion to concur in a Senate amendment, a motion to amend is not in order.— On March 2, 1907,[4] the Speaker laid before the House from the Speaker's table the bill (H. R. 13566) relating to the currency, with Senate amendments thereto.

The amendments having been read, Mr. Charles N. Fowler, of New Jersey, moved to concur in the Senate amendments, and on that demanded the previous question.

Mr. Ollie M. James, of Kentucky, rising to a parliamentary inquiry, asked if a motion to concur with an amendment would not have precedence of the motion to concur.

The Speaker [5] said:

It would if the gentleman from New Jersey had not demanded the previous question.

The previous question was then ordered, yeas, 164; nays, 84.

Mr. James then proposed to offer an amendment to the Senate amendment.

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[1] Edward P. Allen, of Michigan, Speaker pro tempore.

[2] First session Fifty-third Congress, Journal, pp. 8 and 9.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-ninth Congress, Record, pp. 4511–4513.

[5] Joseph G. Cannon, of Illinois, Speaker.

Mr. James E. Watson, of Indiana, made a point of order against the motion.

The Speaker held:

The gentleman from Kentucky proposes to offer an amendment after the previous question has been ordered on a motion to concur in the Senate amendments, and the point of order is made that it is not in order to offer an amendment after the previous question is ordered. Under the present conditions the Chair sustains the point of order.

Mr. James having appealed from the decision, the appeal, or motion of Mr. James R. Mann, of Illinois, was laid on the table, yeas, 159; nays, 167.

5489. The previous question having been demanded on a motion to recommit, it was held to be not in order to withdraw the latter motion.— On May 28, 1852,[1] the House proceeded to the consideration of the bill (S. 43) relating to the Missouri bill, which was in this situation: On a previous day Mr. Willard P. Hall, of Missouri, had moved to recommit the bill, and had then moved the previous question.

On this day, the bill having come before the House, Mr. Hall announced his intention to withdraw the motion to recommit.

Mr. Harry Hibbard, of New Hampshire, raised the question of order that the gentleman from Missouri could not withdraw the motion to recommit without previously withdrawing the motion for the previous question.

The Speaker[2] sustained the point of order, saying that a motion to recommit could not be made after the previous question had been moved,[3] and so it was evident that the motion to recommit, once made, could not be withdrawn until the motion for the previous question had been withdrawn.

5490. In order to prevent amendments the previous question is sometimes ordered on undebatable motions.—On December 18, 1900,[4] Mr. Joseph W. Babcock, of Wisconsin, moved that the House take a recess until 10 o'clock tomorrow, and on that motion demanded the previous question.

The Speaker[5] said:

The Chair is of the opinion, without examination, that the motion for the previous question is not necessary on this motion.

Thereupon Mr. James D. Richardson, of Tennessee, moved to amend the motion by inserting five minutes to 12 o'clock instead of 11 o'clock.

The Speaker then said:

The Chair will put the motion for the previous question. It will be in order to obviate the very purpose that is manifested by the supplemental motion.

5491. When a vote taken under the operation of the previous question is reconsidered the main question stands divested of the previous question, and may be debated and amended without reconsideration of

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[1] First session Thirty-second Congress, Globe, pp. 1504, 1505.

[2] Linn Boyd, of Kentucky, Speaker.

[3] This was before the motion to recommit had been given a special privilege in connection with the motion for the previous question.

[4] Second session Fifty-sixth Congress, Record, p. 411.

[5] David B. Henderson, of Iowa, Speaker.

the motion for the previous question. (Speaker overruled.)—On June 7, 1841,[1] the House had adopted this resolution:

Resolved, That a committee of nine members be appointed to revise, amend, and report rules for the government of this House; and that until such committee make report, and the same be finally acted upon, the rules and orders of the last House of Representatives, except the twenty-first,[2] shall be considered as the rules and orders of this House.

On June 8 Mr. Joseph Fornance, of Pennsylvania, moved to reconsider the vote whereby the resolution had been adopted, and on June 12 the motion to reconsider passed by a vote of 106 yeas to 104 nays.

The question then recurring on the resolution, Mr. Kenneth Rayner, of North Carolina, proposed to amend by a substitute adopting all the rules of the last House. This amendment was objected to as not in order, and on June 15 Mr. Daniel D. Barnard, of New York, submitted a question of order, as follows:

The House had passed a resolution adopting certain rules and orders for its own government. This resolution was passed under the operation of the previous question, by which the House determined that the question on the resolution should be taken without further debate. Yesterday the House determined to reconsider the vote adopting the said resolution. This restored the question on that resolution to the position in which it stood at the moment of taking the first vote thereon. The previous question still applies, and the question must now be taken without debate or amendment.

The Speaker[3] decided that, the House having reconsidered the vote adopting the resolution, the proceeding was restored to the precise point at which it was when the question to agree to the resolution was put; that the question, "Will the House agree to the resolution?" immediately recurred upon the passing of the vote to reconsider, and it was the question now before the House; that, as that question had been decided on the 8th instant under the operation of the previous question, the previous question now operated upon it, and consequently it was not open to debate or amendment.

From this decision Mr. Henry A. Wise, of Virginia, appealed, on the ground that a previous question expended itself when once put and decided; that, having been put on the 8th instant and decided, it could no longer be applied to the present proceeding unless renewed, and, consequently, that the proposition before the House was open both to amendment and debate.

On the question, "Shall the decision of the Chair stand as the judgment of the House?" the yeas were 105 and the nays were 112.

So the decision of the Chair was reversed, and it was decided that the previous question when once put no longer operated, notwithstanding a reconsideration of the question to which it may have been applied.

5492. On February 17, 1857,[4] Mr. Abraham Wakeman, of New York, called up, and the House agreed to, a motion to reconsider the vote by which the bill of the Senate (S. 493) entitled "An act to expedite telegraphic communication for the uses of the Government in its foreign intercourse," was referred to the Committee on the Post-Office and Post-Roads.[5]

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[1] First session Twenty-seventh Congress, Journal, pp. 47, 61, 128, 129; Globe, p. 53.

[2] This twenty-first rule was that which forbade the introduction of petitions for the abolition of slavery. It had been made an exception in the resolution on motion of Mr. John Quincy Adams, and by a vote of 112 to 104. (Journal, p. 42.)

[3] John White, of Kentucky, Speaker.

[4] Third session Thirty-fourth Congress, Journal, p. 452; Globe, p. 729.

[5] Section 2 of Rule XVIII now forbids bringing a bill back in this way.

The question then recurring on the motion to refer to the Committee on the Post-Office and Post-Roads,

Mr. George W. Jones, of Tennessee, made the point of order that the previous question, under which the bill was referred to the Committee on the Post-Office and Post-Roads at a former day, was still operating.

The Speaker [1] decided that the previous question was exhausted by the former reference, and that the question now recurred upon the motion to refer, divested of the previous question.

5493. When the previous question has been ordered on a series of motions and its force has not been exhausted, the reconsideration of the vote on one of the motions does not throw it open to debate or amendment.—On April 8, 1896,[2] the House was considering the bill (H. R. 7251) relating to the metric system, and the bill was passed to be engrossed and read a third time under the operation of the previous question, which had been ordered only to the engrossment and third reading, and not to the passage.

Then the vote whereby the bill was ordered to be engrossed and read a third time was reconsidered, and the Chair announced that the question was on the engrossment and third reading of the bill, which was open to debate and amendment.

Mr. Charles H. Grosvenor, of Ohio, made the point that as the vote had not been taken on the passage, the previous question was not exhausted.

The Speaker pro tempore [3] said:

The Chair will read a paragraph from the Digest which bears directly upon the point:

"When a vote, taken under the operation of the previous question, is reconsidered, the question is then divested of the operation of the previous question and is open for debate and amendment. * * * These decisions apply only to cases where the previous question was fully exhausted by votes taken on all the questions covered by it before the motion to reconsider was made. In any other case the pendency of the previous question would preclude debate."

If the previous question had been ordered on the passage of the bill, then the position taken by the Chair would, unquestionably, be wrong. The Chair was informed that the previous question was ordered on the engrossment and third reading of the bill, and upon that ground the Chair sees no reason for changing his ruling. * * * The Chair has examined the Journal, and it does not show that the previous question was ordered on the passage of the bill. It speaks of the state which the bill had reached and says, "The previous question was then ordered," and stops there. The Chair thinks the previous question only extended to the third reading of the bill, as that was the only question then before the House. The Chair still adheres to the ruling made.

5494. The previous question is exhausted by the vote on the motion on which it is ordered, and consequently a motion to reconsider the vote on the main question is debatable.[4]—On December 21, 1853,[5] the House adopted, under the operation of the previous question, a resolution instructing the Committee on Commerce [6] to inquire in relation to certain river and harbor works.

Mr. Cyrus L. Dunham, of Indiana, moved that the vote be reconsidered.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 37–22.

[3] William W. Grout, of Vermont, Speaker pro tempore.

[4] See, however, sections 5700, 5701 of this volume.

[5] First session Thirty-third Congress, Journal, p. 127.

[6] This committee formerly had jurisdiction of subjects relating to the improvement of rivers and harbors.

Mr. Thomas L. Clingman, of North Carolina, rose to a question of order, as to the right of a Member to debate the motion to reconsider, the vote upon the resolution having been taken under the operation of the previous question.

The Speaker[1] decided that the previous question had exhausted itself by the vote upon the resolution, and that consequently the motion to reconsider was debatable.

In this decision of the Chair the House acquiesced.

Subsequently, after debate upon the motion to reconsider, the Speaker stated that after more reflection upon the question of debating the present motion, he was of opinion that, under the rule which prohibits debate upon resolutions "on the very day of their being presented," he should not have permitted the debate to progress. Hereafter, in similar cases, he should so hold; but otherwise (as in his decision when the question of order was raised) in the case of motions to reconsider generally.[2]

5495. When the previous question is ordered "on any proposition on which there has been no debate" forty minutes are to be divided in debate.—Section 3 of Rule XXVIII,[3] which is classified under "suspension of the rules" but which applies also to the previous question, provides:

> When a motion to suspend the rules has been seconded, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for forty minutes, one-half of such time to be given to debate in favor of and one-half to debate in opposition to such proposition; and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

5496. The forty minutes of debate allowed in certain cases after the previous question is ordered should be demanded before division on the main question has begun.—On July 1, 1902,[4] Mr. Sereno E. Payne, of New York, from the Committee on Ways and Means, reported with an amendment a concurrent resolution fixing the time of adjournment of Congress, and immediately demanded the previous question, which was ordered.

The amendment was then agreed to; and pending the question on agreeing to the resolution, Mr. William Sulzer, of New York, moved to recommit with instructions. This motion was disagreed to.

The question being on agreeing to the resolution, the yeas and nays were ordered on the demand of Mr. Sulzer.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] The Congressional Globe (first session Thirty-third Congress, p. 78) shows that the explanation by the Speaker was prompted by conditions no longer existing. The twenty-fifth rule then provided for the introduction of resolutions on call by States, with the further provision that such as occasioned debate should go over. This resolution was introduced, the previous question demanded upon it, and sustained by the House, which cut off debate, and brought the House to action upon the resolution. It was passed through the House without debate; for if debate had arisen upon its introduction, it must have gone over. Upon reconsideration this resolution gives rise to debate, and thus the question arises whether it shall go over by the twenty-fifth rule. The Chair concluded, in view of the twenty-fifth rule, that the motion to reconsider should have been taken without debate. Thus it will be seen that in this view the question of the previous question does not enter.

[3] For history of this rule see section 6820 of this volume.

[4] First session Fifty-seventh Congress, Record, p. 7777.

Thereupon Mr. Claude A. Swanson, of Virginia, raised the question of order that there should be forty minutes of debate on the resolution, since there had been no debate before the previous question was ordered.

The Speaker[1] said:

Demand was made for the yeas and nays, and the yeas and nays have been ordered. No debate was demanded until after the division began, and the Chair thinks it is too late now. * * * The point of order is not without some difficulty, but the Chair thinks it comes now too late. The question on the amendment and the motion to recommit have been considered, and the House is dividing, and the Chair thinks it comes too late. While it is not without difficulty, the Chair thinks it is now too late.

5497. The word "proposition" in the rule providing as to debate after the previous question is ordered, means the main question and does not refer to incidental motions.—On February 5, 1896,[2] the House decided in the negative the question on the passage of the District of Columbia appropriation bill.

The vote having been reconsidered, and the question recurring on the passage, Mr. Charles H. Grosvenor, of Ohio, moved to recommit the bill to the Committee on Appropriations with certain instructions, and on that motion demanded the previous question, which was ordered.

Mr. Charles F. Crisp, of Georgia, made the point of order that there should be forty minutes of debate on the motion to recommit.

After debate the decision of the point of order was deferred.

On May 23, 1896,[3] the previous question having been ordered on the conference report on the Indian appropriation bill, Mr. John F. Fitzgerald, of Massachusetts, raised a question as to whether or not debate was allowable.

The Speaker[4] said:

In regard to the suggestion or inquiry which was made a while ago by the gentleman from Massachusetts [Mr. Fitzgerald] in regard to the right to speak after the ordering of the previous question, on the ground that there has been no debate upon the pending proposition, the Chair desires to state that this question was raised on the 5th of February last by the gentleman from Georgia [Mr. Crisp], and the Chair had occasion then to consider the right of debate under such circumstances. Under the rules, the right of debate for a limited time is given after the ordering of the previous question wherever the proposition has not been debated. Of course, if that word "proposition" referred to all motions or to any action of the House whatever, debate would have to be granted upon every motion on which the House might be called upon to act, so that it would be impossible to escape a great amount of debate.

The object of the previous question is to bring the House to a vote without debate or without further debate whenever the House sees fit to insist upon a vote. But of course it was very undesirable that any proposition should be sprung upon the House, and, without a word of explanation, forced through under the previous question. Hence an ameliorating clause was introduced into the rule providing that no proposition should go entirely undebated; that is, if it were a new proposition which had not been debated, that it should have the benefit of the provision for limited debate after the ordering of the previous question. But the word "proposition" as embodied in the rule means the main question, as Members of the House will see upon examining the language and reflecting upon what the practical working of the rule has always been. For example, debate in Committee of the Whole has always been held to satisfy this clause. So, also, wherever a question has been debated in the slightest manner—

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 1342; Journal, p. 535.

[3] Record, p. 5649.

[4] Thomas B. Reed, of Maine, Speaker.

where merely a sentence or two have been uttered by the mover explanatory of the measure—such limited debate has been held to satisfy the requirement of the rule.

Now, propositions which come up in the House in connection with the reports of conference committees are all of them propositions which have been debated, and it does not matter that any particular item of the main question or proposition submitted to the House has not been debated. If the subject has had debate, and thereby the House has had some information upon it, the rule allowing debate after the ordering of the previous question does not operate. The Chair thinks the matter is very clear, but as some gentlemen seem to have had some doubt about it, although the question has arisen more than once heretofore, the Chair thought he ought to make this statement.

5498. On January 5, 1904,[1] the House had ordered the previous question on a resolution relating to alleged improper conduct of Members in connection with irregularities in the Post-Office Department.

Thereupon Mr. Sereno E. Payne, of New York, moved to refer the resolution to the Committee on the Post-Office and Post-Roads.

Mr. Oscar W. Underwood, of Alabama, rising to a parliamentary inquiry, asked if debate was in order.

The Speaker[2] replied:

On page 438 of the Manual it says: "The word 'proposition' in the rule providing for forty minutes of debate after the previous question is ordered means the main question and does not refer to incidental motions."

Now, the main question has already been debated. This is an incidental motion to dispose of the resolution, namely, to refer it to a committee. The Chair thinks that debate has already been had under the rule and that further debate is not in order. The question is now on the motion of the gentleman from New York to refer the resolution to the Committee on the Post-Office and Post-Roads.

5499. If there has been debate, even though brief, before the previous question is ordered, the forty minutes of debate provided for in Rule XXVIII is precluded.—On May 1, 1890,[3] Mr. William McKinley, jr., of Ohio, presented from the Committee on Rules a resolution providing for the consideration of certain bills.

Retaining the floor Mr. McKinley yielded to Mr. John G. Carlisle, of Kentucky, for a brief statement on the subject, and after this had been made, replied to an inquiry which Mr. William M. Springer, of Illinois, made concerning the terms of the resolution. Then the previous question was ordered.

The question recurring on agreeing to the resolution, Mr. James B. McCreary, of Kentucky, made the point of order that debate was in order on the pending question, as authorized by clause 3 of Rule XXVIII.

The Speaker[4] overruled the point of order on the ground that there had been debate on the said proposition before the previous question was ordered.

5500. On January 24, 1891,[5] the Journal was read, and the question recurred on its approval.

Mr. William McKinley, jr., of Ohio, having been recognized, yielded to Mr. C. R. Breckinridge, of Arkansas, who commented briefly upon certain alleged inaccuracies

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[1] Second session Fifty-eighth Congress, Record, p. 476.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fifty-first Congress, Journal, p. 555; Record, p. 4086.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-first Congress, Journal, p. 178; Record, pp. 1809, 1810.

in the Journal. Mr. McKinley having replied, the previous question was ordered by the House.

Under the operation thereof, the question recurred on the approval of the Journal as read.

Mr. Breckinridge, of Arkansas, having submitted to the Speaker a question as to whether or not debate had been had on the said question that would cut off the forty minutes allowed under the rule,

The Speaker [1] ruled that such debate had been had.

5501. On January 26, 1891,[2] the question was upon the approval of the Journal, and Mr. William McKinley, jr., of Ohio, being recognized, said that there was a manifest intention on the part of gentlemen on the floor to delay proceedings, and that therefore he should, before demanding the previous question, make such remarks as would constitute "debate." Having spoken for a brief time, during which he yielded for questions, Mr. McKinley demanded the previous question, which was ordered.

Thereupon Mr. James H. Blount, of Georgia, made the point of order that under the rule forty minutes' debate could be now had, the remarks of Mr. McKinley before demanding the previous question not being "debate" within the meaning of the rule.

The Speaker [1] overruled the point of order in accordance with the ground heretofore taken by him, that debate being had before ordering the previous question precluded debate thereafter on the pending question.

Mr. Blount appealed from the said decision of the Chair, and the Speaker declined to entertain the appeal, on the ground that it was dilatory.

5502. The debate which justifies a refusal of the right to the forty minutes after the previous question is ordered should be on the merits.—On January 26, 1904 [3] Mr. Jesse Overstreet, of Indiana, from the Committee on the Post Office and Post-Roads, submitted a resolution of inquiry relating to the use of horses, carriages, and other vehicles by the Post-Office Department. The resolution having been read, the following occurred, as shown by the Record:

Mr. HITCHCOCK. Mr. Speaker——

The SPEAKER. Does the gentleman from Indiana yield to the gentleman from Nebraska?

Mr. OVERSTREET. Yes, sir.

Mr. HITCHCOCK. I should like to ask the chairman of the committee whether he will accept an amendment to specify the time upon which payment of wages has been asked?

Mr. OVERSTREET. I do not feel free to accept any amendment, Mr. Speaker, as I have been directed by the committee to report this substitute.

Mr. HITCHCOCK. I understand the committee desires to obtain information sufficient to guide the House, and as the matter now stands the information obtained is likely to be almost worthless.

Mr. OVERSTREET. I move the previous question.

The previous question was ordered, whereupon Mr. G. M. Hitchcock, of Nebraska, claimed the floor for debate.

Mr. Overstreet made the point of order that, as there had been debate before the previous question was ordered, no further debate was in order.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-first Congress, Journal, p. 182; Record, pp. 1831–1833.

[3] Second session Fifty-eighth Congress, Record, pp. 1199, 1200.

The Speaker[1] said:

Under some circumstances the Chair thinks he might well hold that there had been debate, where it was evidently for obstruction or dilatory purposes; but it seems to the Chair that a fair construction of the rule under existing conditions would not authorize the Chair to say that such debate had been had as to preclude debate at this time. Therefore the Chair recognizes the gentleman from Indiana.

5503. The rule permitting forty minutes of debate was held to apply to an amendment on which the previous question had been ordered before there had been debate either in the House or in Committee of the Whole.— On January 31, 1889,[2] the House was considering the Oklahoma bill, and a motion was made to reconsider the vote whereby the House had adopted an amendment relating to the rights of honorably discharged Union soldiers and sailors to make homes on the public lands.

The House having voted to reconsider, the Speaker announced that the question was on agreeing to the amendment.

On motion of Mr. William M. Springer, of Illinois, the previous question was ordered.

Then, on the demand of Mr. Daniel Kerr, of Iowa, the amendment was divided. The first portion having been agreed to, the Speaker stated that the question was next upon agreeing to the remainder of the amendment.

Mr. Lewis E. Payson, of Illinois, made the point that the amendment might be debated thirty minutes.[3]

The Speaker[4] said:

The Chair is very much inclined to think that where it is necessary to order the previous question upon a proposition which has not been debated the rule allowing thirty minutes for debate would apply. This proposition has not been debated in the House * * * nor in its present form, and therefore the Chair would be inclined to think that in the interest of careful legislation there should be thirty minutes allowed for debate on a proposition which has not been before debated either in the House or in the Committee of the Whole on the state of the Union.

5504. The rule for the forty minutes of debate does not apply to an amendment on which there has been no debate in a case wherein the motion for the previous question covers both the amendment and the original proposition, which has been debated.—On April 7, 1892,[5] Mr. Edward H. Funston, of Kansas, as a matter of privilege, sent to the Clerk's desk and had read an article in a weekly paper commenting on himself and others. Mr. Funston denounced the statement contained in the paper as false.

Mr. William H. Hatch, of Missouri, as a matter of privilege, moved that so much of the article read at the desk as referred to others than Mr. Funston be omitted from the Record.

After debate Mr. Julius C. Burrows, of Michigan, moved to amend the motion of Mr. Hatch by substituting therefor that the entire article be omitted from the Record.

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[1] Joseph G. Cannon, of Illinois, Chairman.

[2] Second session Fiftieth Congress, Record, p. 1381; Journal, p. 384.

[3] Prior to the Fifty-first Congress the time was thirty minutes instead of forty.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Fifty-second Congress, Journal, p. 136; Record, p. 3059.

Mr. Burrows demanded the previous question on his amendment and on agreeing to the motion.

The previous question was ordered, and then Mr. Funston claimed the right to debate the amendment submitted by Mr. Burrows upon the ground that, there having been no debate on the amendment, under clause 3, Rule XXVIII, there should be allowed thirty minutes I for debate on the amendment submitted by Mr. Burrows.

The Speaker[2] held that there having been debate on the original motion debate was not now in order.

5505. When the previous question is ordered on a proposition which has been debated in Committee of the Whole, the rule permitting forty minutes of debate does not apply.—On May 4, 1892,[3] the Speaker announced that the business regularly in order was the consideration of the bills on the passage of which the previous question had been ordered at the evening session last Friday.

Mr. Joseph W. Bailey, of Texas, submitted the question of order whether, there having been no debate on the bills in the House, but only in Committee of the Whole, there should not be allowed thirty minutes' debate on each bill, pursuant to the provision of Rule XXVIII, clause 1.

The Speaker[2] held that debate on the bills in Committee of the Whole was such debate as was contemplated by the rule and that the previous question precluded further debate.

5506. When the previous question is ordered on a conference report which has not been debated, the forty minutes of debate is not allowed if the subject-matter of the report was debated before being sent to conference.—On April 18, 1898,[4] the previous question had been ordered on the conference report on the joint resolution (H. Res. 233) authorizing and directing the President of the United States to intervene and stop the war in Cuba, which the Senate had amended with a substitute.

Mr. Robert Adams, jr., of Pennsylvania, having demanded the previous question, Messrs. Joseph W. Bailey, of Texas, and Henry U. Johnson, of Indiana, asked, as parliamentary inquiries, "ether or not there would be forty minutes of debate after the previous question was ordered.

The Speaker[5] decided that there would not be, saying:

> The object of that rule was to prevent a proposition being presented without any debate; but these propositions have had such debate as the House saw fit to give them. * * * When a matter has been discussed in Committee of the Whole, that is regarded as debate, and such has been the rule in all these matters. It was an extension of the privilege under a demand for the previous question, and had that intention, and that only. * * * The Chair has considered the question, and after consideration it seems very clear to the Chair that the proposed debate is not possible under the rules of the House.

5507. On February 22, 1899,[6] Mr. J. A. Hemenway, of Indiana, presented the conference report on the disagreeing votes of the two Houses on the legislative, executive, and judicial appropriation bill.

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[1] The rule at present allows forty minutes.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Fifty-second Congress, Journal, p. 173; Record, p. 3930.

[4] Second session Fifty-fifth Congress, Record, p. 4062.

[5] Thomas B. Reed, of Maine, Speaker.

[6] Third session Fifty-fifth Congress, Record, p. 2188.

The report having been read, Mr. Hemenway asked for the previous question.

Mr. Levin I. Handy, of Delaware, rising to a parliamentary inquiry, asked whether or not, the previous question having been ordered, there would be forty minutes of debate.

The Speaker [1] said:

It will not. The question has been debated already. * * * The object of the rule giving twenty minutes' debate on each side after the ordering of the previous question was that no subject which was entirely new should be presented to the House without an opportunity for some discussion upon it. Where a bill has been debated in Committee of the Whole, no debate is allowed in the House after the previous question is ordered; and where a bill has reached the stage of a conference report, no debate is allowed under the rules if the previous question is ordered.

5508. The previous question having been ordered on a resolution to correct an enrolled bill, the forty minutes of debate was not allowed.—On March 3, 1903 [2] (legislative day of February 26), the previous question was ordered on the motion to agree to the following resolution:

Resolved by the Senate (the House of Representatives concurring), That the Committee on Enrolled Bills, in the enrollment of the bill (H. R. 12199) to regulate the immigration of aliens into the United States, are hereby authorized and directed to correct the cross references by sections in said bill, made necessary by the changed numbering of the sections thereof, namely:

Page 3, lines 2 and 3, strike out thirty-three "and insert "thirty-two."

Page 6, line 23, strike out "five" and insert "four," etc.

Mr. James D. Richardson, of Tennessee, made the point of order that forty minutes of debate should be allowed.

The Speaker pro tempore [3] held:

It is perfectly clear to the Chair that this is a proposition which has been debated. The present proposition is merely the correction of a clerical error in the conference report; it is not a new subject, but is a subject which has been debated. The Chair therefore overrules the point of order made by the gentleman from Tennessee. * * * The Chair desires to call the attention of the gentleman from Tennessee to a ruling made in the first session of the Fifty-fourth Congress, wherein it was held that "debate meant debate upon the main proposition and not upon anything incidentally connected therewith."

5509. Before the adoption of rules the previous question of general parliamentary law does not permit forty minutes of debate on questions on which there has been no debate.

Before the adoption of rules, while the House is proceeding under general parliamentary law, the provisions of the House's accustomed rules are not necessarily followed.

On March 15, 1897,[4] Mr. David B. Henderson, of Iowa, presented this resolution:

Resolved, That until further notice the rules of the House of Representatives of the Fifty-fourth Congress be adopted as the rules of the House of Representatives of the Fifty-fifth Congress.

The previous question having been ordered on the resolution, Mr. William P. Hepburn, of Iowa, as a parliamentary inquiry, asked whether there would be twenty minutes' debate, on a side as provided in section 3 of Rule XXVIII.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-seventh Congress, Record, p. 3019.

[3] James S. Sherman, of New York, Speaker pro tempore.

[4] First session Fifty-fifth Congress, Record, p. 17.

The Speaker[1] said:

There are rules and rules. There was a rule for the previous question in the Fifty-second, Fifty-third, and Fifty-fourth Congresses, and also a rule for the previous question in general parliamentary law. In the House of Representatives heretofore the rule has allowed twenty minutes for debate, but that is not the rule under which we are now acting; and, perhaps the Chair ought to observe, there has been debate enough to cut off that twenty minutes before the previous question was ordered.

5510. When the House adjourns before voting on a proposition on which the previous question has been ordered, the question comes up the next day immediately after the reading of the Journal, superseding the order of business.—On July 19, 1886,[2] Mr. Nelson Dingley, jr., of Maine, rising to a question of order, called attention to the fact that at a preceding session the House had ordered the previous question on a resolution providing for the printing of the third annual report of the Civil Service Commission.

The Speaker,[3] having examined the Journal, said:

The Journal shows that the resolution was passed over for the present, the previous question having been ordered upon it. The Chair supposes that under the practice of the House that would bring this resolution up for consideration this morning.[4]

5511. On January 31, 1889,[5] the regular order having been demanded, Mr. Charles H. Grosvenor, of Ohio, made the point of order that the Oklahoma bill, which had been considered the previous day under a special order, would not be the regular order on this day, for although the previous question had been ordered, the special order had evidently contemplated that only one day should be occupied by the bill.

After debate, the Speaker[3] ruled:

In the present case the rules were suspended and the special order to which the gentleman from Ohio [Mr. Grosvenor] and the gentleman from Mississippi [Mr. Hooker] refer was made; and by the terms of that order, at 4 o'clock, on whatever day this matter should come up for consideration, the previous question was to be considered as ordered on all pending amendments, on ordering the bill to be engrossed and read a third time, and on its passage. Yesterday the House, having voted on some of the amendments, and while others were still pending, adjourned; so that the question this morning is simply whether or not the action of the House in ordering the previous question, not only on the amendments, but on ordering the bill to be engrossed and read a third time and on its passage, brings the bill within the practice which for a number of years has prevailed in the House. That practice, as stated in the Digest, is as follows:

"Under the established practice of the House the effect of the previous question ordered before an adjournment is to bring the proposition up for consideration immediately after the reading of the Journal the following morning, even on Friday, though it be a public bill."

Various decisions are cited, some of which were made by the present occupant of the chair.

In the case of pension bills, for instance, which are taken up under a rule of the House setting apart Friday evening for their consideration, several instances have occurred, and some are now on the Calendar, upon which the House at those evening sessions has, by agreement, ordered the previous question on the third reading and on their passage; and the Chair has ruled in every such case that

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Forty-ninth Congress, Record, pp. 7154, 7155; Journal, p. 2259.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Speaker pro tempore Blackburn made a similar ruling in the preceding Congress. Second session Forty-eighth Congress, Journal, p. 409; Record, p. 1122.

[5] Second session Fiftieth Congress, Record, pp. 1378, 1379; Journal, pp. 381, 384.

those bills would come up the next morning immediately after the reading of the Journal, though a public bill day, and only a few mornings since the gentleman from Indiana called up one, and it was considered by the House.

Unless the Chair has been wrong in its rulings on all those pension bills, it is constrained to hold in this instance that the action of the House in ordering the previous question on the passage of the bill places it in that condition in which it may be called up the next morning after the adjournment; and the Chair thinks the clause in the special order providing the previous question should be considered as ordered on the passage of the bill was inserted for the express purpose of bringing up the bill the next morning in case the vote could not be completed on the first day. The Committee of the Whole on the state of the Union might have reported so many amendments to this bill that it would have required the House a week to dispose of them, and it could not be supposed the House could be compelled to remain in session until all such amendments were disposed of in order to preserve the special order and continue the operation of the previous question.

The Chair overrules the point of order, and holds the bill can be called up under the practice.

5512. On August 26, 1890,[1] Mr. Charles S. Baker, of New York, called up the bill of the Senate (S. 4278) authorizing the construction of a bridge over the Tennessee River at or near Knoxville, Tenn.

Mr. Marriott Brosius, of Pennsylvania, made the point of order against the consideration of the bill on the ground that the pending order of business was the bill of the House (H. R. 11568) defining "lard," etc., coming over as unfinished business from last Saturday's session, on the passage of which the previous question and yeas and nays had been ordered, and on which no quorum voted on the roll call then taken.

After debate on the point of order, the Speaker[2] sustained the same on the following ground:

The House will have seen by the discussion that this and similar questions have had a considerable variety of decision, and it would not be possible to reconcile with each other all the rulings and decisions which have been made. The Chair thinks, however, that the decision which was cited by the gentleman from Missouri [Mr. Hatch] governs this case.[3]

At the adjournment on Saturday the previous question had been ordered in accordance with the rule; the yeas and nays also had been ordered. The taking of the yeas and nays had been interrupted by the absence of a quorum. Thereupon the gentleman in charge of the bill [Mr. Brosius] asked if this matter would come up on Monday or Tuesday; the Chair replied that he thought it would; and that statement was received without dissent on the part of the House. While the Chair does not think that this would be a controlling matter, nevertheless it appears to the Chair a proper element in the decision, since the House may have acted on the intimation. In the light of the decisions made in the previous Congress, and in view of the intimation which was given by the Chair, the Chair thinks that the House ought to have an opportunity to pass upon the question.

The Chair deems it frank to say that as the result of this discussion there is very grave doubt in his mind as to whether the decision with relation to the copyright bill was a correct one. It was in accordance with a decision made in the Forty-eighth Congress, that whenever a committee had had a day assigned for its business, and its work was not done within the time prescribed, its special privilege ceased. The attention of the Chair had-not been called to the decision cited by the gentleman from Missouri. It might be said, also, that the language of the ruling at this session excepted a case like this, where another day has actually been given to the committee, and it is proper that this statement should be made in connection with the doubt expressed by the Chair. * * * The Chair, in view of all the circumstances, thinks that the question now before the House is the roll call on the passage of the bill.

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[1] First session Fifty-first Congress, Journal, p. 989; Record, pp. 9181, 9277.

[2] Thomas B. Reed, of Maine, Speaker.

[3] See section 5511 of this volume.

Mr. William E. Mason, of Illinois, appealed from the said decision of the Chair, and the Chair was sustained, yeas 130, nays 46.

5513. On April 16, 1892,[1] the regular order of business being demanded, the Speaker[2] announced that the first business in order, according to the practice of the House, was the consideration of bills on the passage of which the previous question had been ordered at the preceding session of the House.

5514. On Friday, May 27, 1898,[3] immediately after the reading of the Journal, the Speaker announced as the regular order the bill (H. R. 10253) to amend the internal-revenue laws relating to distilled spirits, on which the yeas and nays had been ordered on the day before.

Mr. C. N. Brumm, of Pennsylvania, made the point of order that the Private Calendar was the regular order.

The Speaker[4] overruled the point of order, saying:

> The regular order, after the previous question is ordered, is to put the question to a vote.

5515. On February 8, 1899,[5] the House was considering certain bills for the erection of public buildings under the terms of a special order[6] which devoted two days, February 7 and 8, to these bills. The previous question had been ordered on the bill (S. 1273) for a public building at Altoona, Pa., when Mr. Alexander M. Dockery, of Missouri, rising to a parliamentary inquiry asked what would be the status of the bill if the House (on this the last day of the special order) should now adjourn.

The Speaker[4] replied that, the previous question having been ordered, the bill would go over until the next day.

5516. On February 3, 1845,[7] the Speaker[8] announced as the business first in order the bill (No. 439) to organize a Territorial government in the Oregon Territory; the main question having been ordered to be now put, on Saturday last, and pending when the House adjourned.

5517. On December 16, 1851,[9] the Speaker announced that the first business in order would be the unfinished business of the preceding day, the bill to refund to the State of California certain moneys collected in her ports.

Mr. William A. Richardson raised a question in the debate on which the twenty-third and twenty-seventh rules were quoted, with their provisions that after the reading of the Journal the Speaker should call the States for petitions, and that, after the hour for the reports of committees and resolutions, a motion to proceed to business on the Speaker's table; and also the fifty-eighth rule which gave unfinished business priority only over the orders of the day.[10]

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[1] First session Fifty-second Congress, Journal, p. 149; Record, p. 3359.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 5294.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 1635.

[6] For form of this special order see Record, February 6, 1899, p. 1503.

[7] Second session Twenty-eighth Congress, Journal, p. 310.

[8] John W. Jones, of Virginia, Speaker.

[9] First session Thirty-second Congress, Globe. p. 107.

[10] These rules have since then been changed.

The Speaker[1] said:

But for the fact that the previous question had been seconded[2] and the main question ordered to be put, the rules referred to would have required this bill to go over and take its place on the Calendar of the House. But the House ordered the main question to be put, and thus gives this bill, or the unfinished business, preference over all others. The main question must therefore be now put. By reference to the Journal of the Twenty-eighth Congress, the gentleman will find a decision directly in point.

The Speaker asked if there was an appeal, but no appeal was taken.

5518. When several bills come over from a previous day with the previous question ordered, they have precedence in the order in which the several motions for the previous question were made.—On Saturday, July 30, 1892,[3] the House resumed the consideration of the Senate amendments to the bill (H. R. 7520) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1892, and for other purposes.

Mr. Augustus N. Martin, of Indiana, submitted the question of order, whether the first business in order should not be the consideration of bills reported from the Committee of the Whole House upon which the previous question had been ordered to the passage thereof at the session of the House Friday evening, pending the vote whereon the House had adjourned.

The Speaker[4] held that, the previous question having been ordered on the pending amendments of the Senate which were under consideration before the order of Friday evening was made, the consideration of the amendments to the bill (H. R. 7520) had preference over other unfinished business.

5519. The precedence which belongs to a bill coming over from a previous day with the previous question ordered is not destroyed by the fact that the allowable motion to commit may be pending with amendments thereto.—On January 18, 1893,[5] the Speaker announced that the business in order was the consideration of the bill (H. R. 10010) to establish a court of appeals for the District of Columbia, and for other purposes, on the passage of which the previous question had been ordered and which was pending when the House adjourned on the preceding day.

Mr. Joseph W. Bailey, of Texas, made the point of order that, pending the question on the passage of the bill, the motion to recommit having been made and an amendment submitted thereto, the question on which amendment was pending when the House adjourned, the consideration of the bill did not take precedence over other unfinished business.

The Speaker[4] overruled the point of order, holding that when an adjournment takes place, after the previous question has been ordered on the passage of a bill and before the vote is taken on the passage, it brings the question up the next morning, immediately after reading of the Journal, and with it any collateral questions which, under the rules, might be submitted. A motion to commit is a motion of that character, and comes over with the bill under the order for the previous question.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] The second is no longer required for the previous question.

[3] First session Fifty-second Congress, Journal, p. 347; Record, p. 6964.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-second Congress, Journal., p. 49; Record, p. 664.

5520. A bill on which the previous question has been ordered takes precedence of a special order although the latter may provide for immediate consideration.—On May 30, 1900,[1] a demand being made for the regular order, the Speaker announced that there were two matters of unfinished business:

1. The bill (S. 1939) "authorizing the President of the United States to appoint a commission to study and make full report upon the commercial and industrial conditions of China and Japan," etc. This bill had been reported from the Committee of the Whole House on the state of the Union with the recommendation that the enacting, clause be stricken out, and on April 30, 1900, the previous question had been ordered on the motion to concur in this recommendation.

2. Sundry pension bills in order under this special order:

Resolved, That immediately after the passage of this resolution all private bills considered in Committee of the Whole House on Friday, May 25, and reported to the House, shall be in order as unfinished business, the previous question to be considered as ordered on each bill and all amendments thereto to their final passage, and each to be disposed of without intervening motion.

Mr. James D. Richardson, of Tennessee, rising to a parliamentary inquiry, asked which would come up first on a demand for the regular order.

The Speaker[2] said:

The Chair stated that there are two matters of unfinished business before the House. The order adopted yesterday morning made the pension bills in order now; but the Chair is of the opinion that the higher claim to the regular order would be the Japan and China commission bill, upon which the previous question had been ordered.

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[1] First session Fifty-sixth Congress, Record, p. 6249.

[2] David B. Henderson, of Iowa, Speaker.

Chapter CXXI.

THE ORDINARY MOTION TO REFER.[1]

1. **Reference with instructions. Sections 5521–5528.[2]**
2. **Limitations of motion to refer with instructions. Sections 5529–5544.**
3. **Instructions to report "forthwith." Sections 5545–5551.**
4. **Instructions to Committee of Whole. Section 5552, 5553.**
5. **In relation to other motions. Sections 5554–5557.**
6. **The motion to recommit. Sections 5558–5563.**
7. **As to debate on the motion to refer. Sections 5564–5568.**

5521. The ordinary motion to commit may be amended, as by adding instructions, unless such amendment is prevented by moving the previous question.

The motions to refer, commit, and recommit are practically the same.

On July 25, 1882,[3] the regular order being called for, the House resumed, under the special rule, the consideration of the bill (H. R. 3902) permitting the use of domestic materials in the construction of steam and sailing vessels for foreign account, the pending question being on the motion of Mr. William D. Kelley, of Pennsylvania, to refer the bill and pending amendment to the Committee on Ways and Means,

Mr. John Randolph Tucker, of Virginia, moved to amend that motion by adding certain instructions.

Mr. Dudley C. Haskell, of Kansas, made the point of order that the motion to refer might not be amended.

After debate the Speaker[4] held:

The Chair does not remember to have passed on the precise question here involved. The parliamentary practice has been to permit an amendment to a motion to refer or commit, or recommit, which is substantially the same thing. That, in the opinion of the Chair, is limited to one motion without amendment, under the new rule, after the previous question has been ordered on the passage of a bill or joint resolution. In that case the Chair thinks a fair interpretation of the rule limits it to a single motion, and therefore, for that reason, an amendment can not be made, because the House is operating under the previous question, and the operation of the previous question is to bring the House to a vote on the

[1] Not in order in Committee of the Whole. (Sec. 4721 of Vol. IV.)

Not in order to refer a conference report to standing or select committee. (Sec. 6558 of this volume.)

[2] Division of the question in order on vote on motion to refer with instructions. (Secs. 6134–6137 of this volume.)

[3] First session Forty-seventh Congress, Record, p. 6475; Journal, p. 1724.

[4] J. Warren Keiffer, of Ohio, Speaker.

main question at the earliest practicable moment. The Chair thinks, under a strict construction, after the previous question has been called or ordered, it can only allow a motion to commit, but no amendment to it, and this it has so held.[1]

But that does not apply to this case, as the previous question has not been demanded, and parliamentary practice would admit of an amendment to this motion to refer; and therefore the Chair holds the motion of the gentleman from Virginia [Mr. Tucker] to amend the motion to refer with instructions to be in order.

5522. It has been held not in order to move to instruct a committee on the first reference of a matter to it.—On February 15, 1887,[2] at the conclusion of a decision by the Speaker in reference to the function of the Committee on Rules, Mr. Albert S. Willis, of Kentucky, as a parliamentary inquiry, asked whether or not a motion to refer a matter to the Committee on Rules with instructions would be in order.

The Speaker[3] replied:

The Chair has always held that it is not competent to move instructions upon the reference of a matter which has not been reported by a committee. Matters reported to the House by a committee can be recommitted with or without instructions under the rules of the House.

5523. On April 4, 1792,[4] the House resumed the consideration of the resolutions reported by the Committee of the Whole House on Monday last, to whom was referred a report of the Secretary of the Treasury on the subject of the public debt; whereupon—

Ordered, That a bill or bills be brought in pursuant to the first, second, fourth, sixth, seventh, and eighth resolutions; and that Mr. Fitzsimons, Mr. Laurance, Mr. Key, Mr. Macon, and Mr. Smith (of South Carolina) do prepare and bring in the same.

A motion being made and seconded—

That it be an instruction to the committee last appointed to report a provision for a loan of the remaining debts of the individual States;

The motion was objected to as out of order.

The Speaker[5] sustained the point of order.

An appeal being taken, the question was put, "Is the said motion in order!"[6], and decided in the negative.

5524. On January 30, 1882,[7] Mr. Speaker Keifer expressed the opinion that a motion to instruct a committee on referring a bill on its introduction, was not proper.[8]

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[1] See Chapter CXXII, section 5569, etc., for later practice in this respect.

[2] Second session Forty-ninth Congress, Record, p. 1785.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Second Congress, Journal, p. 164 (old ed.), 561 (Gales and Seaton ed.).

[5] Jonathan Trumbull, of Connecticut, Speaker.

[6] The present mode of putting the question on appeal is, "Shall the decision of the Chair stand as the judgment of the House?"

[7] First session Forty-seventh Congress, Record, p. 727.

[8] A notable instance of instruction of a committee occurred on February 8, 1836, when the House agreed to the following resolution:

"Resolved, That all memorials which have been offered, or may hereafter be presented to thin House, praying for the abolition of slavery in the District of Columbia, and also the resolutions offered by an honorable Member from Maine [Mr. Jarvis], with the amendment thereto proposed by an honorable

5525. On December 14, 1868,[1] Mr. James W. Grimes, of Iowa, in addressing the Senate, said:

During the time that I have been here, and, as I have been told frequently by those who were much longer in the Senate when I came here, from the foundations of the Government to this time, a resolution has never been passed instructing one of the committees of this body. The object of a reference to a committee is to enable them to consider the subject and report their judgment, and their judgment alone, and the Senate is presumed to act upon it.

5526. When a bill is recommitted with instructions relating only to a certain portion the committee may not review other portions.—On February 5, 1896,[2] the District of Columbia appropriation bill had been refused a passage, and that vote had been reconsidered.

The question then recurred on the passage of the bill, when Mr. Charles H. Grosvenor, of Ohio, moved to recommit the bill to the Committee on Appropriations, with instructions to reexamine and report a new paragraph of so much of the bill as appeared under the subhead "For charities."

Mr. Alexander M. Dockery, of Missouri, submitted a parliamentary inquiry as to whether or not it would be competent for the Committee on Appropriations, in case the motion should prevail, to review other paragraphs of the bill than the one specifically mentioned.

The Speaker[3] expressed the opinion that it would not be in order.

5527. A bill to establish a department of commerce and labor may be recommitted with instructions to report instead two bills establishing separate departments of commerce and labor.—On January 17, 1903,[4] the House had ordered to be read a third time the bill (S. 569) to establish a department of commerce and labor.

Thereupon Mr. William Richardson, of Alabama, moved as follows:

Resolved, That the pending bill be recommitted to the Committee on Interstate and Foreign Commerce with instructions to report a bill or bills to the House to create and establish two separate departments, a department of labor and a department of commerce, each of the same dignity as existing Departments and each with a secretary in the Cabinet of the President, and to assign to each of the departments proper and relative bureaus.

Thereupon Mr. James R. Mann, of Illinois, made the point of order against the motion—

That it directs the Committee on interstate and Foreign Commerce to report a bill creating a department of labor, which, under the rules of the House, can not be done by this committee. The

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Member from Virginia [Mr. Wise], together with every other paper or proposition that may be submitted in relation to the subject, be referred to a select committee, with instructions to report:

"That Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the States of this confederacy; and

That, in the opinion of this House, Congress ought not to interfere in any way with slavery in the District of Columbia, because it would be a violation of the public faith, unwise, impolitic, and dangerous to the Union. Assigning such reasons for these conclusions as, in the judgment of the committee, may be best calculated to enlighten the public mind, to allay excitement, to repress agitation, to secure and maintain the just rights of the slave-holding States, and of the people of this District, and to restore harmony and tranquillity amongst the various sections of the Union." (First session Twenty-fourth Congress, Journal, p. 316.)

[1] Third session Fortieth Congress, Globe, p. 63.

[2] First session Fifty-fourth Congress, Record, p. 1342.

[3] Thorn B. Reed, of Maine, Speaker.

[4] Second session Fifty-seventh Congress, Record, p. 928; Journal, p. 134.

Committee on Interstate and Foreign Commerce has not jurisdiction, and could not have jurisdiction, of a bill to organize a department of labor. * * * I make the further point that a bill to create a department of labor is not germane as an amendment to the bill pending before the House.

In the debate Mr. James D. Richardson, of Tennessee, said:

I desire only to say that it is competent for the House of Representatives to refer a bill to any committee that it choose. A particular committee might not have jurisdiction in the first place without the direct action of the House. A bill might inadvertently be referred to a committee not having jurisdiction of the subject under the rules, and the House might correct such reference, because under the rules the bill would not go there. But it is competent for the House in its majesty, as the House sits here this evening, to refer this or any other bill to the Committee on Interstate and Foreign Commerce.

The Speaker pro tempore [1] said:

The Chair is very clearly of opinion that the 6ew expressed by the gentleman from Tennessee [Mr. Richardson] as to the power of the House to refer this matter to the Committee on Interstate and Foreign Commerce states correctly the situation.

After debate on the question of germaneness, the Speaker pro tempore said:

There is no question in the mind of the Chair as to the power of the House to authorize the Committee on Interstate and Foreign Commerce to report a bill creating a department of labor, if the House sees fit to refer that subject to that committee. This is a bill creating a department of commerce and labor. The proposition contained in the motion is to return this bill to that committee with instructions to separate the two branches of the subject, and to report instead of a measure for one department a measure for two departments, covering the same subjects as are now covered in the bill pending before the House. The Chair holds that the motion is germane. The point of order is therefore overruled. The question is on the motion of the gentleman from Alabama [Mr. Richardson] to recommit the bill with instructions, as read by the Clerk.[2]

5528. Reasoning from the parliamentary law that a part of a bill may be committed to one committee and a part to another, it was held in order in the Senate to recommit a bill with instructions to report it as two bills.— On June 16, 1836,[3] the Senate was considering the bill to regulate the public deposits, Mr. Silas Wright, of New York, having moved to recommit the bill with the substitutes reported by the select committee and the amendments adopted by the Senate to the Committee on Finance with instructions to divide them into two separate bills so that one should contain all that related to the deposit banks and the other all that related to the surplus.

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] There is, however, a ruling made on a different theory. On August 27, 1888, the previous question had been ordered on the bill (H. R. 10896) making appropriations to supply deficiencies, etc., and under the operation thereof the bill was engrossed and read the third time.

Mr. Charles E. Hooker, of Mississippi, moved to recommit the bill with instructions to strike out section 4 thereof, and to report the subject-matter of said section as a separate bill.

Mr. Charles F. Crisp, of Georgia, made the point of order that the motion was out of order, for the reason that it is not in order to move to recommit a bill with instructions to report the same together with a separate bill.

The Speaker sustained the point of order. (First session Fiftieth Congress, Journal, p. 2682; Record, p. 8012.) There is some doubt as to who was in the chair when this ruling was made. The Record indicates that Mr. Speaker Carlisle was presiding, while the Journal indicates a Speaker pro tempore, probably Mr. Benton McMillin, of Tennessee; for Mr. Crisp, who, on August 25 (Journal, p. 2664), had been elected Speaker pro tempore, raised the point of order, and consequently could not have been in the chair.

[3] First session Twenty-fourth Congress, Debates, p. 1782.

Mr. John C. Calhoun, of South Carolina, having raised a question of order, the Presiding Officer,[1] stated that he had no doubts on the subject as to the power of the Senate. It could not only recommit the whole bill, but any portion of a bill, leaving the residue of it precisely as it stood either in committee or in the House. The parliamentary rule was precise. They could commit any portion of a bill to one committee and the other portion to another committee, with instructions; and if they could thus commit two parts of the same bill to two different committees, it followed, of course, that they could instruct one committee to separate a bill into two parts. When it came, thus separated, before the Senate it was in their power to take either proposition, or both, as the majority might decide.

The Presiding Officer quoted Jefferson's Manual in support of his view.

5529. It is not in order to do indirectly by a motion to commit with instructions what may not be done directly by way of amendment.

To a bill proposing the admission of one Territory into the Union an amendment proposing the admission of another Territory is not germane.

On February 12, 1859,[2] the House resumed the consideration of the bill of the Senate (S. 239) for the admission of Oregon into the Union; and the question being on the third reading of the bill, Mr. Galusha A. Grow, of Pennsylvania, proposed to submit an amendment, in the nature of a substitute, the amendment being, in substance, an enabling act for the Territories of Oregon and Kansas.

Mr. John M. Sandidge, of Louisiana, made the point of order that the amendment was not in order, on the ground that it was not germane to the bill.

The Speaker[3] decided that the amendment was out of order under the fifty-fifth rule, which declares that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

From this decision of the Chair Mr. Grow appealed, and the appeal, on motion of Mr. Alexander H. Stephens, of Georgia, was laid on the table by a vote of 126 yeas to 92 nays.

Mr. John G. Davis, of Indiana, moved to recommit the bill to the Committee on the Territories, with the following instructions:

> Insert a clause therein, or add a section thereto, repealing so much of the act entitled "An act for the admission of the State of Kansas into the Union," approved May 4, 1858; as prohibits the people of Kansas from forming a constitution and asking admission into the Union as a State until "it is ascertained by a census, duly and legally taken, that the population of said Territory equals or exceeds the ratio of representation required for a Member of the House of Representatives of the Congress of the United States."

Mr. Sandidge made the point of order that the motion was out of order.

The Speaker stated that inasmuch as it was not competent for the House to amend the bill in the manner proposed—the same not being germane—it was not in order for the House to instruct the committee to do what the House itself could not do. He therefore decided that the motion was out of order.[4]

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[1] William R. King, of Alabama, Presiding Officer.

[2] Second session Thirty-fifth Congress, Journal, p. 389; Globe, pp. 1007, 1009.

[3] James L. Orr, of South Carolina, Speaker.

[4] On September 24, 1850 (First session Thirty-first Congress, Journal, pp. 1513, 1514; Globe, p. 1951), Mr. Speaker Cobb had decided that a proposition not in order as an amendment could not be offered as part of a motion to commit with instructions.

From this decision of the Chair Mr. John G. Davis appealed, and on motion of Mr. James Hughes, of Indiana, the appeal was laid on the table, 118 yeas to 95 nays.

5530. On February 13, 1851,[1] the House was considering the joint resolution (No. 36) "for the relief of Thomas Ritchie on the subject of the public printing," the pending question being on a motion to recommit with instructions providing that the same relief should be granted to the printers of the Thirtieth Congress.

Mr. John A. McClernand, of Illinois, made a point of order that the provision of the instruction was out of order.

The Speaker[2] stated that inasmuch as the resolution under consideration contained but two sections—one of which provided for additional compensation to one of the Public Printers, and the other for auditing the accounts of the Public Printers during recess—it would be clearly out of order, under the uniform practice of the House, to amend the said resolution by a provision for the relief of other individuals. It was also well settled that it was not competent for the House to instruct the committee to do what it could not do itself. He therefore sustained the point of order, and decided the amendment to the instructions to be out of order.

Mr. John Crowell, of Ohio, having appealed the decision of the Chair was sustained.

5531. On July 27, 1886,[3] the previous question had been demanded on the passage of a bill restoring to the United States certain lands granted to railroads, when Mr. Robert R. Hitt, of Illinois, moved to recommit the bill with instructions to report the Senate bill for which this substitute had been adopted.

Mr. William M. Springer, of Illinois, made the point of order that this Senate bill was the text that the House had stricken out, and it was not in order to direct the committee to report that which the House had just rejected.

The Speaker[4] sustained the point of order, and held it was not in order to move the recommitment of a bill with instructions to report matter which would not be in order if offered as an amendment in the House. The House had just voted to strike out the text of the Senate bill and insert a new proposition, and it was not therefore in order to do indirectly by way of recommitment that which could not be done directly by way of amendment.

5632. On August 23, 1890,[5] the House had ordered the previous question on the passage of the bill relating to the manufacture and sale of "compound lard," when Mr. William C. Oates, of Alabama, moved to recommit the bill with instructions to report therefore a substitute, which had already, in the previous consideration of the bill, been ruled out of order when offered as an amendment.

Mr. Marriott Brosius, of Pennsylvania, made the point of order that the motion was not in order, for the reason that the proposition was in violation of the rules of the House.

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[1] Second session Thirty-first Congress, Journal, p. 271; Globe, p. 526.

[2] Howell Cobb, of Georgia, Speaker.

[3] First session Forty-ninth Congress, Record, p. 7613; Journal, p. 2363.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Fifty-first Congress, Journal, pp. 984, 985; Record, p. 9105.

Mr. Edward H. Funston, of Kansas, made the additional point of order that it was not in order to do by commitment what could not be done by way of amendment.

The Speaker pro tempore[1] sustained the said point of order made by Mr. Funston on the ground stated by Speaker Carlisle in the Forty-ninth Congress, that it was not in order to do indirectly by way of recommitment what it was not in order to do directly by way of amendment, and that as the proposition submitted by Mr. Oates had been ruled out of order as an amendment it was not in order by way of recommitment.

5533. On March 3, 1892,[2] the previous question had been ordered on the passage of the District of Columbia appropriation bill, when Mr. David B. Henderson, of Iowa, moved to recommit the bill to the Committee on Appropriations with instructions to report the same to the House with the following amendment:

On page 22, in line 15, strike out the word "four" "and insert "six;" "and in line 20, strike out the word "twelve" and insert "thirty-five."

Mr. David A. De Armond, of Missouri, moved to amend the motion to recommit by adding thereto the following instructions:

That the bill be further amended by striking out the word "half "in line 3, page 1, and insert in lieu thereof the word "one-fourth, "and by striking out the word "half "in line 5 of same page, and inserting in lieu thereof the word "three-fourths."

Mr. Thomas B. Reed, of Maine, and Mr. Julius C. Burrows, of Michigan, made the point of order against the amendment submitted by Mr. De Armond, that the amendment was not in order, for the reason that the proposed additional instructions required the committee to amend the bill by changing existing law, and that inasmuch as no retrenchment of expenditure thereby was apparent, such amendment would be a violation of clause 2, Rule XXI.[3]

The Speaker[4] overruled the point of order, holding as follows:

The Chair is of the opinion that it is not competent to do by indirection that which could not be directly done; that it is not competent for the House to direct the committee to do something which the committee itself could not do by reason of a rule restricting it from such action. Therefore the question for the Chair to determine is whether this amendment would be in order in Committee of the Whole. Concededly it changes existing law. It is in order, then, if it reduces expenditures, and is not in order if it does not. This bill, a copy of which is before the Chair, provides "That the half of the following sums named, respectively, is hereby appropriated out of any money in the Treasury not otherwise appropriated, and the other half out of the revenues of the District of Columbia." So there seems to be an amount of money in the Treasury recognized as the "revenues of the District of Columbia," distinct from money in the Treasury from general sources; and this proposition, as the Chair understands, is to reduce the amount appropriated from the general fund—that raised for general purposes. Therefore the Chair thinks the amendment reduces expenditures, and is in order.

5534. On February 17, 1893,[5] Mr. William Mutchler, of Pennsylvania moved the previous question on the passage of the bill making appropriations for the payment of invalid and other pensions.

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[1] Lewis E. Payson, of Illinois, Speaker pro tempore.

[2] First session Fifty-second Congress, Journal, pp. 86, 87; Record, p. 1698.

[3] The present form of the rule is different. (See see. 3578 of Vol. IV of this work.)

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-second Congress, Journal, p. 96; Record, p. 1754.

Pending this, Mr. Amos J. Cummings, of New York, moved to recommit the bill with instructions to report an amendment providing that honorably discharged soldiers and sailors of the civil war should be preferred in the administration of the civil service.

Mr. Mutchler made the point of order that the motion was not in order, for the reason that the amendment proposed in the instructions was a change of existing law and did not retrench expenditures in the manner provided by the rule.

The Speaker[1] sustained the point of order.

5535. On March 20, 1894,[2] pending the question on the passage of the sundry civil appropriation bill, Mr. William W. Bowers, of California, proposed to recommit the bill with instructions to report an amendment for assistance to certain holders of Government land whose patents were threatened by legal procedure.

Mr. Joseph D. Sayers, of Texas, made the point that the amendment proposed in the motion of Mr. Bowers was not in order, and that the motion was, therefore, not in order.

The Speaker[1] sustained the point of order, holding that the House can not do indirectly, by means of a motion to recommit, what can not be done directly by amendment.

5536. On June 16, 1894,[3] the question being on the passage of the Indian appropriation bill, Mr. John H. Gear, of Iowa, moved that it be recommitted with instructions to report the same back to the House forthwith, amended as follows:

Strike out all of the bill relating to Indian schools and insert in lieu thereof the following:

"For support of Government Indian day and industrial schools, and the erection and repair of Government school buildings on Indian reservations and at places where the Government has established and is now maintaining Government Indian schools, and for each and every purpose necessary in the judgment of the Secretary of the Interior for the establishment and proper conduct of such schools, $2,225,000: *Provided,* That pending the establishment of such schools on Indian reservations, the Secretary of the Interior may, in his discretion, during the fiscal year 1895, authorize contracts to be made with established schools not conducted by the Government, for the education and support of Indian pupils and to pay therefor from this appropriation; and the Secretary of the Interior shall report to the first regular session of the Fifty-fourth Congress, in detail, all expenditures made and authorized by him under this appropriation: *Provided further,* That nothing herein shall be construed to prevent the sending of Indian children, at no expense to the United States, to schools not conducted by the Government."

Mr. Charles Tracey, of New York, and Mr. Joseph H. O'Neil, of Massachusetts, made the point of order that the instruction was not in order, for the reason that the amendment provided therein was a change of existing law, or new legislation, not retrenching expenditure.

The Speaker[1] sustained the point of order, holding that the scope and intent of the proposed amendment was to do away with the contract schools for Indians, and to establish Government schools, thus changing the present law in that respect.

Mr. Joseph G. Cannon, of Illinois, appealed from the decision of the Chair.

Mr. Tracey moved to lay the appeal on the table. The appeal was laid on the table, 158 yeas to 57 nays.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 256–258; Record, p. 3155.

[3] Second session Fifty-third Congress, Journal, p. 436; Record, pp. 6433, 6434.

5537. On June 27, 1894,[1] Mr. Joseph H. Outhwaite, of Ohio, from the Committee on Rules, reported a resolution providing for the consideration of the bill (H. R. 353) to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

After debate for thirty minutes, Mr. John F. Lacey, of Iowa, moved to recommit the resolution to the Committee on Rules, with instruction to amend the same by providing also for the consideration of the bill to admit into the Union the Territory of Oklahoma.

Mr. Outhwaite made the point that the motion to recommit was not in order.

The Speaker[2] held that the amendment proposed in the motion of Mr. Lacey was not germane to the pending resolution, and therefore sustained the point of order.

5538. On January 20, 1898,[3] the bill (H. R. 6449) making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1889, was passed to be engrossed and read a third time, and the question was on its passage, the previous question having been ordered.

Mr. Joseph W. Bailey, of Texas, moved to recommit the bill to the Committee on Foreign Affairs with instructions to report it back with this amendment:

> That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America should maintain a strict neutrality between the contending parties, according to each all the rights of belligerents in the ports and territory of the United States.

Mr. Robert R. Hitt, of Illinois, made the point of order that the amendment would not be germane and would be new legislation.

The Speaker[4] ruled that the motion to commit with instructions was not in order, upon the ground that a motion to commit, which would not be admissible as an amendment, was not admissible as instructions.

5539. On February 16, 1899,[5] the sundry civil appropriation bill had been passed to be engrossed and read a third time, when Mr. William P. Hepburn, of Iowa, moved that the bill be recommitted with instructions that there be added legislation providing for the construction of the Nicaragua Canal.

Mr. Joseph G. Cannon, of Illinois, made the point of order that it was not in order to accomplish by a motion to recommit with instructions what could not be accomplished directly by an amendment.

The Speaker[4] Sustained the point of order.

Mr. Hepburn appealed, whereupon Mr. Sereno E. Payne, of New York, moved to lay the appeal on the table.

On the succeeding day[6] the appeal was laid on the table by a vote of 158 ayes to 95 noes, and so the decision of the Chair was sustained.

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[1] Second session Fifty-third Congress, Journal, p. 453; Record, p. 6908.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 811.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 1960; Journal, pp. 170, 174.

[6] Record, p. 1995.

5540. On February 26, 1904,[1] the naval appropriation bill had passed to be engrossed and read a third time, and pending the question on the passage Mr. Adolph Meyer, of Louisiana, proposed a motion to recommit with certain instructions.

Mr. George E. Foss, of Illinois, made the point of order that the instructions involved legislation on an appropriation bill.

The Speaker[2] sustained the point of order, saying:

The Chair, as he caught the reading of the motion, and he was paying as close attention as was possible for the Chair to do, is of opinion that several of the instructions in the motion cover legislation, and therefore, as you can not do indirectly that which you can not do directly, the Chair sustains the point of order.

5541. On March 1, 1905,[3] the pending question was on the passage of the bill (H. R. 18787) to amend the homestead laws as to certain unappropriated and unreserved lands in Colorado.

Mr. Oscar W. Underwood, of Alabama, moved to recommit the bill with instructions to report it back with an amendment repealing section 2301 of the Revised Statutes of the United States.

Mr. Franklin E. Brooks, of Colorado, made a point of order that, as the amendment was not germane, the instructions were not in order.

After debate, the Speaker[2] held:

On the motion the gentleman from Colorado makes the point of order that the instructions are not germane under the rules of the House, and, under the rules of the House, it is not debatable. This matter came up substantially on yesterday in the consideration of the bill before the House, and an amendment substantially the same as this in part was ruled out of order, and this amendment is clearly not germane, because it directs the reporting back of the bill with a provision that would repeal the commutation homestead act everywhere in the United States, this bill applying only to the State of Colorado. For that reason the Chair sustains the point of order.* * * The Chair reads from the Digest: "It is not in order to move to recommit a bill with instructions to a committee to report an amendment which is not germane." Many precedents are given, running through a period of substantially fifty years. And again, the House can not do indirectly what it can not do directly. Therefore the Chair sustains the point of order.

5542. After the previous question had been ordered it was once held in order to move to commit with instructions to strike out a portion of an amendment already agreed to, although such a purpose might not be accomplished directly by a motion to amend.—On February 25, 1895,[4] the previous question had been ordered on the passage of the deficiency appropriation bill, when Mr. John W. Maddox, of Georgia, moved that the bill be recommitted to the Committee on Appropriations, with instruction to report the same forthwith with the provision for one month's extra pay to Members' clerks stricken from the bill.

Mr. William A. Stone, of Pennsylvania, made the point of order that, the House having just agreed to an amendment adding to the bill what it was proposed in said instruction to strike out, the said motion to recommit was not in order.

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[1] Second session Fifty-eighth Congress, Record, pp. 2448, 2449.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Third session Fifty-eighth Congress, Record, p. 3775.

[4] Third session Fifty-third Congress, Journal, pp. 156–158; Record, p. 2729.

The Speaker[1] held that inasmuch as the amendment which the House had just agreed to included several propositions, only one of which it was proposed by the present motion to have stricken out, the question on which the House had voted was not identical with the pending question. The motion to recommit with said instruction was therefore entertained.[2]

5543. On a motion to commit with instructions the instructions may not authorize a committee to report at any time, as such authorization would constitute a change of the rules.—On January 12, 1883,[3] the House was considering a bill to remove certain burdens on the American merchant marine, etc., and the previous question had been demanded on the passage of the bill, when Mr. Samuel S. Cox, of New York, moved that the bill be recommitted to the Committee on Commerce with instructions to report back to the House without delay a bill providing for the purchase, free admission, and registry of foreign-built vessels, and for the free admission of all material used in the construction and repair of vessels in American yards; and that the committee have leave to report at any time.

Mr. Thomas B. Reed, of Maine, made the point of order that the provision relating to reporting at any time would cause a change of the rules.

The Speaker[4] said:

> The clause of the proposed instructions that the committee have authority to report at any time[5] is not, in the opinion of the Chair, in order; and unless that clause be withdrawn the Chair will have to rule out the whole.[6]

5544. On December 4, 1860,[7] after the reading of the annual message of the President of the United States, Mr. Alexander R. Boteler, of Virginia, offered the following:

> *Resolved,* That so much of the President's message as relates to the present perilous condition of the country, be referred to a special committee of one from each State, with leave to report at any time.

Mr. Thomas S. Bocock, of Virginia, made the point of order that to give the committee leave to report at any time would be to change the rules of the House.

The Speaker[8] sustained the point of order, saying that the motion could not be entertained in its present shape.

5545. A bill may be committed with instructions that it be reported "forthwith;" and in such a case the chairman of the committee to which

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] This ruling is exceptional. It is a well-understood rule that what is once inserted by way of amendment may not be amended by simply striking out a portion of it. (See secs. 5758–5771 of this volume); and it is also well understood that it is not in order to do indirectly by referring with instructions what may not be done directly by way of amendment.

[3] Second session Forty-seventh Congress, Journal, p. 229; Record, pp. 1147, 1148.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] Under the later development of the rules this right to report at any time is valuable only in so far as it carries with it the right that the matter reported may be considered at anytime. Every Committee may report whenever its report is ready.

[6] Mr. Speaker Randall also decided this way in a case wherein the same point of order was made. (Second session Forty-fourth Congress, Journal, p. 285.)

[7] Second session Thirty-sixth Congress, Globe, p. 6.

[8] William Pennington, of New Jersey, Speaker.

it is committed makes a report at once without awaiting action of the committee.

A bill having been considered in Committee of the Whole, and the House, pending a vote on the passage, having recommitted it with instructions that it be reported "forthwith" with an amendment in the nature of a substitute, it was held that the substitute did not require consideration in Committee of the Whole.

On February 27, 1891,[1] the House had been considering the bill (S. 3738) to place the American merchant marine engaged in the foreign trade on an equality with that of other nations, under the terms of a special order which, at a certain time, ordered the previous question to the passage.

The bill had been ordered to be engrossed and read a third time, when Mr. Joseph G. Cannon, of Illinois, moved to recommit the bill to the Committee on Merchant Marine and Fisheries, with instructions "to report forthwith" an amendment in the nature of a substitute, which he presented therewith.

Mr. Richard P. Bland, of Missouri, made the point of order that the direction to the committee to report forthwith was not in order.

The Speaker[2] overruled the point of order.

The House having passed in the affirmative the motion of Mr. Cannon, the chairman of the Committee on Merchant Marine and Fisheries, Mr. John M. Farquhar, of New York, immediately rose in his place and announced that, as chairman of that committee, he reported back the substitute bill as instructed by the House.

Mr. Charles F. Crisp, of Georgia, made the point of order that there had been no meeting of the committee, and that therefore its chairman could not, under the rules of the House, make report.

The Speaker ruled:

The Chair has some sympathy with the observations which have been made by the gentleman from Georgia [Mr. Crisp], because he himself made somewhat similar observations on the 10th day of July, 1886, upon a similar question; but the result was very much as the Chair will now decide, after stating what he thinks to be the parliamentary condition of affairs.

The House of Representatives, considering the bill that was before it, passed it with sundry amendments. The rules of the House provide that after a bill has been ordered to a third reading—that is, after it passes the amendment stage—then the House has an opportunity to look at the bill as amended, and if not satisfied with it, it has a right under the rules to recommit with specific instructions. That is only another method of reconsidering its action. It may very often happen—the Chair will not say very often because it has been seldom in the experience of Members of the House, but it might happen—that an amendment was adopted by a majority composed of one set of Members and another amendment adopted by a majority composed of another set of Members, and that the majority of the House would not be in favor of both amendments together.

It is to give opportunity to remedy this that the motion to recommit is permitted. Now, the form which that takes is a peremptory instruction on the part of the House to the committee to make that return; and it seems to the Chair, after consideration of the matter, that it would be adhering too much to technicalities to take the view entertained by the gentleman from Georgia [Mr. Crisp], and it would seem to be more suitable that the chairman of the committee should promptly obey the orders of the House and follow its direction.

The gentleman from Georgia is correct in saying that the chairman of the committee is the mouthpiece of the committee, but the committee itself is the agent of the House, and the House has a perfect

[1] Second session Fifty-first Congress, Record, p. 3505–3508; Journal, pp. 312–321.

[2] Thomas B. Reed, of Maine, Speaker.

right to order the committee to do its will in whatever fashion it sees fit. In response to parliamentary inquiries, the Chair stated to the House what he thought to be the parliamentary law with regard to it, and the House has acted in that connection. That is the impression which the Chair entertains upon the subject. Such being the case, it seems as if the point of order should be overruled.

5546. Mr. Crisp having made the point of order that the bill reported back must be referred to the Committee of the Whole House on the state of the Union, and Mr. W. C. P. Breckinridge, of Kentucky, having made the point that the bill should take its place on the Calendar, since the Committee on Merchant Marine and Fisheries was not privileged to report at any time under the rules, the Speaker held:

The Chair would be glad to have the attention of the House for a moment. The rules of the House must be construed having them all in view. This method of reference to a committee after a bill has been ordered to be engrossed is a part of a system of consideration. The Chair has already passed upon some parts of that system, and it is not necessary to repeat what he has said; but, according to the idea of the Chair, when the House ordered the committee to report a particular substitute back "forthwith," that expression carried with it the right of immediate consideration; precisely as in Rule XI the expression "The following-named committees shall have leave to report at any time" carries with it the right of consideration at the time of the report.

Such a course enables the House to finish the business upon which it has entered, and to finish it in accordance with the wishes of the Members of the House. On the proposition which has been made that this bill must go to the Committee of the Whole, the Chair desires to remind the House that the whole subject in the original bill was referred to the Committee of the Whole, and was therein discussed. No one proposed that the substitute which was offered after the House came out of Committee of the Whole should be sent back to that committee because it had not been there considered.

No more can the substitute which the House has ordered to be reported forthwith be sent to the Committee of the Whole for consideration, for what could that committee do with it? The bill is here by the order of the House, and the subordinate of the House, the Committee of the Whole, could not act upon what the House itself has already acted upon. The House has directed this bill to be brought before it, and to be brought before it through the medium of the committee that had the original bill in charge.

The whole subject, within the purview of the rules, has been considered by the Committee of the Whole, and the functions of that committee have been performed. The Committee of the Whole has reported, and the result thus far is that the House has disagreed with the Committee of the Whole so pointedly that it has substituted directly its own will for the will of the Committee of the Whole, and, after considering the bill, which had been ordered to a third reading, as amended, has directed the committee in charge of this matter to bring back to the House "forthwith" another bill. It seems to the Chair that that is a plain, logical system for the transaction of business, and that it will justify itself thoroughly in actual practice in the House. The Chair is not aware whether this question has been up fully before, but it has been up to some extent, and the Chair thinks that the debate on the 10th of July, 1886, will throw light upon the subject for such gentlemen as desire to examine it.

Mr. John H. Rogers, of Arkansas, made the further point of order that, under the rules, neither the committees nor the chairman of the committee was authorized to make a report in the manner in which this bill had been reported.

Mr. Charles H. Mansur, of Missouri, made the additional point of order that the proper construction of the word "forthwith" was the legal construction, which meant within twenty-four hours.

The Speaker overruled the points of order.

5547. On April 6, 1900,[1] the House was considering the bill (S. 222) to provide a government for the Territory of Hawaii, and the bill having been read a third

[1] First session Fifty-sixth Congress, Record, p. 3866.

time, Mr. Richard Bartholdt, of Missouri, offered a motion that the bill be recommitted to the Committee on Territories with instructions to strike out of page 71, line 7, after the word "allowed," the words "nor shall saloons for the sale of intoxicating liquors be allowed," and that the bill be reported back forthwith.

Mr. Joseph G. Cannon, of Illinois, rising to a parliamentary inquiry, asked whether or not, the motion being adopted, it would be the duty of the gentleman in charge of the bill at once to report the bill back as instructed.

The Speaker [1] said:

The Chair will state, in reply to the parliamentary inquiry of the gentleman from Illinois, that it has been held repeatedly that the chairman of the committee who reports the bill, if this motion should prevail, should report it back forthwith, without leaving his seat or consulting his committee; and the Chair will further state that in the recollection of the Chair, on a motion made by the gentleman from Illinois who makes the parliamentary inquiry, that ruling was made.

The question being taken the motion was disagreed to.

5548. It is in order to move to recommit with instructions to the committee to report "forthwith" a certain proposition; but instructions that the report be made on a certain day in the future involve a different principle.—On February 27, 1891,[2] the House, acting under a special order, had passed to be engrossed and read a third time the bill (S. 3738) to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations.

The bill having been read a third time, and the question being on its passage, Mr. Joseph G. Cannon, of Illinois, moved that the bill be recommitted to the Committee on Merchant Marine and Fisheries, with instructions to report the same forthwith, with an amendment in the nature of a substitute.

Mr. Richard P. Bland, of Missouri, made the point of order that so much of the motion as instructed the committee to report forthwith was not in order, and that a similar motion made by him in respect to the silver-coinage bill had been ruled out by the Speaker on a point of order.

The Speaker [3] ruled the motion submitted by Mr. Cannon to be in order, and stated that no ruling was made by him on the motion made by Mr. Bland as to the silver bill, but that instead Mr. Bland modified his motion so as to require the Committee on Coinage, Weights, and Measures to report back a bill for the free coinage of silver.

5549. On June 7, 1890,[4] the House resumed the consideration of the special order, it being the bill of the House (H. R. 5381) authorizing the issue of Treasury notes on deposit of silver bullion, with amendments.

The bill as amended was engrossed and read the third time, and the question was on its passage, when Mr. Richard P. Bland, of Missouri, submitted the following resolution:

Resolved, That the bill be recommitted to the Committee on Coinage, Weights, and Measures, with instructions to strike out all after the enacting clause and insert in lieu thereof the following:

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-first Congress, Journal, pp. 31 2–321; Record, pp. 3505–3508.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-first Congress, Journal, p. 713; Record, p. 5813.

"That from and after the passage of this act all holders of silver bullion of the value of $50 or more, standard fineness, shall be entitled to have the same coined into standard silver dollars," etc.

And that the committee report the bill so amended back to the House for consideration immediately after the reading of the Journal on next Tuesday, the 10th instant.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the clause directing the committee to report back the bill at a designated time was not in order, being a change of the rules. The Speaker [1] sustained the point of order.[2]

5550. It is in order to refer a matter already under consideration to a committee with instructions to report a bill forthwith, and such bill being reported is in order for immediate consideration.—On January 15, 1842,[3] during a time set apart by special order for the reception of petitions and memorials, Mr. Linn Boyd, of Kentucky, presented a petition of inhabitants of the county of Otsego, in the State of New York, praying Congress to repeal the act, passed at the last session, to establish a uniform system of bankruptcy. Thereupon, on motion of Mr. Boyd, it was—

Ordered, That the memorial of the inhabitants of the county of Otsego, in the State of New York, be referred to the Committee on the Judiciary, with instructions to report, instanter, in execution of an order of the House made on the 8th instant, a bill for the repeal of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved 19th of August, 1841.

Thereupon Mr. Henry A. Wise, of Virginia, demanded that the committee report instantly the bill.

Mr. Millard Fillmore, of New York, objected on the ground that the House was now acting under a special order, and that the reception of petitions and memorials was the business in order.

The Speaker [4] stated that this was a novel case, and that he had searched in vain for precedents to guide him. He must therefore rely on his own convictions of propriety. On the 11th instant he had decided that it was not in order for the Committee on the Judiciary to report the bill repealing the bankruptcy law, which the House, on the 8th instant, had ordered the committee to report on the 11th, for the reason that between the time of making the order and the time of its execution business under the pending special order had not been completed. Therefore the decision was made that the report could not be made. This was a different case, inasmuch as the order for the committee to report was imperative, and the time fixed was "instanter," and it was, in fact, but a mere continuation of the same proceeding; and, considering that, if the committee could not be called upon to report now, the power of the majority to carry out its intentions would become nugatory, the Speaker felt himself bound by the order of the House to call upon the committee to report the bill.

Mr. Caleb Cushing, of Massachusetts, having appealed, the appeal was laid on the table, yeas 101, nays 98.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] The Record (p. 5813) shows that the Speaker made no ruling, but that Mr. Bland, when the point of order was made, withdrew that part of the motion, assuming that it would be held out of order.

[3] Second session Twenty-seventh Congress, Journal, pp. 189–199, 202, 207; Globe, pp. 134–138.

[4] John White, of Kentucky, Speaker.

Thereupon Mr. Daniel D. Barnard, of New York, chairman of the Committee on the Judiciary, in execution of the order of the House, reported a bill (No. 72) to repeal the act to establish a uniform system of bankruptcy.

The bill having been received and read a first time, Mr. Robert C. Winthrop, of Massachusetts, objected to any proceeding at this time on the bill on the ground that the order of the House had been fully executed by the reporting of the bill, and was therefore exhausted, and that the bill must take its place with business on the Speaker's table, and be taken up and proceeded with according to the rules when that class of business should be in order.

The Speaker sustained the point of order, but on an appeal, and on the succeeding day, this decision was reversed, yeas 99, nays 118.

§ 5551. A bill recommitted under Rule XVII with instructions that it be reported "forthwith" was, when reported, again passed to be engrossed and read a third time.—On January 30, 1904,[1] the House was considering the bill (H. R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The bill having been engrossed and read a third time, Mr. David E. Finley, of South Carolina, moved that the bill be recommitted to the Committee on Indian Affairs with instructions that it be reported forthwith with a certain amendment.

The motion being agreed to, Mr. Charles H. Burke, of South Dakota, from the Committee on Indian Affairs, at once reported the bill with the amendment specified.

Mr. Robert Baker, of New York, having made a point of order, the Speaker[2] said:

> The Chair is informed, and his recollection without the information concurs with the information, that this is the usual proceeding and that there are precedents. The Clerk will read section 1022 of Hinds's Parliamentary Practice.
>
> The Clerk read as follows:
>
> "SEC. 1022. A bill may be recommitted with instructions that it be reported back forthwith, and this report may be made at once by the chairman of the committee and is not subject to the point that it must be considered in the Committee of the Whole if it has previously been considered there.

The amendment reported by Mr. Baker was then agreed to.

The question being taken on the engrossment and third reading of the bill, a quorum failed on the division. Thereupon the House adjourned.

On February 1[3] the bill coming up, Mr. Burke moved the previous question on the bill to its passage. This motion was agreed to, and under the operation thereof the bill was engrossed, read a third time, and passed.[4]

5552. A bill is sometimes recommitted to the Committee of the Whole with instructions.—On February 25, 1833,[5] the House passed to the consideration of the bill (H. R. 641) to reduce and otherwise alter the duties on imports. This

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[1] Second session Fifty-eighth Congress, Journal, p. 225; Record, pp. 1428, 1429.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Journal, p. 227; Record, p. 1469.

[4] The reengrossment of the bill, under operation of the previous question was in accordance with the procedure on February 27, 1891 (second session Fifty-first Congress, Journal, p. 319).

[5] Second session Twenty-second Congress, Journal, pp. 415–423; Debates, p. 1772.

bill had been reported from the Committee of the Whole House on the state of the Union with certain amendments, a portion of which had been acted on by the House.

Mr. Robert P. Letcher, of Kentucky, moved to strike out all after the enacting clause and insert a new text,[1] which he presented.

This motion being objected to, Mr. Letcher moved that the bill be recommitted to the Committee of the Whole House on the state of the Union, with instructions to amend the same to read as follows: i. e., in accordance with a new draft of a bill, which he presented.

This motion was agreed to, yeas 95, nays 54.

The House at once resolved itself into Committee of the Whole; and the Committee of the Whole amended the bill as directed. The substitute was read in Committee; but apparently there was no debate. The Committee then rose and reported the bill to the House.

The House concurred in the amendment of the Committee of the Whole.

5553. On April 10, 1828[2] the motion pending was to recommit the tariff bill to the Committee of the Whole House on the state of the Union (whence it had been reported with amendments), with certain instructions.

Mr. Michael Hoffman, of New York, rising to a parliamentary inquiry, asked if it were competent for the House to instruct the Committee of the Whole what amendments they should report.

The Speaker[3] decided that it was competent for the House so to instruct the Committee. Here the motion was to "inquire into the expediency of making certain specific amendments," which the Chair pronounced to be perfectly in order. The decision was acquiesced in by the House.

Mr. Benjamin Gorham, of Massachusetts, inquired whether, if the bill were recommitted, it would be in order to confine the Committee of the Whole, as proposed by the motion.

The Speaker said that the committee, if not instructed, would have the whole bill before them open to amendment; but the House might restrain them by instructions to the consideration of a single section, or a single point in the bill.

In this decision the House also acquiesced.

5554. The question of consideration being pending, a motion to refer is not in order.—On February 26, 1901.[4] Mr. James D. Richardson, of Tennessee, had offered a resolution relating to the right of supervision proper to be exercised over the Congressional Record by the Speaker.

Mr. John F. Lacey, of Iowa, raised the question of consideration.

Mr. James S. Sherman, of New York, rising to a parliamentary inquiry, asked if it would be in order to move to refer the resolution to the Committee on Rules.

The Speaker[5] held that the question of consideration must be disposed of first.

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[1] This text was the Clay bill, already presented in the Senate. It passed the Senate without amendment and became a law.

[2] First session Twentieth Congress, Journal, p. 1039; Debates, pp. 2260–2262.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] Second session Fifty-sixth Congress, Record, p. 3093.

[5] David B. Henderson, of Iowa, Speaker.

5555. The motion to refer, the previous question not being ordered, has precedence of the motion to amend.—On March 7, 1902,[1] Mr. Joel P. Heatwole, of Minnesota, chairman of the Committee on Printing, reported a joint resolution (H. J. Res. 26) providing for the Special Report on the Diseases of the Horse.

After consideration Mr. Heatwole moved to recommit the bill.

Mr. Oscar W. Underwood, of Alabama, proposed an amendment.

The Speaker[2] said:

The Chair will say that under Rule XVI the motion to recommit has precedence over the motion to amend, and that therefore the Chair will put the motion to recommit.

5556. It was held in the Senate that a pending motion might not be referred to a committee.—On June 30,1868,[3] in the Senate, a motion was made that the oath be administered to Thomas W. Osborn, Senator-elect from Florida.

Mr. Thomas A. Hendricks, of Indiana, proposed to refer this motion with certain papers to the Committee on the Judiciary, and Mr. Henry B. Anthony, of Rhode Island, made such a motion.

Mr. John Conness, of California, made the point of order that it was not in order to refer a pending motion to a committee.

The President pro tempore[4] said:

They are entirely independent motions, and the first made must be disposed of first. The question now is, Shall the Senator-elect from Florida be admitted to take the oath and his seat? The Senator from Rhode Island moves that that motion be referred to the Committee on the Judiciary. I can hardly think that that is in order, because you could never get a decision in that way. Motion after motion might be put, and the last one would have to go to a committee. I know of no case where motions of that kind have been referred, and I think I can see great difficulty in establishing such a rule.

Mr. Anthony raised the point that had his motion been reduced to writing it would have been in order to refer it.

The President pro tempore said:

The Chair has already stated that in his opinion a motion to refer another motion is not in order. It takes nothing with it in this case. There are many motions that can be made that can be referred, because they take some substantial thing along with them to be deliberated upon and decided by the committee. But here is a motion to admit this Senator to take the oath. A motion to refer that motion to a committee takes nothing with it; there is nothing for the committee to consider; and therefore, and because of its inconvenience, the Chair believes it not to be in order; that it would establish a bad rule. If Senators think that is a wrong decision, and probably it may be, they will take an appeal and settle the question.

No appeal was taken.

5557. After discussion the Senate decided out of order a motion to refer an amendment to a pending bill without the bill itself.—On May 9, 1906,[5] the Senate resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all

[1] First session Fifty-seventh Congress, Record, p. 2495.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fortieth Congress, Globe, p. 3606.

[4] Benjamin F. Wade, of Ohio, President pro tempore.

[5] First session Fifty-ninth Congress, Record, pp. 6553–6559.

acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

There was pending an amendment proposed by Mr. John F. Dryden, of New Jersey, which had been amended by the Senate on motion of Mr. Stephen B. Elkins, of West Virginia.

Mr. Albert J. Hopkins, of Illinois, moved to refer the amendment as amended to the Committee on Interstate Commerce.

Mr. Joseph W. Bailey, of Texas, made the point of order that the amendment might not be committed to a committee.

Mr. Nelson W. Aldrich, of Rhode Island, requested the following rule of the Senate to be read:

RULE XXII.—*Precedents of motions.*

When a question is pending, no motion shall be received but—

To adjourn.

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

To take a recess.

To proceed to the consideration of executive business.

To lay on the table.

To postpone indefinitely.

To postpone to a day certain.

To commit.

To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

Mr. Aldrich further said:

The parliamentary law as understood in the Senate is Jefferson's Manual, which was made years ago the authority of the Senate upon all questions of parliamentary law not included within the Senate rules. I call attention to page 106, where it is said in terms:

"A particular clause of a bill may be committed without the whole bill."

* * * If we can commit a clause, we certainly can commit an amendment or a proposed clause. The only difference is that one is a clause and the other is a proposed clause.

Mr. Henry Cabot Lodge, of Massachusetts, said:

Mr. President, I am as anxious as anybody could possibly be to have this subject, which I think a large and complicated one, referred to a committee, so that before the conclusion of the session we may act upon it intelligently and better than we possibly can now; but I can not vote, Mr. President, to attain that result, which is easily attainable in an orderly manner and in conformity with what I believe to be parliamentary law, in a manner which I believe to be contrary to parliamentary law and contrary to the practice of the Senate.

An amendment has no existence except in connection with the measure to which it is proposed. When we send amendments to a committee to consider, it is because the bill to which they are proposed is in a committee in a state of preparation; but this bill is before the Senate; it is not before the committee; and there is no bill before the committee relating to this subject. If there were a bill before the committee relating to this matter—the divorcing of railroads from the ownership of coal lands—it would be then perfectly proper to refer these amendments for the consideration of the committee in connection with that bill. But to take the amendment away from the bill by which alone it can have parliamentary existence, I do not believe can possibly be done.

I have looked as well as a very brief time would permit me to do so at the very full collection of precedents of the House which were prepared for the House, and there is not a suggestion in all the innumerable questions that have arisen about amendments and committal that a motion to commit

could ever be applied to an amendment by itself. A motion to commit invariably applies—and every decision in this great work shows that it applies—to the bill, to the subject before the House, and not to an amendment to the subject or the proposition before the House. The first words of the eighteenth chapter on amendments are:

"Under the rule relating to amendments the following motions are in order: To amend; to amend that amendment; for a substitute; and to amend the substitute."

These are all the motions that are in order in regard to an amendment.

Our standing rule simply establishes the order of motions. It does not say what we can commit. Those are the motions, in their order, which may apply to the proposition before the Senate, or, like a motion to adjourn, apply only to the action of the body and not to the proposition then pending. * * * The motion to commit, the Senator from Wisconsin suggests, must apply to some substantive proposition. The substantive proposition before the Senate is the bill, and nothing else. The amendment is a mere attachment proposed to the bill, which may come into existence, or may have no existence; but it is here only because the bill is here. If there was no bill here, nobody would suggest that an amendment could be discussed when no bill existed to which it could apply.

Mr. President, I can find nothing in the general parliamentary law that refers to anything but the committal of the subject before the body. There is an utter absence of any suggestion, in any volume of rules at which I have been able to look, that it was ever contemplated that an amendment by itself could be committed to a committee or referred separately from the main proposition.

Mr. Charles A. Culberson, of Texas, said:

On page 115 of Jefferson's Manual it is said:

"1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal; yet it must be postponed separately from its original, if at all; because the eighth rule of Senate says that when a main question is before the House—"

The main question here is the bill to regulate commerce—

"no motion shall be received but to commit, amend, or prequestion the original question, which is the parliamentary doctrine also."

At the conclusion of the debate the Vice-President [1] said:

The Senator from Texas raises a point of order against the motion of the Senator from Illinois to the effect that the motion is not in order under the rules of the Senate. The Chair finds no sanction for the motion in the well-recognized practice and usage of the Senate. The Chair will, therefore, leave the question to the determination of the Senate itself, as it is entirely within its competency to decide whether the motion is in order or not. * * * Those who are of opinion that the motion is in order will vote "yea" as their names are called, and those opposed "nay." The Secretary will call the roll.

The Secretary called the roll; and the result was, yeas 25, nays 48.

So the motion to refer was held not to be in order.

5558. A bill referred to a committee and reported therefrom is sometimes recommitted.

When a bill is recommitted to the committee which reported it the whole question is before the committee anew, as if it had not been before considered.

The parliamentary law provides that the House may commit a portion of a bill or part to one committee and part to another.

Section XXVIII of Jefferson's Manual provides:

After a bill has been committed and reported it ought not, in an ordinary course, to be recommitted; but in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. (Hakew., 151.) If a report be recommitted before agreed to in the House,

[1] Charles W. Fairbanks, of Indiana, Vice-President.

what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. (3 Hats., 131—note.)

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

A particular clause of a bill may be committed without the whole bill[1] (3 Hats., 131); or so much of a paper to one and so much to another committee.

5559. The House having disposed of a report adversely, it is not in order to recommit it.—On July 23, 1842,[2] the House proceeded to the consideration of the report of the Committee on the Judiciary, which recommended: "That it is not expedient to amend the existing bankrupt law, so as to include associations and corporate bodies issuing notes or bills for circulation as money."

The question being put on agreeing to the recommendation of the report, it was decided in the negative.

A motion was then made by Mr. James I. Roosevelt, of New York, that the report be recommitted to the Committee on the Judiciary.

The Speaker[3] decided the motion not to be in order.

Mr. Roosevelt having appealed, the appeal was laid on the table.

5560. It is not in order to recommit a report until a question of order relating to its reception has been settled.—On February 19, 1857,[4] the select committee appointed to investigate certain alleged corrupt combinations among Members made a report in relation to Mr. W. A. Gilbert, of New York.

Objection was made to the reception of this report on the ground that it was not privileged.

Pending consideration of the question of order involved, Mr. Henry Bennett, of New York, moved that the report be recommitted.

The Speaker[5] held that the motion to recommit was not in order, as the House had not yet received the report.

Mr. Bennett proposed to appeal, but later withdrew his motion to recommit.

5561. The motion to recommit with instructions may be made before the engrossment of a bill, and is debatable; but a demand for the previous question on the bill to the passage, if sustained, cuts it off.—On January 11, 1899,[6] the House was considering the bill (H. R. 8571) to provide a criminal code for the District of Alaska, the question being on the engrossment and third reading of the bill, and the previous question not having been demanded or ordered.

Mr. Oscar W. Underwood, of Alabama, moved to recommit the bill with certain instructions.

Mr. Sereno E. Payne, of New York, made the point of order that the motion to recommit was not in order as the bill had not been ordered to be engrossed and read a third time.

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[1] This, of course, can only apply to cases where the House commits a bill. Under the present system bills on their introduction are referred under the rule, and a bill may not be divided among two or more committees.

[2] Second session Twenty-seventh Congress, Journal, pp. 1149, 1150; Globe, p. 782.

[3] John White, of Kentucky, Speaker.

[4] Third session Thirty-fourth Congress, Globe, pp. 762, 764.

[5] Nathaniel P. Banks, of Massachusetts, Speaker.

[6] Third session Fifty-fifth Congress, Record, pp. 595, 597.

The Speaker pro tempore [1] held:

The previous question not having been asked for or ordered a motion to recommit is in order.

Debate having begun, Mr. John J. Jenkins, of Wisconsin, made the point of order that the motion was not debatable.

The Speaker pro tempore [1] said:

The Chair decides that a motion to recommit with instructions opens up the entire subject.

Debate having proceeded, Mr. Vespasian Warner, of Illinois, demanded the previous question on the bill to its passage.

Mr. Underwood having called attention to the pendency of his motion to recommit the Speaker [2] said that ordering the previous question on the bill to its passage would cut off the motion to recommit with instructions; [3] but that the latter motion might be made after the bill had passed to be engrossed, provided the previous question on the bill to its passage should be ordered.

5562. The motion to recommit may be made after the engrossment and third reading of a bill, even though the previous question may not have been ordered.—On February 16, 1899,[4] the House was considering the sundry civil appropriation bill, and had ordered it to be engrossed and read a third time. The question then recurred on its passage, and the previous question had not been ordered.

Mr. William P. Hepburn, of Iowa, moved to recommit the bill with instructions that there be added to it legislation providing for the construction of the Nicaragua Canal.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the motion was not in order, as the previous question had not been ordered.

The Speaker [2] said:

The Chair thinks the motion is regular, and the Clerk will present it.

5563. On January 22, 1855,[5] the House was considering the bill to provide for railroad and telegraph communication between the Atlantic States and the Pacific Ocean, which had been passed to be engrossed and read a third time under the operation of the previous question.

Mr. Lewis D. Campbell, of Ohio, moved that the vote whereby the main question was ordered be reconsidered, in order that a motion might be made to recommit the bill to the select committee which had reported it.

A question arising as to the proper procedure, the Speaker [6] said:

The Chair will state the exact effect of the motion. If the vote by which the main question was ordered to be now put be reconsidered, and the House should see proper to reconsider the vote by which the bill was ordered to be engrossed and read a third time, it may be committed, but only after the vote by which it was ordered to be engrossed has been reconsidered. Before that vote is taken, however,

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[1] Israel F. Fischer, of New York, Speaker pro tempore.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Of course the previous question might have been demanded on the motion to recommit with instructions instead of being offered as a motion having priority under section 4 of Rule XVI.

[4] Third session Fifty-fifth Congress, Record, p. 1960.

[5] Second-session Thirty-third Congress, Globe, p. 353.

[6] Linn Boyd, of Kentucky, Speaker.

it may be recommitted to the select committee under an express rule, but it can not be committed to a new committee.[1] That is the recollection of the Chair in regard to the rule. But the reconsideration of the vote by which the bill was ordered to be engrossed will place it in a position to be committed or recommitted.

5564. The simple motion to refer or commit is debatable, but the merits of the proposition which it is proposed to refer may not be brought into the debate.

A former rule of the House provided that a motion to refer should not be debatable. (Footnote.)

On February 21, 1893,[2] the House was considering the Senate amendments to the bill (H. R. 9350) to promote the safety of employees and travelers, etc., and Mr. James D. Richardson, of Tennessee, submitted a motion that the bill and amendments be committed to the Committee on Interstate and Foreign Commerce. He was proceeding to debate this motion to commit, when Mr. John Lind, of Minnesota, made the point of order that the motion of Mr. Richardson was not debatable.

The Speaker[3] sustained the point of order on the ground that the amendments not having been considered by or reported form a committee of the House, under clause 2 of Rule XIII[4] the question on the motion to commit was not debatable.

5565. On December 19, 1825,[5] Mr. Edward Livingston, of Louisiana, was recognized in debate, the pending question being on a motion to refer to the Committee on Ways and Means a resolution calling on the Secretary of the Treasury for a detailed account of unclaimed dividends on United States stock.

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[1] The rule referred to, No. 120 at this time, was as follows: "After commitment and report thereof to the House, or at any time before its passage, a bill may be recommitted." This rule dated from 1789, but has not existed for many years.

[2] Second session Fifty-second Congress, Journal, p. 101; Record, p. 1956.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] This rule is no longer a part of the rules. It provided: "The question of reference of any proposition, other than that reported from a committee, shall be decided without debate, in the following order, viz, a standing committee, a select committee; but the reference of a proposition reported by a committee, when demanded, shall be decided according to its character, without debate, in the following order, viz, House Calendar, Committee of the Whole House on the state of the Union, Committee of the Whole House, a standing committee, a select committee." This rule had its inception on March 13, 1822 (first session Seventeenth Congress, Journal, p. 350), and was evidently intended to remedy troubles such as occurred January 29, 1822 (first session Seventeenth Congress, Annals, p. 827), when there was much debate and contention over the reference of papers relating to the difficulties of General Jackson and Judge Fromentin. In the first form the motion to refer was left debatable, and long debates over reference frequently occurred, as in the case of the President's message relating to the Creek treaties, on February 9, 1827 (second session Nineteenth Congress, Debates, pp. 1029–1033).

Section 4 of Rule XVI (see sec. 5301 of this volume) seems to imply that the motion to commit may be debatable, under certain circumstances at least, and the relations of these two rules, which existed together in the Fifty-second Congress, were discussed at this time. (Record, p. 1955.)

The general parliamentary law (see sec. 120 of Reed's Parliamentary Rules) provides:

"The motion to commit is debatable, but the merits of the main question are not open to discussion on this motion, since that discussion will be in order when the committee reports. If, however, the proposition be to commit with instructions as to the main question, then debate can be had on the merits."

[5] First session Nineteenth Congress, Debates, p. 828.

Mr. Livingston was proceeding to discuss the condition and situation of these balances when the Chair[1] reminded him that it was not in order to discuss the merits on a motion to refer to a committee.

5566. On February 4, 1834,[2] a message was received from the President on the subject of the refusal of the Bank of the United States to transfer the money and books of the pension fund to the Girard bank.

The message having been read, Mr. Henry Hubbard, of New Hampshire, moved that the message, with the accompanying documents, be referred to the Committee on Ways and Means.

Debate arising the Speaker[3] twice admonished Members that it was not in order to enter on the merits of the question referred to by the message.

Again on February 25[4] the Speaker ruled in the same way on a motion to recommit the fortifications appropriation bill to the Committee of the Whole.

5567. On December 2, 1902,[5] the message of the President had been read when Mr. Sereno E. Payne, of New York, moved that it be referred to the Committee of the Whole House on the state of the Union.

Mr. Galusha A. Grow, of Pennsylvania, rising to a parliamentary inquiry, asked if the message itself might be debated on the motion to refer.

The Speaker[6] said:

The Chair thinks that is not the practice.

5568. On December 10, 1903,[7] Mr. John F. Lacey, of Iowa, moved to refer to the Committee on the Judiciary a resolution proposing proceedings in relation to the impeachment of Judge Charles Swayne.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the motion was not debatable.

The Speaker[8] said:

The Chair thinks the motion of the gentleman from Iowa [Mr. Lacey] is debatable, as to the propriety of the proposed reference, and has recognized the gentleman from Mississippi [Mr. Williams], who will confine himself within the limits.

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[1] John W. Taylor, of New York, Speaker.

[2] First session Twenty-third Congress, Debates, p. 2616.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] Debates, pp. 2784, 2785.

[5] Second session Fifty-seventh Congress, Record, p. 20.

[6] David B. Henderson, of Iowa, Speaker.

[7] Second session Fifty-eighth Congress, Record, p. 97.

[8] Joseph G. Cannon, of Illinois, Speaker.

Chapter CXXII.

THE MOTION TO REFER AS RELATED TO THE PREVIOUS QUESTION.

1. **The rule. Section 5569.**
2. **The motion amendable but not debatable. Sections 5570, 5571.**
3. **Applies to resolutions and certain motions. Sections 5572–5575.**
4. **Time of making the motion. Sections 5576–5581.**
5. **May be amended by adding instructions. Sections 5582–5584.**
6. **As applied to resolutions on which previous question is ordered. Sections 5582–5584.**
7. **Motion should be in simple form. Section 5589.**
8. **General decisions. Sections 5590–5604.**[1]

5569. The motion to refer provided for in the rule for the previous question.—Section 1 of Rule XVII [2] provides:

> It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

5570. The motion to commit under section 1 of Rule XVII is not debatable, but is amendable unless the previous question is ordered on it.—On February 7, 1901,[3] the previous question had been ordered on the Post-Office appropriation bill to the final passage, and under the operation thereof the bill had been passed to be engrossed and read a third time.

Pending the question on the passage of the bill, Mr. Claude A. Swanson, of Virginia, moved to recommit the bill, and on that motion demanded the previous question.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked whether or not, should the previous question be voted down, the motion to recommit would be open to debate.

The Speaker [4] replied that it would be open to amendment, but not to debate.

5571. On March 31, 1904,[5] the previous question had been ordered on the sundry civil appropriation bill to its final passage, and the bill having been engrossed

[1] Only one motion in order. (Sec. 5885 of this volume.)

[2] For full form and history of this rule see section 5443 of this volume.

[3] Second session Fifty-sixth Congress, Record, p. 2100.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Fifty-eighth Congress, Record, pp. 4075, 4076.

and read a third time, Mr. William Sulzer, of New York, moved to recommit with instructions.

On this motion Mr. James A. Hemenway, of Indiana, moved the previous question.

Mr. John S. Williams, of Mississippi, having suggested that the motion should be withheld to permit debate on the motion to recommit, the Speaker[1] said:

The previous question is now operating upon the bill to its final passage. The gentleman from New York moves to recommit the bill with instructions.

Now, the effect of the previous question under these circumstances is to cut off amendments. Debate has already been cut off, and whether the previous question upon this motion be ordered now or not, debate would not be in order save by unanimous consent.

5572. The motion to commit after the previous question is ordered applies to resolutions, the word "bill" in the rule being a generic term applying to all legislative propositions.—On May 22, 1884,[2] the House had under consideration the contested-election case of English *v.* Peelle. Mr. Alphonso Hart, of Ohio, had proposed a substitute for the resolutions reported by the Committee on Elections, and the House had agreed to this substitute, the previous question being ordered on the substitute and the original resolutions.

Mr. William M. Springer, of Illinois, had moved to reconsider this vote, and Mr. Hart had moved to lay Mr. Springer's motion on the table. The House refused to lay the motion on the table, and voted to reconsider.

The question recurring on the substitute submitted by Mr. Hart, Mr. Thomas M. Browne, of Indiana, submitted a resolution in the nature of a motion to recommit the case to the Committee on Elections, with instructions to make a recount of the ballots.

Mr. Springer made the point of order that the motion to recommit was not in order for the reason that the rule under which it was permitted (Rule XVII) applied solely to bills on their passage.

The Speaker[3] overruled the point of order on the ground that the term "bill," as used in the rule, was a generic term and included all legislative propositions which could properly come before the House. The Speaker further held that if the previous question had been ordered only on the substitute, the motion to recommit would not be in order, but being ordered on the resolutions reported from the Committee on Elections and also the substitute therefor submitted by Mr. Hart, the motion was in order—the House, by reconsideration, having reached the original state of proceedings on the substitute.

5573. The motion to commit provided for in the rule for the previous question applies not only to bills but to resolutions of the House alone.

An opinion of the Speaker that the motion to commit is not in order when the previous question has been ordered simply on a pending amendment.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Forty-eighth Congress, Journal, p. 1296.

[3] John G. Carlisle, of Kentucky, Speaker.

On May 22, 1884,[1] the House had under consideration the contested-election case of English *v.* Peelle, from Indiana. A substitute to the resolution of the majority of the committee had been offered and under the operation of the previous question, which was ordered on both substitute and resolution, had been agreed to. Then the vote adopting this substitute had been reconsidered.

When the question recurred again on the adoption of the substitute, Mr. Thomas M. Browne, of Indiana, moved to recommit the resolution to the Committee on Elections with certain instructions.

Mr. William M. Springer, of Illinois, made the point of order that, as the Chair had ruled in other cases that the motion to recommit was in order only on the final passage of a bill, and not before the engrossment, the present motion was not in order, since the final passage of a bill was not pending.

Mr. Springer made the further point of order that if the motion to recommit was in order at all, it should have been made immediately after the previous question was ordered and before the proceedings under the previous question had begun.

The Speaker[2] said:

On yesterday, upon the motion of the gentleman from Ohio [Mr. Geo. L. Converse], the House ordered the previous question, not only upon the amendment which was proposed by the minority of the Committee on Elections, but upon the adoption of the resolutions reported by the majority of the committee. Thereupon a vote was taken in the House on the adoption of the amendment proposed by the minority of the committee, and it was agreed to.

The gentleman from Illinois [Mr. Springer] then moved to reconsider the vote by which the amendment was agreed to, and this morning that vote has been reconsidered. Therefore the House now stands with reference to this matter precisely as it did before any vote had been taken after the previous question was ordered. If the previous question had been ordered only upon the amendment proposed by the minority of the committee, the Chair would have no hesitation in holding that it was not now in order, under the rules of the House, to move to recommit, either with or without instructions. But the previous question, as the Chair has already said, has been ordered not only upon the amendment, but upon the adoption of the original resolutions reported by the majority of the committee. The House, by reconsidering that vote by which yesterday the amendment was adopted, has gone back to precisely the same stage of proceedings which existed before any vote whatever had been taken upon the amendment.

The only question, then, is whether it is in order at any time after the previous question has been ordered to recommit measures except what is technically termed a "bill." The Chair thinks that the term "bill" as used in Rule XVII is a generic term, and includes all legislative propositions which can come before the House.[3]

In accordance with this opinion, the Chair has during this session invariably held that it was in order to recommit other propositions than bills after the previous question had been ordered. The Chair thinks that this motion is in order, and so decides.

5574. The motion to commit provided for in the rule for the previous question, may be applied to a motion to amend the Journal.

A former rule of the House provided that motions might be committed, and the principle has been reasserted by the Chair.

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[1] First session Forty-eighth Congress, Record, p. 4403.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Mr. Speaker Keifer had held in the preceding Congress that the motion to commit under Rule XVII applied only to bills and not to the resolution then before the House from the Committee on Rules. (Second session Forty-seventh Congress, Journal, p. 505; Record, p. 3315.)

On March 23, 1880,[1] the House was considering a motion submitted by Mr. James A. Garfield, of Ohio, to amend the Journal, and on this motion the previous question had been demanded.

Thereupon Mr. Elijah C. Phister, of Kentucky, moved to refer the motion to the Committee on the Judiciary.

The point of order being made against this motion by Mr. Garfield, the Speaker[2] said:

The Chair entertains the motion under the latter portion of the first clause of Rule XVII, which provides—

"That it shall be in order, pending the motion for or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee."

The suggestion being made that a resolution or bill could be committed, but not a motion, the Speaker had read the former rule of the House (No. 47): "Motions and reports may be committed at the pleasure of the House."[3]

5575. The previous question having been ordered on a motion to agree to a Senate amendment to a House bill, a motion to commit is in order.— On November 1, 1893,[4] the House was considering the Senate amendments to the bill (H. R. 1) to repeal a part of the act of July 14, 1890, relating to the purchase of silver bullion.

Mr. Leonidas F. Livingtson, of Georgia, submitted the question of order whether, after the previous question should have been ordered on the motion to concur in a Senate amendment, it would be in order to commit the bill and amendment to a committee with instructions.

The Speaker[5] expressed the opinion that the motion to commit would in such case be in order.

5576. The motion to refer under Rule XVII may be made pending the demand for the previous question, on the passage, whether a bill or resolution be under consideration.—On January 4, 1904,[6] Mr. James Hay, of Virginia, presented a resolution relating to an investigation of certain alleged misconduct on the part of Members, and after debate thereon, moved the previous question.

Pending this question Mr. Sereno E. Payne, of New York, rising to a parliamentary inquiry, asked when it would be in order to make a motion to commit the resolution.

The Speaker[7] said:

The Chair is of the opinion that, pending the demand for the previous question the motion which the gentleman indicates would not be in order.

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[1] Second session Forty-sixth Congress, Record, pp. 1814, 1815.

[2] Samuel J. Randall of Pennsylvania, Speaker.

[3] The revision of the rules had recently taken place when this ruling was made, and this rule 47 had disappeared in that revision; but the Speaker evidently considered the principle involved as surviving.

[4] First session Fifty-third Congress, Journal, p. 162; Record, p. 3060.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Fifty-eighth Congress, Record, p. 448.

[7] Joseph G. Cannon, of Illinois, Speaker.

The question was then taken on the motion for the previous question, the yeas and nays being ordered. There appeared, yeas 78, nays 78, answering present 9—not a quorum.

Thereupon the House adjourned.

On January 5,[1] when the resolution was again taken up, the Speaker said.

The Chair desires at this time to correct a ruling made by the Chair yesterday. After the previous question had been moved upon this resolution yesterday the gentleman from New York [Mr. Payne] proposed a motion to refer. The Chair had in mind clause 4 of Rule XVI, which is as follows:

"When a question is under debate no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend, or postpone indefinitely; which several motions shall have precedence in the foregoing order."

Now, with that rule standing alone, the ruling of the Chair was strictly in accordance with the letter of the rule; but the Chair had overlooked Rule XVII, which is as follows:

"There shall be a motion for the previous question, which, being ordered by a majority of Members voting, if a quorum be present, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee."

In the opinion of the Chair, if called upon to rule for the first time and harmonize Rule XVI with Rule XVII, the Chair would hold that Rule XVI applies to resolutions and that Rule XVII applies to joint resolutions and bills.

Evidently, under Rule XVII, it was the intention of the House, by the adoption of the same, to give the House an opportunity after a bill had been engrossed and read a third time, if there were accidents, or for any reason it was the sense of the House that the bill ought to be recommitted, to have that opportunity. In practice that motion is in constant use in the ordinary business of the House in cases where the previous question is ordered upon the bill to its passage after the bill has been engrossed and read a third time. But the Chair does not feel at liberty or believe that it would be a correct ruling, in view of the practice of the House heretofore, to so harmonize these two rules. It has been the practice of the House, certainly from the time of Speaker Crisp, to hold that Rule XVII applies to resolutions as well as to bills. That was followed by Speaker Reed and also by Speaker Henderson.

Gentlemen are familiar with that fact, for the reason that in cases of resolutions reported from election committees in the determination of election contests it has been the constant practice after the substitute was voted on to move to recommit with or without instructions. So the practice of the House having been to substantially nullify Rule XVI, and the Chair, not feeling at liberty to depart from that practice, so far as the motion to commit is concerned, holds that under Rule XVII it is in order, pending a motion for the previous question upon a resolution[2] or after the previous question upon the resolution has been ordered, either, at the election of the House, to commit the resolution.

The Chair thought proper to call the attention of the House promptly to the error that the Chair fell into yesterday.

5577. Where separate motions for the previous question are made, respectively, on the third reading and on the passage of a bill, the motion to commit should be made only pending the demand for or after the previous question is ordered on the passage.

Under the rule for the previous question but one motion to commit is in order.

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[1] Record, pp. 474, 475.

[2] See, however, section 5585.

On January 17, 1884,[1] the House had under consideration a bill for immediate improvement of the Mississippi River, the previous question having been moved on the third reading only, and not on the bill to its final passage. A motion was made to commit the bill with certain instructions. This motion was defeated. The question recurring on ordering the bill to be read a third time, Mr. John D. White, of Kentucky, inquired whether it would be in order to move to commit the bill with instructions; or, if not now, whether it would be in order after the previous question should have been ordered.

The Speaker[2] stated that under the rule of the House it was in order to move to commit with or without instructions pending the demand for the previous question or after the previous question had been ordered on the passage of the bill.

Mr. Albert S. Willis, of Kentucky, made the point of order that one such motion had been made and that the privilege was exhausted. But the Speaker replied that the motion had been made while the question was on ordering the bill to a third reading. Only one such motion was in order after the ordering of the previous question on the passage of a bill or pending the demand for the previous question on the passage.

It was then recalled to the Speaker's attention that the previous question had been demanded on the third reading before the motion to commit was made. The Speaker said that probably it was a mistake to entertain the motion to commit under the circumstances. But the previous question having been ordered on the passage, the motion to commit was in order.

5578. Where the motion for the previous question covers all stages of the bill to the final passage, the motion to commit is made after the third reading, and is not in order before engrossment or third reading or pending the motion for the previous question.—On May 26, 1896,[3] the House had under consideration the bill (H. R. 3282) relating to the use of alcohol in the arts, and the previous question, on motion of Mr. Walter Evans, of Kentucky, had been ordered on the bill and amendments to the passage, when Mr. William E. Barrett, of Massachusetts, proposed a motion to recommit with instructions.

The Speaker[4] held that the motion would not be in order until the bill had passed to be engrossed and had been read a third time, saying:

> The Chair supposes that the practical principle involved is this: After the House has proceeded to amendment of the bill, and the bill has reached its final position, ready to be engrossed, or ordered to be engrossed, then, if the House is dissatisfied with it, it may move to commit, or recommit, as the phraseology ordinarily is. That is to enable the House to correct its action in case the bill when finished is not satisfactory.

Again, on January 12, 1897,[5] the House having under consideration the bill (H. R. 9601) relating to the unlawful use of the franking privilege, and Mr. Eugene F. Loud, of California, having demanded the previous question on the engrossment

[1] First session Forty-eighth Congress, Record, p. 466; Journal, pp. 338, 339.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-fourth Congress, Record, p. 5753.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-fourth Congress, Record, pp. 739, 740.

and to the passage of the bill, Mr. William E. Barrett, of Massachusetts, moved to recommit the bill, with certain instructions.

The Speaker held that this motion would not be in order until after the bill had passed to be engrossed and been read a third time, saying:

The proposition is that it is the motion for the previous question upon the final passage that is spoken of as pending, and during the pendency or after the passage of which a motion to commit may be submitted. Now, the rule of the House permits a double motion, which is to move the previous question on the engrossment to the passage, so that when under the operation of that double motion, or a motion double in its effect, a motion to recommit is presented, it must wait until the bill has passed to be engrossed before it can become pending. Such has always been the ruling in the House, and such, as it seems to the Chair, is the plain meaning of the rule. * * * It is simply a question as to when the motion to recommit becomes effective in the proceedings. * * *

The bill could be passed in this way: First, by a motion for the previous question upon the engrossment of the bill, and then the previous question would exhaust itself, and the question might become a subject of discussion if the previous question were not renewed on the passage; and it is at that time that the motion to recommit is admissible under our rules, upon the theory that the House, having amended the bill, and having ordered it to be engrossed, and having presumably examined the engrossed copy, is not satisfied with the amendments which have been made in the bill, and therefore wants to recommit it, and then the House has a last chance to send it to a committee. According to our system the bill is up. The House has the right to send it to a committee or a right to amend it. It chooses to amend it. Having amended it, and having had it engrossed, and having examined it, the House comes to the conclusion that it is not satisfied with the bill, and therefore by its rules gives itself the right to send it again to a committee, to enable them to make such changes as may make it more acceptable to the House.

Now, where the gentleman from Massachusetts [Mr. Barrett] is misled is in the joining together, by the rule of the House, of the two motions for the previous question—the one on the motion that the bill be engrossed, and the other on the motion for the passage. Now, that seems to the Chair to be clear.

5579. On March 19, 1898,[1] the Post-Office appropriation bill was reported from the Committee of the Whole, and Mr. Eugene F. Loud, of California, demanded the previous question on the engrossment and third reading of the bill to its passage.

Mr. Leonidas F. Livingston, of Georgia, moved to recommit the bill.

The Speaker[2] said:

This is not the proper time to make that motion. The motion to recommit should be made after the bill is engrossed. The question is on ordering the previous question.

5580. On May 5, 1898,[3] the previous question had been ordered on the engrossment and third reading and to the passage of the bill (H. R. 4372) concerning carriers engaged in interstate commerce and their employees.

Mr. Samuel Maxwell, of Nebraska, moved that the bill be recommitted.

The Speaker[2] decided that the motion was not in order at that time, as the question was on the engrossment and third reading.

The bill having been ordered to be engrossed and read a third time, Mr. James Hamilton Lewis moved to recommit the bill with certain instructions.

This motion having been decided in the negative, the question recurred on the passage of the bill, when Mr. Maxwell proposed a motion to recommit.

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[1] Second session Fifty-fifth Congress, Record, p. 3015.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 4649.

The Speaker said:

A motion to recommit will not be in order. Only one motion to recommit is in order. The gentleman could have amended by moving to strike out the instructions, but not now.

5581. On May 23, 1900,[1] the House was considering the bill (H. R. 11719) amending section 5270 of the Revised Statutes of the United States, and Mr. George W. Ray, of New York, moved the previous question on the bill and amendment to the final passage.

Mr. D. A. De Armond, of Missouri, made a motion to recommit, claiming that such motion was in order pending the motion for the previous question, under section 1 of Rule XVII.

The Speaker pro tempore[2] read to the House section 1015 of the "Parliamentary Precedents," and held that in accordance with the precedents of the House the motion was not at that time in order.

5582. After the previous question is ordered the motion to commit may be amended, as by adding instructions, unless such amendment be precluded by moving the previous question on the motion to commit.

The motion to commit, made after the previous question is ordered, is not debatable.

Under the rule for the previous question, but one motion to commit is in order.

To a bill proposing one mode of arranging the Presidential succession, an amendment proposing a joint resolution for submitting a constitutional amendment on a plan differing as to details was held germane.

On January 15, 1886,[3] the House was considering a bill relating to the Presidential succession, and the previous question had been demanded on its passage, when Mr. Andrew J. Perkins, of Tennessee, proposed to recommit the bill; and at the same time, as a parliamentary inquiry, asked if a motion to recommit with instructions would be in order in case the motion to recommit should be voted down.

The Speaker[4] replied:

The Chair thinks not. Under the rule but one motion to recommit is in order,[5] whether with or without instructions. The Chair, however, has ruled heretofore that a motion to recommit without instruction is subject to an amendment, so as to instruct the committee.

Thereupon Mr. Thomas Ryan, of Kansas, made this motion:

Recommit the bill with instructions to report as a substitute a resolution submitting an amendment to the Constitution providing one or more additional Vice-Presidents, upon whom, in their order, the office of President shall devolve in case of the removal, death, resignation, or inability both of President and Vice-President.

Mr. Roger Q. Mills, of Texas, made the point of order that these instructions were not germane.

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[1] First session Fifty-sixth Congress, Record, p. 5921.

[2] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[3] First session Forty-ninth Congress, Record, pp. 694, 695; Journal, pp. 378, 379.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] See also sections 5577, 5580, 5604.

The Speaker ruled:

The Chair thinks on examination that the matter of the resolution which it is proposed to instruct the committee to report is germane to the subject-matter of this bill. It is upon the succession to the Presidential office; and though it may come back to the House in the form of a joint resolution instead of a bill, technically speaking, yet it requires the same proceeding in the House, and is a similar legislative proposition.

The inquiry having been made as to whether or not these instructions might be amended, the Speaker replied that the motion to recommit was amendable, but not debatable.[1]

An amendment having been proposed to the instructions, Mr. William M. Springer, of Illinois, made the point of order that the motion to commit was not amendable.

The Speaker said:

That point was made during the Forty-eighth Congress, and the Chair then decided that under the rule of the House one motion to recommit with or without instruction, and one motion only, was in order, but that from the very nature of the case Members upon the floor ought to have the right to offer an amendment to the motion, and for the very obvious reason that an advocate of the pending measure, and therefore an opponent of recommitment, might offer a motion to recommit with such instructions as it was evident the House would not agree to, thereby preventing anybody who desired in good faith to recommit the measure from submitting such a motion. The Chair thought it was a matter of simple justice to those on the floor who desired to recommit with substantial instructions that they should have an opportunity to propose amendments. The motion to recommit is an independent proposition, upon which the previous question may be ordered, and until such order is made by the House the Chair thinks amendments may be proposed as in other cases.[2]

5583. On June 12, 1884,[3] the House having under consideration a bill relating to certain public works on rivers and harbors, Mr. John D. White, of Kentucky, moved that the bill be committed to a select committee, with certain instructions.

Pending this, Mr. James D. Belford, of Colorado, moved to amend the motion of Mr. White by adding the following: "And shall be paid in the standard silver coin of the United States or in silver certificates."

Mr. William H. Calkins, of Indiana, made the point of order that the motion of Mr. White to commit with instructions was not amendable.

The Speaker[4] held the motion to be amendable, for the reason that, there being a special rule permitting a motion to commit with or without instructions pending the demand for or after the previous question was ordered, the motion to commit was subject to amendment as provided by the rules of the House, and amendments could only be precluded by ordering the previous question on the motion to commit.

5584. On December 11, 1894,[5] the House was considering the bill (H. R. 7273) to amend an act entitled "An act to regulate commerce," approved Feb-

[1] For similar ruling that motion to commit under these circumstances is not debatable see Record, first session Fifty-fourth Congress, p. 4477.

[2] On March 15, 1888 (first session Fiftieth Congress, Journal, pp. 1182, 1183; Record, p. 2111), Mr. Speaker Carlisle reaffirmed this position, saying that if the motion to recommit was not amendable it would be in the power of the opponents of recommittal to make the motion in such form that the House would vote it down, and thus deprive the other side of the power to submit a proposition that might be acceptable to the House.

[3] First session Forty-eighth Congress, Journal, p. 1430.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Third session Fifty-third Congress, Journal, pp. 28, 29; Record, p. 230.

ruary 4, 1889, and the question was on the passage, the previous question being ordered.

Mr. Charles M. Cooper, of Florida, moved to recommit the bill to the Committee on Interstate and Foreign Commerce.

Mr. W. C. P. Breckinridge, of Kentucky, moved to amend the motion of Mr. Cooper by substituting the following:

> That the bill be recommitted to the Committee on Interstate and Foreign Commerce with instruction to report the bill with an amendment that no agreement contemplated, authorized, or permitted shall become valid until the same has been submitted to the Interstate Commerce Commissioners and by said Commissioners approved and promulgated.

On motion of Mr. Josiah Patterson, of Tennessee, the previous question was ordered on the amendment and on the motion of Mr. Cooper, of Florida, to recommit.

The amendment proposed by Mr. Breckinridge having been disagreed to, the question recurred on the motion of Mr. Cooper, of Florida, to recommit.

Mr. James D. Richardson, of Tennessee, made the point of order that the motion of Mr. Breckinridge was an independent motion to recommit with instructions and that the same having been rejected no other motion to recommit was in order, inasmuch as the rule permitted but one motion to recommit at this stage of the bill.

The Speaker[1] overruled the point of order, holding that the proposition of Mr. Breckinridge, whatever might be its form, was offered as an amendment, and was in effect an amendment to the motion of Mr. Cooper, of Florida, to recommit. The Speaker further said:

> It is not an open question at all. This matter was very thoroughly discussed in the Forty-eighth Congress and decided at that time by the then Speaker of the House. It was held by the Speaker in a decision covering the whole ground, that this motion to commit with or without instructions was merely an enlargement of the right of amendment. It gave an additional opportunity to amend the bill and carried with it all the incidents of an original amendment, unless, of course, the offering of the amendment was precluded by the previous question. The Journal of the Forty-eighth Congress, page 1430, contains this decision:
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> "A motion to commit under clause I of Rule XVII, with or without instructions, is subject to amendment under Rule XIX, unless precluded by ordering the previous question on the motion to commit."
>
> And ever since that time such has been the practice of the House invariably.

5585. When the previous question has been ordered on a simple resolution (as distinguished from a joint resolution) and a pending amendment, the motion to commit should be made after the vote on the amendment.— On April 22, 1892,[2] the House was considering the contested-election case of Noyes *v.* Rockwell, from New York, and the previous question was offered on the resolutions reported by the committee and on a substitute offered by the minority.

Mr. William J. Bryan, of Nebraska, submitted the question of order whether it would be in order at this stage to move to recommit the report to the Committee on Elections.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-second Congress, Journal, pp. 154, 155; Record, p. 3538.

The Speaker[1] held as follows:

The Chair thinks that motion is not in order at this time. The rule provides that a motion to recommit may be made either before or after the previous question is ordered upon the passage of a bill. It has been frequently held by presiding officers that the word "bill" in this case is used as a generic term, applying to and including all legislative propositions which can properly come before the House. So that in this case the House must first dispose of the substitute, which is but an amendment; and after the disposition of that, when the question shall be upon the original resolutions as amended or without amendment, the motion to recommit will be in order. The motion to recommit may be made whether the substitute be voted down or not.

5586. On September 5, 1890,[2] the House was considering the election case which involved the title of Mr. Clifton R. Breckinridge, of Arkansas, to his seat. The previous question was ordered on the resolutions proposed by the majority of the committee, and also at the same time on a substitute therefore proposed by the minority.

Mr. Charles F. Crisp, of Georgia, then offered a resolution which was, in effect, a motion to recommit with instructions.

The Speaker pro tempore[3] ruled that the resolution was not in order for present consideration, as the pending question was on agreeing to the substitute, while the resolution had reference to the recommitment of the resolutions reported by the Committee on Elections.

5587. On April 21, 1896,[4] the House had considered the contested-election case of Goodwyn *v.* Cobb, from Alabama, and the previous question had been demanded on the original resolutions and a substitute therefore proposed by the minority.

Mr. Charles L. Bartlett, of Georgia, asked if a motion to recommit would be entertained after the previous question had been ordered.

The Speaker[5] said:

The Chair thinks that after the question on the substitute has been decided a motion to recommit may be in order.

Again, on April 26, 1898[6] in the case of Wise *v.* Young, from Virginia, the previous question was ordered on the resolutions and substitute; and then, before the substitute was voted on, the motion to recommit with instructions was entertained.

After this vote had been taken the Speaker[5] said:

The Chair thinks that properly the motion to recommit should have come in after the resolution had been perfected, after the substitute had been disposed of. The question now is on agreeing to the substitute.

5588. On April 22, 1892,[7] the previous question was ordered on the resolutions reported by the Committee on Elections in the New York case of Noyes *v.* Rockwell, and on a substitute offered by the minority.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-first Congress, Journal, p. 1014; Record, p. 9749.

[3] Julius C. Burrows, of Michigan, Speaker pro tempore.

[4] First session Fifty-fourth Congress, Record, p. 4242.

[5] Thomas B. Reed, of Maine, Speaker.

[6] Second session Fifty-fifth Congress, Record, p. 4286.

[7] First session Fifty-second Congress, Journal, p. 156; Record, pp. 3538–3540.

The substitute having been agreed to, and the question being on agreeing to the resolutions as amended, Mr. William J. Bryan, of Nebraska, moved to recommit the resolutions with certain instructions.

Mr. Asher G. Caruth, of Kentucky, submitted the question of order whether it would not be inconsistent, the House having voted that the contestee was entitled to his seat, to now recommit the case to the committee.

The Speaker[1] held that, by analogy to the practice in the consideration of a bill, it was in order to recommit at any time before the report as amended was finally agreed to.

5589. The previous question having been ordered, and a motion to recommit having been made in the form of a resolution with a preamble, the preamble was ruled out of order.—On June 3, 1882,[2] the House was considering the contested-election case of Lowe *v.* Wheeler, from the Eighth district of Alabama, when, the previous question having been demanded, Mr. William M. Springer, of Illinois, proposed a motion to recommit, under section 1 of Rule XVII.

This motion to recommit was in form of a preamble of seventeen paragraphs reciting statements relating to the case, followed by a resolution of recommittal with instructions.

Mr. John A. Kasson, of Iowa, made the point of order that the preamble was not in order, being in the nature of argument or debate, which was not in order pending the motion for the previous question, and asked for an inspection of the paper by the Chair before being read to the House.

After debate the Speaker[3] said:

The Chair desires to state that it does not feel called on to define the form of any motion of this character. Nor will the Chair, in determining whether a motion of this character is in order, look to see whether the matters referred to in it are true or false, or in any sense look to the motive of the mover.

The difficulty with this resolution (if it turns out to be on inspection in proper form) lies, in the opinion of the Chair, not so much in the fact that it is long, because it might be the desire of the mover and of the House to commit a bill on a proposition of any kind with instructions of very considerable length, but in reading the preamble over many things are found in it which could not possibly relate to a motion to commit with instructions. * * * As, for instance, such as these:

"Whereas the essential points in the report of the majority are based entirely upon the papers above mentioned."

That could not in any sense be connected with the motion to recommit. Again—

"Whereas the House of Representatives of the United States should not deprive a Member of his prima facie right to his seat except in pursuance of law."

What has that to do with the motion to recommit? And so it goes on in other portions of the preamble.

Cushing, in his Law and Practice of Legislative Assemblies, defines a preamble to be in the nature of a reason, or debate; and though it is sometimes connected with a bill, or adopted with a bill, it is never regarded as good legislation. Now, the Chair thinks that the gentleman from Illinois has the right, as he undoubtedly has under the rule, to move to recommit with or without instructions, and to do that without reducing the motion to writing. But would it be held to be in order for him to rise in his place and state "whereas," etc., going on, as preliminary to the motion, to arraign the committee at great length, or for a limited time, and then conclude by making the motion to recommit? The

[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Forty-seventh Congress, Journal, pp. 1395, 1396; Record, pp. 4501–4504.

[3] J. Warren Keifer, of Ohio, Speaker.

Chair think that would not be in order, for if that could be done, he might do it whether he desired to recommit with instructions or not, and for other reasons.

The Chair holds that it would be a very bad precedent to allow the motion to recommit to contain any matter, whether in the form of a preamble or otherwise, that was in its nature debate. If this preamble, as submitted by the gentleman from Illinois, contained nothing but a statement in the form of a preamble even of the particular thing that the committee would be required, under the instructions, to investigate, the Chair would not stop with the form of it, but would treat it as if it were a motion to recommit with instructions; and in that case the Chair would hold that the motion would be to recommit for the purpose of investigating the foregoing matter. Possibly the motion might come in and be allowed to go that far. There are other objections to it, but, taking this as a whole, the Chair thinks it is not properly a motion to recommit.

Mr. John E. Kenna, of West Virginia, having appealed from the decision of the Chair, the Speaker directed the preamble and resolution to be read before submitting the appeal to the House.

The appeal being submitted, it was laid on the table on motion of Mr. Thomas B. Reed, of Maine.

5590. The vote whereby a bill was passed having been reconsidered, amendments having been made and the third reading ordered again under operation of the previous question, a motion to recommit was held to be in order, although such a motion had previously been rejected.—On August 12, 1890,[1] the Speaker laid before the House a bill recalled from the Senate, being a bill (S. 3917) to adopt regulations for preventing collisions at sea. The vote whereby the bill had been passed having been reconsidered, and an amendment having been adopted, Mr. Nelson Dingley, jr., of Maine, demanded the previous question on the amendment and on the third reading and passage of the bill, which was ordered, and under the operation thereof the amendment was agreed to.

The bill as amended was then read the third time, and the question being on its passage as amended, Mr. John H. Rogers, of Arkansas, moved that the bill, as amended, be committed to the Committee on Merchant Marine and Fisheries.

Mr. Dingley made the point of order that the motion was not in order for the reason that the same had been previously made and rejected by the House.

The Speaker[2] overruled the point of order on the ground that the vote by which the bill was passed had been reconsidered and the bill amended, thus presenting a new question for the judgment of the House.

5591. A bill recommitted under section 1 of Rule XVII (rule of the previous question) and reported back to the House must again be put on its passage to be engrossed for a third reading.

A bill recommitted under the rule relating to the previous question, and on which, when it is again reported and considered, the previous question is again ordered, may again be subjected to the motion to commit.

A bill which, after consideration in Committee of the Whole, is recommitted with instructions to strike out a portion, does not, when again reported, require consideration in Committee of the Whole.

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[1] First session Fifty-first Congress, Journal, p. 946; Record, pp. 8473–8476.

[2] Thomas B. Reed, of Maine, Speaker.

Interpretation of the rule which forbids the repetition of the motions to postpone or refer at the same stage of the question.

On July 10, 1886,[1] pending the demand for the previous question on the passage of the general deficiency appropriation bill, the House recommitted the bill to the Committee on Appropriations with instructions to strike out that portion of the bill which provided for one month's extra compensation to certain employees of the House.

Mr. James N. Burnes, of Missouri, having reported the bill back with an amendment striking out the portion referred to in the instructions, Mr. Thomas M. Browne, of Indiana, made the point of order that the bill stood now as it did when originally reported from the committee, and that it must be considered in Committee of the Whole.

The Speaker,[2] in response to suggestions from various Members, said that it was undoubtedly true, should the bill go to the Committee of the Whole, that that committee could not strike out anything that had been inserted by the House; that the bill as now reported contained no provision which had not already received full consideration in Committee of the Whole House on the state of the Union, and that the amendment which had now been reported by the Appropriations Committee was to strike out a subject which was considered and adopted in Committee of the Whole. Therefore the Chair would decide that the bill should not be considered in Committee of the Whole.

Mr. Thomas M. Browne, of Indiana, then moved to recommit the bill to the Committee on Appropriations, with instructions to strike out the paragraph appropriating for rental of a wharf at Galveston, Tex.

The previous question was ordered.

Mr. Browne's motion having been disagreed to, the amendment reported by the Appropriations Committee, to strike out the provision relating to a month's extra pay for employees, was agreed to.

The Speaker then announced that the question was on the engrossment and third reading of the bill.

Mr. Charles S. Baker, of New York, moved to recommit the bill, with instructions to strike out a provision of the bill relating to United States commissioners.

The Speaker ruled:

> That motion is not in order now. After the previous question has been demanded and ordered on the passage of a bill under a special rule of the House, a motion to recommit may be made. * * * Under the old rule of the House, which corresponds with the old parliamentary law, no motion was allowed to be made to recommit when the previous question had been ordered on its passage; but under a special rule of the House, after a bill has been ordered to be engrossed and read a third time and the question is on the passage of the bill, even though the previous question has been demanded and ordered, one motion to recommit is in order.

The bill having been ordered to be engrossed and read a third time, and the question being on the passage, Mr. Baker moved that the bill be recommitted with certain instructions relating to United States commissioners.

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[1] First session Forty-ninth Congress, Record, pp. 6757, 6758; Journal, pp. 2168–2170.

[2] John G. Carlisle, of Kentucky, Speaker.

Mr. Thomas M. Bayne, of Pennsylvania, made the point of order under section 4 of Rule XVI, which provided:

* * * No motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided shall be again allowed on the same day at the same stage of the question.

The Speaker ruled:

This is not the same proposition at all. At the time the House recommitted the bill to the Committee on Appropriations with instructions to report it back after striking out a certain clause, there was in the bill a provision to pay certain employees of the Government a month's extra compensation. The bill being then on its passage, it was recommitted to the Committee on Appropriations under these instructions. It now comes back under a rule of the House, and is on its third reading and open to further amendment. The bill does not now contain that clause. It is an entirely different report from the Committee on Appropriations from that upon which the House was acting an hour or so ago. * * * Under the rule there can be but one motion to recommit the bill when the question is on its passage, and no other motion can be made. But this is a different bill, a different report from the committee, and the motion is in order.

5592. The Committee of the Whole having decided between two propositions and the House having agreed to the amendment embodying that decision, it was held to be in order in the House to move to recommit with instructions that in effect brought the two propositions to the decision of the House.—On February 23, 1899,[1] the House under operation of the previous question had passed to be engrossed and read a third time the naval appropriation bill, when Mr. Charles A. Boutelle, of Maine, moved that the bill be recommitted with instructions to report it back with an amendment fixing the price of armor plate at $545 instead of $445 per ton.

Messrs. Charles H. Grosvenor, of Ohio, and James D. Richardson, of Tennessee, made the point of order that this would be adopting by a motion to recommit a proposition which the Committee of the Whole had voted down, since the Committee of the Whole had by an amendment to an amendment stricken out $545 and inserted $445.[2]

The Speaker[3] said:

The Chair thinks the motion to recommit is under the circumstances in order.

5593. Although the decisions conflict, those last made do not admit the motion to commit after the previous question has been ordered on a report from the Committee on Rules.—On January 8,1894,[4] the previous question had been ordered on a resolution reported from the Committee on Rules, providing for the consideration of the bill (H. R. 4864) to reduce taxation, provide revenue, etc.

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[1] Third session Fifty-fifth Congress, Record, p. 2257.

[2] The proposition fixing the price of armor plate at $545 had been offered February 22 as an amendment and on February 23 this amendment was adopted after being amended by striking out $545 and inserting $445. (Record, p. 2255.) The House, when it voted on the amendment as reported from the Committee of the Whole, had either to agree to it or reject it, as the previous question had been ordered. So the only opportunity to test the opinion of the House on the question of the two prices was by the motion to recommit with instructions.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 71, 72; Record, p. 534.

Mr. Thomas B. Reed, of Maine, moved to recommit the resolution to the Committee on Rules, with instructions to report an order for the consideration of the bill (H. R. 4864), which would allow more time for general debate.

Mr. William M. Springer, of Illinois, made the point of order that it was not in order to recommit a report from the Committee on Rules.

The Speaker [1] held that the motion to recommit was in order.

5594. On March 28, 1894,[2] the previous question had been ordered on a resolution reported from the Committee on Rules, fixing times for the consideration of the contested election cases of O'Neill *v.* Joy, from Missouri, and English *v.* Hilborn, from California.

Mr. Thomas B. Reed, of Maine, moved to recommit the pending resolution to the Committee on Rules with instruction to so modify the resolution that an additional vote might be had in the Joy case on the question of ordering a new election, if the House should determine that the facts required one, and with instruction to allow a suitable time for discussion.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that a motion to recommit a report of the Committee on Rules was not now in order.

The Speaker [1] sustained the point of order, holding as follows:

In the first place ordinarily under all parliamentary rules with which the Chair has any acquaintance, except the system under which we are now operating, a motion to recommit is not in order after the previous question is demanded or ordered. A motion to recommit is simply another method of permitting the House to amend, and under ordinary rules the the right of amendment is cut off by the previous question. The House has, however, a provision in its rules that even pending the demand for the previous question or after it is ordered a motion to recommit may be in order.

Rule XI provides that "It shall always be in order to call up for consideration a report from the Committee on Rules, and pending the consideration thereof the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of."

Now, the purpose of the rule, as disclosed by the language which has been read, was that on reports from the Committee on Rules the House should have the right, without delay and without motions tending to delay, to dispose of such report. The language is similar to that used in reference to motions to suspend the rules; and the Chair is aware that there may be some embarrassment at times because of the distinction between a report from the Committee on Rules and a motion to suspend the rules. But take the case now before the House. The Chair has no doubt that it is within the power of the House to amend a report from the Committee on Rules. The Chair has never entertained any doubt about that. If the House should vote down the demand for the previous question, then this report could be amended.

The idea that the Chair has always had in enforcing this new rule was so to construe it as to permit the House to vote without delay upon the final proposition, either as reported by the committee or as agreed upon by the House if the House should choose to amend it.

Now, the House has ordered the previous question. What does the previous question mean? It means that the House shall proceed to vote upon the proposition on which it is ordered. If a motion to recommit is in order, perhaps a motion to lay on the table might be in order; and the effect of both these motions, whatever the motive of the mover might be, would be to delay the House in reaching a final vote on the proposition before it, and on which the House has expressed a desire for a final vote by ordering the previous question. The Chair has always held, in construing the rule, that any motion which would tend to prevent the House from a speedy vote upon the final proposition is not in order.

The Chair holds that on a report from the Committee on Rules, when the previous question has been ordered, it is not in order to move to recommit to the committee. The Chair thus holds the more

[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 279, 280; Record, p. 3284.

willingly because the matter is entirely in the power of the House. If the House desires to amend or alter in any respect a report of this character, it need only vote down a demand for the previous question, and then the whole field of amendment is open; the report can be altered in any way to suit the wishes of the House.

In other words, the Chair accepts the ordering of the previous question as an expression of the desire of the majority of the House to vote upon the resolution as it stood when the previous question was called upon it. Therefore the Chair holds that the motion to recommit is not in order.[1]

5595. On May 18, 1896,[2] Mr. David B. Henderson, of Iowa, presented from the Committee on Rules a report fixing a time for the consideration of bills reported from the Committee on Immigration and Naturalization.

The previous question having been ordered, Mr. Grove L. Johnson, of California, rising to a parliamentary inquiry, asked if it would be in order to move to recommit the resolution to the Committee on Rules with instructions.

The Speaker[3] replied that it would be in order.

5596. On May 20, 1896,[4] the previous question had been ordered on a resolution reported from the Committee on Rules providing certain days. for business reported from the Committee on Labor.

Mr. Thaddeus M. Mahon, of Pennsylvania, moved to recommit the resolutions with certain instructions.

Mr. John Dalzell, of Pennsylvania, raised a question as to whether or not such a motion was in order.

The Speaker[3] held that it was in order.

5597. On April 11, 1900,[5] the House was considering a resolution reported from the Committee on Rules providing time and conditions for consideration of the bill (H. R. 8245) entitled "An act temporarily to provide revenues for the relief of the island of Porto Rico, and for other purposes," with Senate amendments.

The previous question having been ordered on the resolution, Mr. James D. Richardson, of Tennessee, moved to recommit with instructions.

Mr. John Dalzell, of Pennsylvania, made the point of order against the motion.

The Speaker[6] said:

The Chair will state that on the proposition of the gentleman from Tennessee there has been a conflict of rulings. Some Speakers have held that the motion was in order, and others have held that the motion is not in order. Speaker Crisp has held that the motion was not in order. Speaker Reed has admitted it. The present Chair is clearly of the opinion that a rule reported by the Committee on Rules, upon which the previous question is ordered, is not subject to a motion to recommit, and therefore overrules the motion.

5598. On May 31, 1900,[7] the previous question had been ordered on a resolution reported from the Committee on Rules relating to the consideration of House

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[1] A similar decision was also made on January 30, 1895. (See Journal, pp. 94, 95, third session Fifty-third Congress.) Also on February 26, 1883 (second session Forty-seventh Congress, Record, p. 3315), Mr. Speaker Keifer held that the motion to recommit after the previous question was ordered applied only to bills, which had several stages, and not to the pending resolution from the Committee on Rules.

[2] First session Fifty-fourth Congress, Record, p. 5382.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 5469.

[5] First session Fifty-sixth Congress, Record, p. 4032; Journal, p. 457.

[6] David B. Henderson, of Iowa, Speaker.

[7] First session Fifty-sixth Congress, Record, p. 6303; Journal, p. 647.

resolution 138, proposing an amendment to the Constitution relating to trusts, and the bill (H. R. 10539) to amend the law relating to unlawful restraints and monopolies.

The question being on agreeing to the resolution, Mr. James D. Richardson, of Tennessee, proposed a motion to recommit the resolution with instructions.

Mr. John Dalzell made the point of order against the motion.

The Speaker[1] sustained the point of order. saying:

The Chair has ruled in this session on this question, following the ruling of Speaker Crisp, who made the ruling distinctly. * * * The Chair will say that he has thoroughly examined all of these authorities, that he did so before making the ruling he made in the early part of the session, and therefore the Chair follows the ruling that he then made. The Chair will hear arguments when the Chair has not made up his mind and is in doubt; but when his mind is clear, of course there is no use in making arguments and unnecessarily taking up the time of the House.

5599. On February 17, 1902,[2] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented the following:

Resolved, That immediately on the adoption of this rule, and immediately after the reading of the Journal on each day thereafter until the bill hereinafter mentioned shall have been disposed of, the House shall resolve itself into Committee of the Whole on the state of the Union for consideration of the bill (H. R. 10530) to repeal wax-revenue taxation, and for other purposes; that on February 18, at 4 o'clock p. m., general debate shall be closed in Committee of the Whole, when the committee shall rise and report the bill with such amendments as have been recommended by the Committee on Ways and Means; and immediately the House shall vote without debate or intervening motions on the several amendments reported from the Committee of the whole on the engrossment and third reading, and (if the bill shall have passed to be engrossed and read a third time) on the final passage. General leave to print is granted for ten days from February 18 on the bill H. R. 10530.

The previous question having been ordered, Mr. James D. Richardson, of Tennessee, moved to recommit the resolution with certain instructions.

The Speaker[1] declined to entertain the motion to recommit, announcing that in respect to this question he would be governed by the ruling of Mr. Speaker Crisp.

Mr. Richardson having appealed, the appeal was laid on the table, yeas 166, nays 123.

5600. On March 25, 1904,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented a resolution to permit consideration in the post-office appropriation of a paragraph relating to the rural free-delivery service which had been ruled out on a point of order.

After debate Mr. Dalzell moved the previous question.

Thereupon Mr. James R. Mann, of Illinois, proposed a resolution to recommit with certain instructions.

Mr. Dalzell made the point of order that the motion was not in order.

The Speaker[4] held:

The Chair sustains the point of order. After the previous question is ordered on a report from the Committee on Rules the motion to recommit is not admitted under the more recent practice of the House.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-seventh Congress, Record, pp. 1834, 1835.

[3] Second session Fifty-eighth Congress, Record, pp. 3708, 3709.

[4] Joseph G. Cannon, of Illinois, Speaker.

That ruling was made twice by Speaker Crisp, was followed by Speaker Henderson, and has been followed by the present occupant of the chair.

5601. On February 2, 1904,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted a resolution relating to the status of the Resident Commissioner from Porto Rico, and demanded thereon the previous question.

Pending this motion for the previous question, Mr. John S. Williams, of Mississippi, proposed a motion to recommit the resolution to the Committee on Rules with certain instructions.

Mr. Dalzell made the point of order that the motion was not in order.

After debate and a citation of precedents, the Speaker[2] said:

The gentleman from Mississippi [Mr. Williams] moves to recommit the bill with instructions, pending a motion for the previous question. Rule XVII provides:

"It shall be in order, pending the motion for or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit the motion to recommit, with or without instructions, to a standing or select committee."

Section 4 of Rule XIV, as to resolutions, conflicts with this rule. The Chair has been called upon already at this session of Congress to rule upon a motion to recommit a resolution, and held, somewhat reluctantly, that it was in order to make the motion as to a resolution the same as to a bill, and the Chair stated at the time that the rules might well have been construed together and one applied to a resolution and another to a bill.

But owing to the precedents, which were quite numerous and which the Chair carefully examined, the Chair held that Rule XVII applied to resolutions as well as to bills, and that it was in order to move to recommit a resolution pending the motion for the previous question. Now, the gentleman moves to recommit pending a motion for the previous question. Ordinarily this motion would be in order, but as to reports from the Committee on Rules it is well settled by a ruling made by Mr. Speaker Crisp and by three rulings following that of Mr. Speaker Crisp, made by Mr. Speaker Henderson (the last one being appealed from and the House by a decided majority sustaining the ruling), that reports from the Committee on Rules are exceptional and that the same rule does not apply to those reports as applies to reports from other committees.

Some gentlemen may say that this ruling is not logical. Examining it, however, in the light of Rule XI, which has been read, the Chair is inclined to hold that it is logical. But let that be as it may, the rules are what the House construes them to be; and this rule of construction having been given first by Mr. Speaker Crisp in a matter of very considerable importance, and followed in three different rulings of Mr. Speaker Henderson, and affirmed by the House on a yea-and-nay vote by a decided majority, the Chair feels that it his duty to follow the precedents, and therefore holds that the motion of the gentleman from Mississippi is not in order.

5602. The House having determined in the negative the question on the engrossment and third reading of a bill, a motion to commit is not in order under the rule for the previous question.—On February 4, 1895,[3] the House had refused to order to be engrossed the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve, etc., the vote having been ordered under the terms of a special order.

Mr. William M. Springer, of Illinois, having moved to reconsider, that motion was laid on the table on motion of Mr. William H. Hatch, of Missouri.

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[1] Second session Fifty-eighth Congress, Journal, p. 233; Record, pp. 1523–1525.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Third session Fifty-third Congress, Journal, p. 114.

Mr. W. C. P. Breckinridge, of Kentucky, submitted the question whether it was in order to now move that the bill be recommitted to the Committee on Banking and Currency.

The Speaker[1] held that the House having refused to order the bill to a third reading it was not in order to move to recommit it.

5603. On January 11, 1897,[2] the Pacific Railroad funding bill was considered under the terms of a special order which provided that the "previous question be ordered on this bill to its final passage" immediately after the reading of the Journal on this day.

The question being taken on the engrossment and third reading of the bill, it was decided in the negative, and the motion to reconsider this vote was laid on the table.

Mr. H. Henry Powers, of Vermont, moved, then, after intervening business, to recommit the bill to the Committee on the Pacific Railroads.

Mr. Joel D. Hubbard, of Missouri, made a point of order against the motion.

After debate and on the succeeding day, the Speaker[3] decided:

On the question of the Pacific Railroad funding bill, the Chair thinks that the motion made yesterday by the gentleman from Vermont [Mr. Powers] to recommit the bill was not in order. The Chair thinks that such a motion could have been made if the House had passed the bill to a third reading, or if other business had not intervened.[4]

5604. Before the adoption of rules, while the House was acting under general parliamentary law, it was held that the motion to commit was in order pending the motion for the previous question or after it had been ordered on a resolution.

Reference to the rules and practices of the House as persuasive authority on general parliamentary law.

On August 8, 1893,[5] before the adoption of rules, Mr. Charles T. O'Ferrall, of Virginia, called up a resolution providing that George F. Richardson "be now sworn in as a Representative in this Congress from the Fifth district of the State of Michigan."

To this Mr. Julius C. Burrows, of Michigan, had submitted an amendment in the nature of a substitute.

Upon the resolution and substitute Mr. O'Ferrall demanded the previous question, the question being on ordering the previous question on the resolution submitted by Mr. O'Ferrall, including the amendment thereto proposed by Mr. Burrows.

Mr. Nelson Dingley, jr., of Maine, moved to commit the resolution to a special committee of five, with instructions to report thereon within ten days.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-fourth Congress, Record, pp. 690, 725.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Evidently by this language Mr. Speaker Reed must have meant that either the failure to pass the bill to be engrossed or the intervention of other business was sufficient to prevent the motion to recommit.

[5] First session Fifty-third Congress, Journal, pp. 8, 9.

Mr. O'Ferrall thereupon submitted the point of order that the motion of Mr. Dingley was not in order, inasmuch as the previous question had been demanded upon the resolution submitted by him, including the amendment thereto submitted by Mr. Burrows.

The Speaker [1] overruled the point of order on the ground that under parliamentary law as indicated by the rules and practice prevailing in the House of the Congresses preceding the present the motion to commit was in order pending the demand for the previous question or after the previous question is ordered on agreeing to the resolution.[2]

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] See also sections 5582, 5577, 5580.

Chapter CXXIII.

THE MOTION TO RECONSIDER.[1]

1. **The rule and its history. Section 5605.**
2. **In the absence of a quorum. Sections 5606–5608.[2]**
3. **Where the question has been divided. Section 5609.**
4. **As to who may make the motion. Sections 5610–5619.[3]**
5. **In relation to motions to adjourn and for a recess. Sections 5620–5625.**
6. **In relation to the question of consideration. Sections 5626, 5627.**
7. **In relation to the motion to lay on the table. Sections 5628–5640.[4]**
8. **In relation to other motions. Sections 5641–5643.**
9. **As to vetoed bills and suspension of the rules. Sections 5644–5646.**
10. **In relation to votes referring a bill. Sections 5647–5651.**
11. **Motion precluded by intervening action. Section 5652.**
12. **In relation to the previous question. Sections 5653–5663.[5]**
13. **Votes on Senate amendments not reconsidered after managers are appointed. Section 5664.**
14. **As to an order partially executed. Section 5665.[6]**
15. **As to bills that have gone from the House. Sections 5666–5672.**
16. **Entry and consideration of motion. Sections 5673–5684.**
17. **Repetition of the motion. Sections 5685–5688.**
18. **In relation to the vote ordering the yeas and nays. Sections 5689–5693.[7]**
19. **As to debate on the motion. Sections 5694–5702.**
20. **Effect of affirmative vote on motion. Sections 5703–5705.**

5605. When a motion has been carried or lost, a motion to reconsider may be made on the same or succeeding day, and after the said succeeding day may not be withdrawn without consent of the House.

The motion to reconsider may be made "by any Member of the majority."

A motion to reconsider takes precedence of all other questions except a conference report or a motion to adjourn.

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[1] The motion not in order in Committee of the Whole. (Sec. 47165 of Vol. IV.)
The motion in select and standing committees. (See. 4596 of Vol. IV.)

[2] During a call of the House. (Sec. 3037 of Vol. IV.)

[3] Where the two-thirds vote is required. (Sec. 1656 of Vol. II.)

[4] In order to reconsider affirmative vote to lay on the table. (Sec. 6288 of this volume.)

[5] See also sections 5491–5494 of this volume.

[6] See also section 2028 of Volume III.

[7] A majority is also required to reconsider a two-thirds vote. (Sec. 1656 of Vol. II.)

After the day succeeding that on which it is made, a motion to reconsider may be called up by any Member; but on the last six days of a session such motion must be disposed of when made.

Present form and history of section 1 of Rule XVIII.

Section I of Rule XVIII provides:

When a motion has been made and carried or lost, it shall be in order for any Member of the majority, on the same or succeeding day, to move for the reconsideration thereof, and such motion shall take precedence of all other questions except the consideration of a conference report or a motion to adjourn, and shall not be withdrawn after the said succeeding day without the consent of the House, and thereafter any Member may call it up for consideration: *Provided,* That such motion, if made during the last six days of a session, shall be disposed of when made.

This form of the rule dates from the revision of 1880,[1] and has not been changed since, except that the motions to fix the day to which the House shall adjourn and for a recess, which were included with the motion to adjourn and conference reports as questions not yielding to the motion to reconsider, were dropped in 1890,[2] and, although restored in the two succeeding Congresses, were left out in the Fifty-fourth and succeeding Congresses.

Although not mentioned in the first rules of the House, adopted April 7, 1789,[3] the motion to reconsider was at that time well known in parliamentary American practice and was at once used in the House. In the Continental Congress it had been of quite frequent use, but was not mentioned in the rules of that body.

On March 13, 1779, a question of order arising, it was determined that a vote to reconsider a resolution did not involve its repeal, but left it open for consideration and such disposal as the Congress might prefer. There was no limit of time for the motion, and the Congress reconsidered matters passed on the preceding day or several days or months before.[4] Also the motion was sometimes made to reconsider a matter "in order to take into consideration" a proposition on a kindred subject.[5]

The first rule of the House on the subject dates from January 7, 1802,[6] and was as follows:

When a motion has been once made, and carried in the affirmative or negative, it shall be in order for any Member of the majority to move for the reconsideration thereof.

On December 23, 1811,[7] the rule of 1802 was modified by limiting the time during which the motion might be made to "the same or succeeding day."

The making of this rule does not seem to have been wholly satisfactory, and on January 13, 1815,[8] a rule was proposed that motions to reconsider should be in order each day after the reports of committees, and also that all bills should be retained in the possession of the House until the time for motions to reconsider should have expired. No action was taken on this proposition. On March 2, 1820,[9] the

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[1] Second session Forty-sixth Congress, Record, p. 206.

[2] House Report No. 23, first session Fifty-first Congress.

[3] First session First Congress, Journal, p. 9.

[4] See Journals of Continental Congress, April 23, 1778; March 13, 1779, and October 30, 1783.

[5] Journal, April 16, 1783.

[6] Journal Seventh and Eighth Congresses (Gales & Seaton ed.), p. 39; Annals, p. 410.

[7] First session Twelfth Congress, Report No. 38.

[8] Third session Thirteenth Congress, Journal, p. 697; Annals, p. 1112.

[9] First session Sixteenth Congress, Journal, pp. 277, 281; Annals, pp. 1587–1590.

bill for the admission of Missouri into the Union was before the House with Senate amendments, among them the clause inhibiting slavery in the territory north of 36° 30′ north latitude. The House concurred in that amendment. The next day, after the reading of the Journal, Mr. John Randolph, of Virginia, arose to move to reconsider the vote whereby the House concurred. Mr. Speaker Clay declared the motion out of order until the morning business prescribed by the rules, the presentation of petitions, should have been concluded. After one more unsuccessful trial Mr. Randolph awaited the end of the morning business, and then submitted his motion. The Speaker declined to entertain it, on the ground that the Clerk had taken the bill to the Senate. Mr. Randolph attempted to have the Clerk censured for taking the message, but the House declined to consider the resolution, yeas 61, nays 71.

Soon after this, on May 5, 1820,[1] Mr. Charles Pinckney, of South Carolina, proposed a rule that a bill, after its passage in the House, should not be carried to the Senate until two hours after the reading of the Journal on the next day; but the House took no action on the proposition.[2]

On May 2, 1828,[3] Mr. Speaker Stevenson ruled that the motion to reconsider might be made only in the hour devoted to the presentation of motions by Members, etc., and if not made before the expiration of that hour on the second day was wholly precluded. This ruling seems to have had the effect of calling attention anew to the unsatisfactory state of the rule, and four days later, on May 6, 1828,[4] the House agreed to a rule proposed by Mr. Philip P. Barbour, of Virginia, providing that the motion to reconsider—

shall take precedence of all other questions, except a motion to adjourn.

On May 17, 1834,[5] Mr. Speaker Stevenson ruled that a Member might at any time withdraw a motion to reconsider previously made by him, even though such time had elapsed that another Member would be prevented by the rule from renewing the motion; and on July 20, 1842,[6] Mr. Speaker White made a similar decision.

In view of the practice established by these decisions, on March 2, 1848,[7] Mr. Charles J. Ingersoll, of Pennsylvania, reported from the Committee on Rules a rule providing that the motion to reconsider—

shall not be withdrawn after the said succeeding day without the consent of the House; and thereafter any Member may call it up for consideration.

The original rule, with these additions, became old Rule 49, from which in 1880 the present rule was framed.

5606. In the absence of a quorum it is not in order to move to reconsider a vote on which a quorum is required.—On March 31, 1904,[8] the vote

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[1] First session Sixteenth Congress, Journal, p. 491; Annals, p. 2202.

[2] The principle was later established that a motion to reconsider might be made even though the papers had passed out of the possession of the House.

[3] First session Twentieth Congress, Journal, p. 1041; Debates, p. 2563.

[4] First session Twentieth Congress, Journal, p. 691; Debates, p. 2578.

[5] First session Twenty-third Congress, Debates, p. 4139.

[6] Second session Twenty-seventh Congress, Journal, p. 1118.

[7] First session Thirtieth Congress, Journal, p. 483; Globe, p. 412.

[8] Second session Fifty-eighth Congress, Record, p. 4077.

was taken by yeas and nays on a motion to recommit the sundry civil appropriation bill, and the Speaker announced that the roll call disclosed the absence of a quorum.

Thereupon Mr. John J. Fitzgerald, of New York, proposed to enter a motion to reconsider the vote whereby the House had changed the reference of a bill.

The Speaker [1] said:

In the absence of a quorum no business can be transacted except to adjourn or a call of the House. The rule compels the Speaker on a roll call to ascertain the vote. The Speaker has ascertained the vote, has announced the vote, and is compelled under the rule to take notice that there is no quorum present, and has so announced.

5607. On votes incident to a call of the House the motion to reconsider may be entertained and laid on the table, although a quorum may not be present.—On February 6, 1893,[2] during a call of the House, it was voted that Mr. Charles T. O'Ferrall, of Virginia, be excused from attendance. Mr. C. B. Kilgore, of Texas, moved to reconsider the vote by which Mr. O'Ferrall was excused.

Mr. George D. Wise, of Virginia, moved to lay that motion on the table.

The question being put on the latter motion, the Speaker pro tempore declared that the motion was carried.

Mr. Kilgore made the point that no quorum had voted,[3] and that a quorum was necessary to dispose of the motion.

The Speaker pro tempore [4] overruled the point of order, holding that a quorum was not required to decide a question incidental to a call of the House.

5608. On February 24, 1875,[5] there was a call of the House incident to dilatory proceedings arising over the consideration of reports relating to the affairs in the States of Alabama and Arkansas. It was voted, on motion of Mr. B. F. Butler, of Massachusetts, to dispense with all proceedings under the call—132 yeas to 67 nays.

Mr. Samuel J. Randall, of Pennsylvania, moved that this vote be reconsidered, and Mr. Omar D. Conger, of Michigan, moved that the motion to reconsider be laid upon the table. On a roll call there were 137 yeas and 3 nays.

Mr. Randall made the point that less than a quorum had voted.[6]

The Speaker [7] said:

There is no need of a quorum. Less than a quorum can agree to dispense with the proceedings under the call; and there can not be any sort of doubt that the same vote is sufficient on reconsideration as on the direct question.

5609. A question having been divided for the vote, a separate motion to reconsider was held necessary for each vote, and was made first as to the first portion of the resolution.—On December 11, 1839,[8] before the organization of the House, and while the Members-elect, with Mr. John Quincy Adams, of Massachusetts, as Chairman, were endeavoring to settle the complications arising

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 77; Record, p. 1259.

[3] At this time the quorum voting and not the quorum present was required.

[4] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[5] Second session Forty-third Congress, Record, p. 1731; Journal, p. 548, has no mention of the ruling.

[6] At that time the quorum voting and not the quorum present was required.

[7] James G. Blaine, of Maine, Speaker.

[8] First session Twenty-sixth Congress, Journal, pp. 16, 18; Globe, pp. 40, 42.

out of the contests over five of the New Jersey seats, a resolution was presented providing, first, for a call of the roll of all gentlemen whose seats were not contested, and, secondly, for passing on the contested cases.

A division of the question was called for, and was put first on the first branch of the resolution, which was agreed to. Then the second branch was also agreed to.

Then Mr. John Campbell, of South Carolina, moved that the House do reconsider the votes adopting the resolution.

The previous question was put on this motion and carried.

The motion to reconsider being about to be put, a question arose as whether or not the two votes by which the resolution was agreed to could be reconsidered at one vote. After some discussion, the Chairman decided that, as the question on the resolution had been divided, the question to reconsider would be first put on reconsidering the first portion.

The House having voted to reconsider the vote agreeing to the first part, the question was next put on reconsidering the second portion.

5610. A Member may make the motion to reconsider at any time, without thereby abandoning a prior motion made by himself and pending.— On November 3, 1893,[1] Mr. James D. Richardson, of Tennessee, moved to reconsider the vote whereby the joint resolution (H. Res. 86) relating to the pay of session employees was passed, and also moved to lay that motion on the table.

Pending this Mr. Joseph C. Hutcheson, of Texas, moved that the House take a recess until 2 o'clock and 45 minutes p. m.

Pending this latter motion, Mr. Richardson withdrew his motion to lay on the table the motion to reconsider, and also withdrew the motion to reconsider.

Mr. Hutcheson thereupon renewed the motion to reconsider.

Mr. Richardson moved to suspend the rules and lay the motion to reconsider on the table.

The Speaker stated the question to be on the pending motion of Mr. Hutcheson for a recess until 2 o'clock and 45 minutes p. m.

Mr. Richardson made the point of order that Mr. Hutcheson, pending his motion for a recess, having made another motion, to wit, the motion to reconsider, had thereby abandoned the motion for a recess.

The Speaker[2] overruled the point of order, holding as follows:

> The gentleman from Texas [Mr. Hutcheson] made the point that no quorum had voted upon the motion for a recess. Tellers were appointed. The tellers had taken their places. The House was divided. In that state of the case the gentleman from Tennessee [Mr. Richardson] withdrew his motion—not the motion for the recess, but the motion that was pending to reconsider and lay upon the table. The gentleman from Texas [Mr. Hutcheson] then stated that he renewed the motion. Any gentleman who voted in the affirmative of course had the right to renew the motion to reconsider, and that could be entered, the Chair will state, pending any business, because it must be entered, under the rules, within a limited time.

5611. Where the yeas and nays on a vote have not been ordered recorded in the Journal, any Member, irrespective of whether he voted with the majority or not, may make the motion to reconsider.[3]—On Feb-

[1] First session Fifty-third Congress, Journal, pp. 172: 173; Record, p. 3122.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See also section 5689 of this chapter.

ruary 8, 1894,[1] Mr. Thomas B. Reed, of Maine, moved to reconsider the vote by which, on the preceding day, the House had passed an order for taking absent Members into custody.

Mr. Benjamin A. Enloe, of Tennessee, made the point that Mr. Reed, not having voted in the affirmative, could not move to reconsider.

The Speaker[2] overruled the point, holding that under the practice of the House where there was no yea-and-nay vote on a proposition it was competent for any Member to move to reconsider.[3]

5612. On May 15, 1896,[4] Mr. George D. Perkins, of Iowa, rising to a question of order, stated that on May 1 the House had rejected a bill (H. R. 3826), and that on the following day, just before adjournment, Mr. William S. Knox, of Massachusetts, had moved to reconsider the vote. Mr. Perkins raised the point that the gentleman from Massachusetts, having voted with the minority, might not make the motion to reconsider.

The Speaker[5] said:

> The question is not now before the House. The Chair will state, however, that the uniform decisions are, where there is no record vote, that a gentleman entering such motion is assumed to have acted with the prevailing side.[6]

5613. On February 16, 1855,[7] during the consideration of a resolution to close debate in Committee of the Whole House on the state of the Union, on the bill (H. R. 595) making an appropriation for mail steamers, an amendment was proposed to the resolution, and on a vote by tellers was agreed to.

Mr. James L. Orr, of South Carolina, moved to reconsider the vote whereby the amendment had been adopted.

Mr. Thomas L. Clingman, of North Carolina, made the point of order that the gentleman from South Carolina had voted with the minority.

The Speaker[8] said:

> If there had been a recorded vote, the point would have been good; but in no other case does the question arise as to whether the individual who moves to reconsider voted in the majority or not.

5614. The motion to reconsider a yea-and-nay vote may not be made by a Member who not voting was paired in favor of the majority's contention.—On May 18, 1906,[9] the House was considering the bill (H. R. 9297) for

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[1] Second session Fifty-third Congress, Journal, p. 149; Record, p. 2034.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] So also on December 10, 1879 (second session Forty-sixth Congress, Record, p. 58), in the Senate Vice-President William A. Wheeler ruled that where there had been no record vote any Senator might move to reconsider.

[4] First session Fifty-fourth Congress, Record, p. 5298.

[5] Thomas B. Reed, of Maine, Speaker.

[6] In the earlier years the Speaker sometimes attempted by inquiry to ascertain how a Member had voted in cases where there was no record; but there were difficulties in this course. See instance April 4, 1832. (First session Twenty-second Congress, Debates, pp. 2374, 2375.)

[7] Second session Thirty-third Congress, Globe, p. 774.

[8] Linn Boyd, of Kentucky, Speaker.

[9] First session Fifty-ninth Congress, Record, p. 7095.

the relief of Henry E. Rhodes, when on a yea-and-nay vote of yeas 128, nays 68, the bill was passed.

Mr. John S. Williams, of Mississippi, moved to reconsider the bill.

Mr. James M. Miller, of Kansas, having by inquiry ascertained that Mr. Williams had not voted with the majority, and therefore was not entitled to make the motion to reconsider, Mr. William S. McNary, of Massachusetts, proposed to make the motion.

It appeared on inquiry that Mr. McNary had not voted at all, but he declared that he had been paired in favor of the contention of the majority.

The Speaker [1] held that Mr. McNary might not make the motion.

5615. The most carefully considered ruling has been that in case of a tie vote any Member recorded on the prevailing side may move to reconsider.—On December 13, 1839,[2] before the organization of the House, and while Mr. John Quincy Adams, of Massachusetts, was presiding over the meeting of the Members-elect who were endeavoring to solve the difficulties occasioned by the contests over five seats belonging to the State of New Jersey, Mr. Henry A. Wise, of Virginia, moved a resolution that the credentials of the New Jersey Members commissioned by the governor of that State were sufficient to enable them to take their seats.

On this question there were, ayes 117, noes 117; and so the motion to agree to the resolution was disagreed to.

On December 14 Mr. Charles F. Mercer, of Virginia, who voted in the affirmative, moved to reconsider this vote.

The Chairman decided that as the vote proposed to be reconsidered was a tie vote, in consequence of which the proposition was lost, he did not consider the motion to reconsider in order. The rule provided that—

> When a motion has been once made and carried in the affirmative or negative, it shall be in order for any Member of the majority to move for the reconsideration thereof.

There was no majority on either side of the question, and he did not, therefore, think the rule applied to the case. No motion to reconsider a tie vote would be in order on either side.

Mr. Mercer appealed from this decision, and the decision of the Chair was sustained, yeas 147, nays 64.

5616. On July 18, 1848,[3] during the consideration of the bill (H. R. 298) making appropriations for the civil and diplomatic expenses of the Government, a question was taken on an amendment relating to the improvement of Savannah Harbor, and the announcement was made that there were yeas 86, nays 83, and that the amendment was agreed to.

On July 19 Mr. Alexander H. Stephens, of Georgia, arose and stated that he had voted in the negative on the preceding day, and asked that his vote be changed. This being done, the Speaker announced the vote on the amendment to be yeas 85,

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Twenty-sixth Congress, Journal, pp. 32, 61; Globe, p. 53.

[3] First session Thirtieth Congress, Journal, pp. 1064, 1066, 1078–1081; Globe, p. 954.

nays 84. Thereupon he voted in the negative, and there being yeas 85, nays 85, the question on the amendment was lost.

Later in the day Mr. Charles E. Stuart, of Michigan, moved to reconsider this vote.

Mr. Thomas B. King, of Georgia, raised the question of order that the gentleman from Michigan could not make the motion to reconsider, since he had voted in the affirmative.

On July 20 the Speaker[1] gave his decision. He quoted first the precedent of December 14, 1839, and said that that decision was made under very peculiar circumstances, arising out of the case of the contested election from New Jersey, and while there was no regularly elected Speaker in the chair. The Chair had no hesitation in saying that he differed from the decision in this case. In his own opinion a fair construction of the rule was that anyone who voted on the prevailing side had the right to move a reconsideration. This, he thought, was the spirit of the rule. The Chair therefore decided that the motion to reconsider must be made by a gentleman who had voted with the prevailing side, the negative. Therefore Mr. Stuart was precluded from making the motion.

5617. Where a two-thirds vote is required, the motion to reconsider may be made by anyone who voted on the prevailing side.

Apparently a majority is required to reconsider a vote taken under the requirement that two-thirds shall be necessary to carry the question.

On August 17, 1842,[2] the House was considering a proposed amendment to the Constitution in relation to the veto power of the Executive, and there were in favor of the amendment 99, and opposed 90, not the required two-thirds.

Thereupon, Mr. Thomas F. Marshall, of Kentucky, who was one of those opposed, and "who voted on the prevailing side," made a motion to reconsider, which was entertained.

On August 18 the motion to reconsider was disagreed to, yeas 12, nays 140.[3]

5618. On July 17, 1866,[4] the House disagreed to a resolution for the expulsion of Mr. Lovell H. Rousseau, of Kentucky, by a vote of 73 yeas, 51 nays, not the required two-thirds vote.

Then Mr. Nathaniel P. Banks, of Massachusetts, who had voted with the nays, moved to reconsider the vote.

Mr. William E. Finck, of Ohio, made the point of order that Mr. Banks had voted with the minority and was not entitled to make the motion.

The Speaker[5] said:

The Chair overrules the point of order. Some Member must have the right to move a reconsideration. In this case he certainly could not move a reconsideration if he voted on the side which did not prevail, for he is evidently not in the constitutional majority on that question. And if the gentleman from Ohio is right in his point of order, no one can move a reconsideration, for the side which prevailed was in the minority. The usage upon this subject has been uniform, and the Chair is surprised that

[1] Robert C. Winthrop, of Massachusetts, Speaker.

[2] Second session Twenty-seventh Congress, Journal, p. 1353. John White, of Kentucky, Speaker.

[3] Journal, p. 1355.

[4] First session Thirty-ninth Congress, Globe, p. 3892.

[5] Schuyler Colfax, of Indiana, Speaker.

there are no cases cited in the Digest. But it is plain that any Member voting on the prevailing side has the right to move a reconsideration. Such has always been the practice in Congress, as well as in all State legislative bodies, so far as the Chair is informed.[1]

5619. A Member who was absent when a vote was taken may not move to reconsider. (Speaker overruled.)—On July 8,1846,[2] Mr. Robert W. Roberts, of Mississippi, moved to reconsider the vote whereby on the preceding day day a decision of the Speaker had been overruled.

Mr. Thomas J. Henley, of Indiana, raised the question of order that the record of the proceedings of the day before showed that Mr. Roberts was absent from the House at the time the vote on the decision was taken. Therefore it could not be presumed that he voted in the majority, as the rule required, and he could not, therefore, move a reconsideration.

The Speaker[3] decided that, under the common practice of the House, where a vote had been taken without a division, it was presumed that every Member voted in the affirmative, and therefore a motion to reconsider made by any Member of the House had, in such cases, been entertained. He therefore overruled the point of order made by Mr. Henley and decided that Mr. Roberts was entitled to make the motion to reconsider.

Mr. George Ashmun, of Massachusetts, having appealed, the House overruled the decision of the Speaker, and so Mr. Roberts was precluded from making the motion to reconsider.

5620. A motion to reconsider a vote whereby the House has refused to adjourn is not in order.—On December 15, 1877[4] during dilatory proceedings which had begun on the day before when Mr. Fernando Wood, of New York, presented from the Ways and Means Committee a resolution authorizing a general investigation of the Executive Departments of the Government, the House had decided in the negative, yeas 29, nays 141, a motion to adjourn.

When the result of the vote had been announced, Mr. Omar D. Conger, of Michigan, moved to reconsider the vote by which the House refused to adjourn.

The Speaker[5] decided that a motion to adjourn might not be reconsidered.

5621. On April 4, 1888,[6] during prolonged dilatory proceedings over the subject of refunding the direct tax of 1861, Mr. J. B. Weaver, of Iowa, moved that the House do adjourn.

This motion was decided in the negative, 181 nays to 6 yeas.

Thereupon, Mr. William C. Oates, of Alabama, moved to reconsider the vote just taken.

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[1] The question on the motion to reconsider being taken, the Journal thus records the result: "The motion to reconsider was agreed to." There was no division, but from the language of the Journal it is evident that the Chair considered the ordinary majority vote required. Otherwise the requirements should have been expressed. (Journal, pp. 1036, 1037.)

[2] First session Twenty-ninth Congress, Journal, pp. 1049, 1050 Globe, p. 1070.

[3] John W. Davis, of Indiana, Speaker.

[4] Second session Forty-fifth Congress, Journal, p. 139; Record, p. 243.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] First session Fiftieth Congress, Record, p. 2706.

The Speaker[1] ruled:

Under a ruling heretofore made in the House, that motion is not in order. The point was made during the second session of the Forty-fifth Congress that a motion to reconsider a vote by which the House refused to adjourn was not in order, and the point was sustained by the Chair, and that has been the ruling ever since. The reason is that the motion to adjourn can be repeated again and again after other business has intervened.

5622. On July 14, 1846,[2] Mr. Truman Smith, of Connecticut, moved that the House adjourn, and the question being taken, there were yeas 6, nays 164. So the House declined to adjourn.

Then Mr. Robert C. Schenck, of Ohio, moved to reconsider the last-mentioned vote refusing to adjourn.

The Speaker[3] decided that a motion to reconsider a vote on a motion to adjourn was not in order.

Mr. Schenck having appealed, the decision of the Chair was sustained, yeas 164, nays 1.

5623. A motion to reconsider the vote whereby the House refused to fix a day to which the House should adjourn, has been the subject of conflicting rulings.—On May 24,1882,[4] the House was considering the contested election case of Mackey *v.* Dibble, and a motion that when the House adjourn it be to meet on Friday next, had been decided in the negative.

After the Speaker had announced the vote, Mr. Henry, L. Muldrow, of Mississippi, moved to reconsider the vote.

Mr. George C. Hazleton, of Wisconsin, rising to a parliamentary inquiry, stated that a motion to reconsider a vote on a motion to adjourn was not in order, and asked if the same ruling would apply to the motion to fix the day.

The Speaker[5] said:

The Chair holds that the motion to fix the time to which the House shall adjourn presents a different question from that of a mere motion to adjourn.

Thereupon, the Speaker entertained the motion to reconsider.

5624. On January 11, 1889,[6] Mr. J. B. Weaver, of Iowa, moved that when the House adjourn it adjourn until Monday next.

This motion having been disagreed to, Mr. Weaver moved to reconsider the vote.

Mr. Samuel J. Randall, of Pennsylvania, made a point of order against the motion to reconsider.

The Speaker[7] sustained the point of order.

5625. A motion to reconsider the vote whereby the House refuses to take a recess is not in order.—On January 25, 1893,[8] Mr. Rice A. Pierce, of Ten-

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Twenty-ninth Congress, Journal, p. 1089; Globe, p. 1093.

[3] John W. Davis, of Indiana, Speaker.

[4] First session Forty-seventh Congress, Record, p. 4218.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] Second session Fiftieth Congress, Journal, p. 201; Record, p. 677.

[7] John G. Carlisle, of Kentucky, Speaker.

[8] Second session Fifty-second Congress, Journal, p. 58; Record, p. 836.

nessee, moved that the House take a recess until 5 p. m. On a vote by yeas and nays the House refused to take a recess, yeas 1, nays 211.

Mr. Pierce moved to reconsider the vote by which the House refused to take a recess.

The Speaker pro tempore[1] declined to entertain the motion to reconsider, holding that it was not in order to move a reconsideration of the vote by which the House refuses to take a recess.

Mr. C. B. Kilgore, of Texas, having appealed, the decision of the Chair was sustained, yeas 208, nays 6.

5626. It is not in order to reconsider the vote whereby the House refuses to consider a bill.—On December 14, 1898,[2] the House refused, by a vote of 100 yeas to 103 nays, to consider the bill (S. 112) to amend the immigration laws of the United States.

Mr. Richard Bartholdt, of Missouri, rising to a parliamentary inquiry, asked:

Is a motion to reconsider the vote by which the House refused to consider the bill in order now?

The Speaker[3] replied:

The Chair thinks not.

5627. On March 1, 1900,[4] the contested election case of Aldrich *v.* Robbins, from Alabama, had been called up, and the question of consideration had been raised. On a yea-and-nay vote the question of consideration was decided in the negative, 137 yeas to 144 nays.

The result of the vote having been announced, Mr. James R. Mann, of Illinois, moved to reconsider the vote whereby consideration was refused.

Mr. Charles L. Bartlett, of Georgia, made the point of order that the vote might not be reconsidered.

The Speaker[5] sustained the point of order.

5628. An affirmative vote on the motion to lay on the table may be reconsidered.—On December 14, 1904,[6] the House had agreed to a motion laying on the table a resolution (H. Res. 383) relating to an alleged combination of certain manufacturing interests, when Mr. John J. Jenkins, of Wisconsin, moved to reconsider the vote and lay that motion on the table.

Mr. James R. Mann, of Illinois, rising to a parliamentary inquiry, asked if a motion to lay on the table might be reconsidered.

The Speaker[7] said:

The Chair is of opinion that a motion to reconsider would apply to a motion to lay a resolution on the table, which is primary in its nature and is one way of disposing of a bill or resolution. The Chair thinks that a motion to reconsider and lay that motion on the table is proper, because the substance of

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[1] Joseph H. O'Neil, of Massachusetts, Speaker pro tempore.

[2] Third session Fifty-fifth Congress, Record, p. 197.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 2453; Journal, p. 299.

[5] David B. Henderson, of Iowa, Speaker.

[6] Third session Fifty-eighth Congress, Record, p. 278.

[7] Joseph G. Cannon, of Illinois, Speaker.

the motion to lay on the table is to finally dispose of the proposition, and the substance should govern rather than the form of the motion.

The question is on the motion to reconsider and lay that motion on the table.[1]

5629. The motion to reconsider may be applied to a negative vote on the motion to lay on the table.—On February 4, 1853,[2] a motion to reconsider the vote by which the House refused to lay on the table a Senate bill (No. 13) entitled "An act granting to the State of Wisconsin the right of way and a donation of public land for the purpose of locating and constructing certain railroads in that State," was called up.

Mr. Gilbert Dean, of New York, made the point of order that it was not in order

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[1] Under the general parliamentary law, when a matter is laid on the table, a motion to take it from the table may be made, hence there is no necessity for a motion to reconsider the vote to lay on the table. Hence the rule of general parliamentary law that the motion to reconsider may not be applied to the motion to lay on the table when decided affirmatively. But in the United States House of Representatives the motion to lay on the table has a very different use, significance, and effect from what it does in general parliamentary law. (See secs. 204, 114, and 115 of Reed's Parliamentary Rules.) In the House of Representatives the motion to lay on the table is used only for the purpose of making a final unfavorable disposition of a matter, and this difference in practice formerly caused some uncertainties in the practice of the House. On February 17, 1897 (Record, second session Fifty-fourth Congress, p. 1947), Mr. Walter Evans, of Kentucky, moved to reconsider the vote whereby a certain bill was laid on the table. Mr. W. Jasper Talbert, of South Carolina, raised a point of order against the motion. Mr. Alexander M. Dockery, of Missouri, also made the point that such a motion would be in order only by unanimous consent. The Speaker [Mr. Reed] said: "The Chair will entertain the motion subject to the point of order presented by the gentleman from South Carolina. When the matter comes before the House, the Chair will pass upon the question of order. The Chair has a very strong impression that, under general parliamentary law, a motion to reconsider the vote laying a bill on the table would not be in order. * * * Whether the practice of the House has changed the general rule is what the Chair desires to ascertain." This particular question did not arise again.

On March 3, 1898 (Record, second session Fifty-fifth Congress, p. 2448), the House having voted to lay on the table the bill (H. R. 5359) to amend the postal laws relating to second-class matter, Mr. James D. Richardson, of Tennessee, inquired if it was in order to reconsider the vote, meaning if necessary to make such a motion and have it laid on the table in order to make the action of the House final. The Speaker [Mr. Reed] said: "The impression the Chair holds is that it is not necessary. The Chair will protect the gentleman's rights."

Before this, however, it had been a common practice, in order to make sure that the question was settled, to make the motion and have it laid on the table. Thus, on June 12, 1858, a bill was laid on the table, the motion to reconsider was made, and that, in turn, was laid on the table. On June 14 the bill was taken from the table by a suspension of the rules.

Also, on February 12, 1869, after a subject had been laid on the table, a motion to reconsider was made, and the motion to lay the latter motion on the table was made and carried by a yea-and-nay vote. (Third session Fortieth Congress, Journal, p. 335; Globe, p. 1148.) And earlier than this, on February 6, 1849, the House reconsidered the vote whereby it had laid on the table the bill (H. R. 751) relating to courts in Virginia. (Second session Thirtieth Congress, Journal, p. 381.)

On May 4, 1822, a motion was made to reconsider the vote whereby a bill for the relief of Robert Purdy was laid on the table. The motion failed, and the bill remained on the table. (First session Seventeenth Congress, Journal, p. 563; Annals, p. 1806.)

On March 23, 1880 (Second session Forty-sixth Congress, Record, p. 1807), Mr. Speaker Randall, in a case where the House had just voted to lay on the table a motion to amend the Journal, held that a motion to reconsider that vote was in order, and the House, in fact, did reconsider, although the mover of the motion had intended to have his motion to reconsider laid on the table, the Speaker understanding that to be the object of the motion.

See also sections 5632, 5640.

[2] Second session Thirty-second Congress, Journal, p. 234; Globe, pp. 509–511.

to move to reconsider a vote by which the House had refused to lay a measure upon the table, the motion to lay on the table, like that to adjourn, being one that can be made at any time without that necessity for a reconsideration which exists in other cases.

The Speaker[1] stated that while he was willing to admit that the weight of argument might be on the side of the gentleman from New York [Mr. Dean], the precedents were the other way, and he was not disposed to change the practice.

An appeal, taken by Mr. George W. Jones, of Tennessee, was laid on the table by a vote of 110 yeas to 57 nays.

5630. After careful consideration it was held in order to reconsider the vote laying an appeal on the table.—On May 11, 1854,[2] during prolonged dilatory proceedings over a proposition to close debate in Committee of the Whole House on the state of the Union on the bill (H. R. 236) to organize the Territories of Kansas and Nebraska, an appeal was taken from the decision of the Speaker, and that appeal was laid on the table by a vote of the House.

Mr. Reuben E. Fenton, of New York, moved to reconsider the vote laying the appeal on the table.

The Speaker[1] stated that in an earlier part of the day he had hastily decided a similar motion to be out of order. Subsequent reflection[3] had satisfied him that he was wrong, and he would consequently now entertain the motion.

5631. During proceedings under a call of the House it was held that a motion might not be made to reconsider the vote whereby an appeal was laid on the table.—On August 14, 1876,[4] during proceedings under a call of the House, Mr. George F. Hoar, of Massachusetts, appealed from a decision of the Chair, and this appeal was laid on the table, 82 yeas to 19 nays, a quorum not being present.

Mr. John K. Luttrell, of California, moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table.

Mr. William M. Springer, of Illinois, made the point of order that a motion to reconsider the vote by which an appeal from a decision of the Chair was laid on the table was not in order.

The Speaker pro tempore[5] sustained the point of order, holding that the only motions in order were the motion to issue the Speaker's warrant to compel the attendance of absentees and the motion to adjourn.

5632. The motion to reconsider may not be applied to the vote whereby the House has laid another motion to reconsider on the table.

In the practice of the House the motion to reconsider has been applied to an affirmative vote to lay on the table, although some doubts have been expressed on the question.[6]

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[1] Linn Boyd, of Kentucky, Speaker.

[2] First session Thirty-third Congress, Journal, pp. 769, 770.

[3] Journal, pp. 735, 762.

[4] First session Forty-fourth Congress, Journal, pp. 1492 1493; Record, p. 5650.

[5] Milton Sayler, of Ohio, Speaker pro tempore.

[6] See sections 5628 and footnote.

On February 8, 1843,[1] a situation arose over the following facts:

On February 1 Mr. Caleb Cusbing, of Massachusetts, from the Committee on Foreign Affairs, reported a resolution to close debate in Committee of the Whole House on the state of the Union[2] on House bill No. 57, to provide for the satisfaction of claims due to certain American citizens for spoliations committed on their commerce prior to July 31, 1800.

This resolution was laid upon the table on February 3.

Mr. Isaac D. Jones, of Maryland, moved to reconsider the vote whereby the resolution was laid on the table, and this motion was laid on the table on February 7.

On February 8, Mr. Richard W. Thompson, of Indiana, moved to reconsider the vote whereby Mr. Jones's motion to reconsider was laid on the table.

The Speaker[3] decided that inasmuch as this was a motion to reconsider a vote which laid upon the table a motion to reconsider[4] a subject already laid upon the table, and which, if entertained, must lead to inextricable confusion by piling motion upon motion to reconsider, it could not be entertained.[5]

From this decision Mr. Richard W. Thompson took an appeal to the House, which appeal was laid on the table; so the decision of the Speaker was sustained.

5633. On February 10, 1854,[6] Mr. George W. Jones, of Tennessee, moved that the vote by which the House, on the preceding day, laid on the table the motion to reconsider the vote by which the bill of the House No. 49 (deficiency) was rejected be reconsidered.

The Speaker[7] decided that the motion was not in order, on the ground that it had been the invariable practice of the House, under the existing rules, to regard the laying upon the table the motion to reconsider as conclusive against a further motion to reconsider.

The Speaker said:

> If this bill had been decided, either by a vote rejecting or passing it, it would be in order to move for a reconsideration of that vote. In this case a motion was made to reconsider the vote by which the bill was rejected, and that motion was laid upon the table. What did the House do by laying that motion upon the table? It determined that it would not reconsider the vote by which the bill was rejected. The gentleman from Tennessee [Mr. Jones] moves to reconsider the vote by which the motion to reconsider was laid on the table. The Chair states that the practice of this body has been uniform on this subject, and he thinks he may defy the gentleman from Tennessee, or any other Member, to point to a single case in the history of this House differing from the course which the Chair here deems to be the correct one; which is, that a motion to lay upon the table such a vote as that is final until it be in order to take that vote or bill from the table.

From this decision of the Chair Mr. Jones appealed, on the ground that the fifty-sixth rule[8] conferred on any Member voting with the majority the right to move a

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[1] Third session Twenty-seventh Congress, Journal, pp. 310, 328, 334; Globe, p. 256.

[2] This was the old method of taking a bill from Committee of the Whole.

[3] John White, of Kentucky, Speaker.

[4] The laying on the table of a motion to reconsider is a common method of disposing of that motion. See instances as early as June 23, 1832. (First session Twenty-second Congress, Journal, pp. 932, 935; Debates, pp. 3719, 3720.

[5] See also sections 5638, 5639.

[6] First session Thirty-third Congress, Journal, p. 357; Globe, p. 397.

[7] Linn Boyd, of Kentucky, Speaker.

[8] Now section 1 of Rule XVIII.

reconsideration upon the same day or that succeeding the one upon which the vote was taken.

The appeal was laid on the table, 134 yeas to 35 nays.

5634. Origin of the practice of preventing reconsideration by laying the motion to reconsider on the table.—On February 16, 1835,[1] Mr. Henry A. Wise, of Virginia, moved to reconsider the vote by which the House had ordered to be printed a memorial relating to the abolition of slavery in the District of Columbia. After debate a motion was made to lay the motion to reconsider on the table. Thereupon a question arose as to whether or not the Clerk would be justified in having the memorial printed.

The Speaker[2] said it was a matter not entirely belonging to him, but as the question had been put he should say that the Clerk of the House could not order the memorial to be printed, inasmuch as there would be, if the motion to lay on the table prevailed, a motion pending to reconsider the vote to print the memorial. The motion to lay on the table prevailing would not finally dispose of the matter, because the House might call it up, on doing which the question would recur on the motion to reconsider.[3]

5635. On February 16, 1842,[4] a motion was made to reconsider the vote whereby, on the preceding day, the House had passed the bill (H. R. 112) relating to the charters of certain banks in the District of Columbia. On motion of Mr. Lewis Williams, of North Carolina, the motion to reconsider was laid on the table. On this proceeding the Journal has this entry:

> And so the motion to reconsider was laid on the table, and the bill stands passed.

On February 28[5] the House agreed to a resolution of inquiry in regard to compensation of the General of the Army, and immediately upon the announcement of the vote, a motion was made to reconsider the vote on the passage.

Thereupon a motion was made and agreed to, that the motion to reconsider lay upon the table. "And so the resolution stands passed," is the entry of the Journal on this proceeding.[6]

5636. On July 30, 1846,[7] the House was considering the bill (H. R. 435) to amend the law relating to the rates of postage, etc., when Mr. George W. Hopkins, of Virginia, moved to amend the same by striking out all after the enacting clause and inserting a new text.

Mr. Hannibal Hamlin, of Maine, offered an amendment to the amendment proposed by Mr. Hopkins.

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[1] Second session Twenty-third Congress, Debates, p. 1397.

[2] John Bell, of Tennessee, Speaker.

[3] As early as June 23, 1832 (first session, Twenty-second Congress, Journal, pp. 932, 935; Debates, pp. 3719 3720), occurs an instance of laying on the table a motion to reconsider.

[4] Second session Twenty-seventh Congress, Journal, p. 406.

[5] Journal, p. 452; Globe, p. 267.

[6] See Journal January 22, 1851, for an instance where a motion was made to reconsider the vote laying a bill on the table. Then that motion to reconsider was laid on the table. (Second session Thirty-first Congress, Journal, p. 171.)

[7] First session Twenty-ninth Congress, Journal, pp. 1183–1185; Globe, p. 1169.

Mr. Hamlin's amendment to the amendment was rejected, and then the question recurred on the amendment proposed by Mr. Hopkins, and it was rejected.

The question recurred on ordering the bill to be engrossed, when Mr. Robert Dale Owen, of Indiana, moved that the vote by which the amendment of Mr. Hopkins had been rejected be reconsidered.

Mr. George Rathbun, of New York, moved that the motion to reconsider be laid on the table, and this motion was decided in the affirmative.

The Speaker[1] then stated that the motion to reconsider the vote upon a pending amendment having been laid on the table, no further proceeding could take place in relation to said bill until the said motion to reconsider was taken up and finally disposed of.[2]

5637. On June 12, 1852,[3] the practice of moving to reconsider and then moving to lay that motion on the table, was spoken of as a practice that had grown up in the two preceding Congresses. Mr. Speaker Boyd justified this practice of one Member making such a double motion, as in accordance with the usage of the House.

5638. On March 3, 1853,[4] the House rejected the report of the conference committee on the disagreeing votes of the two Houses on the amendments of the Senate to the civil and diplomatic appropriation bill. At the time of the disagreement to the report, a motion was made to reconsider the vote, and that motion was laid on the table.

Later in the day, Mr. Josiah Sutherland, of New York, moved to reconsider the motion whereby the motion to reconsider had been laid on the table.

Mr. Fayette McMullen, of Virginia, made the point of order that the motion to reconsider was not in order.

The Speaker[5] sustained the point of order.

5639. On July 15, 1868,[6] the Senate requested the House to return the Senate resolution of concurrence in the report of the committee of conference on the bill (H. R. 818) making appropriations for the sundry civil expenses of the Government, in order that an error might be corrected.

The House directed the Clerk to inform the Senate that the House had agreed to the report, and laid on the table the motion to reconsider the vote thereon, and that it was out of the power of the House, except by unanimous consent, which was refused, to return the Senate's resolution of concurrence in the report, as was requested.

5640. The House having laid on the table a motion to reconsider the vote by which a proposition has been laid on the table, the proposition may be taken up only by unanimous consent or a suspension of the rules.— On June 12, 1858,[7] the conferees on the Post-Office appropriation bill reported an inability to agree. Thereupon a motion was made and carried that the

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[1] John W. Davis, of Indiana, Speaker.

[2] This is not the present practice.

[3] First session Thirty-second Congress, Globe, p. 1560.

[4] Second session Thirty-second Congress, Globe, pp. 1155, 1156.

[5] Linn Boyd, of Kentucky, Speaker.

[6] Second session Fortieth Congress, Journal, p. 1075; Globe, pp. 4070, 4075.

[7] First session Thirty-third Congress, Journal, pp. 1125, 1126, 1135; Globe, pp. 3044, 3045.

said bill and amendments be laid on the table. Then a motion to reconsider the vote last taken having been made, the motion to reconsider was laid on the table. Subsequently, on June 14, by a suspension of the rules and a two-thirds vote, the bill was taken up and a further conference asked. Speaker Orr held that the two-third votes was necessary to take the bill from the table.[1]

5641. A motion to go into Committee of the Whole, when decided in the negative, may not be reconsidered.—On February 15, 1906,[2] the House, by a vote of yeas 87, nays 163, disagreed to a motion that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 14606) to provide for the consolidation and reorganization of customs collection districts, and for other purposes.

Mr. Charles R. Thomas, of North Carolina, proposed a motion to reconsider, and a motion to lay the motion to reconsider on the table.

The Speaker[3] said:

> It occurs to the Chair that that motion is not in order. In the opinion of the Chair it is like unto a motion to adjourn. The Chair reads from the House precedents:
>
> "The Speaker decided that a motion to adjourn might not be reconsidered"—

5642. The vote whereby a second is ordered may be reconsidered.—On March 26, 1856,[4] a question arose as to whether or not the vote whereby the previous question had been seconded[5] might be reconsidered. Mr. Howell Cobb, of Georgia (an ex-Speaker), contended that this second, which was never taken by the yeas and nays, was not properly a vote, and might not be reconsidered. But Mr. Speaker Banks held that the vote on the second, like the vote whereby the yeas and nays were ordered, might be reconsidered. The House sustained this decision.

5643. It is in order to reconsider a vote postponing a bill to a day certain, even on a later day.—On January 19, 1857,[6] Mr. Thomas J. D. Fuller, of Maine, called up the motion[7] to reconsider the vote whereby the bill (H. R. 187) establishing the collection districts of the United States, etc., was postponed until the 9th of December last.

Mr. George W. Jones, of Tennessee, made the point of order that, inasmuch as the day had gone by to which the said bill was postponed, it was not now in order to entertain the motion to reconsider the vote on its postponement.

The Speaker[8] overruled the point of order on the ground that the rules conferred the privilege upon a Member voting with the prevailing side to move a reconsideration; and the right to consider such motion whenever regularly called up must, as a matter of course, follow.

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[1] Of course this result might also be effected by majority vote on a report from the Committee on Rules, a procedure unknown in 1858.

[2] First session Fifty-ninth Congress, Record, pp. 2609, 2610.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Thirty-fourth Congress, Journal, pp. 727, 733; Globe, p. 752.

[5] This second is no longer required by the rules.

[6] Third session Thirty-fourth Congress, Journal, pp. 257, 339.

[7] A motion to reconsider must be made on "the same or succeeding day," but as in this case its consideration may not take place until a much later time.

[8] Nathaniel P. Banks, of Massachusetts, Speaker.

Mr. Jones having appealed, on February 2 the decision of the Chair was sustained.[1]

5644. The motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President.— On June 12, 1844,[2] a motion was made by Mr. Orville Hungerford, of New York, to reconsider the vote by which the House on the previous day refused, on reconsideration, to pass the bill (No. 203) entitled "An act making appropriations for the improvement of certain harbors and rivers," which had been returned with the objections of the President.

The Speaker[3] decided that inasmuch as the vote now proposed to be reconsidered was taken in a manner expressly provided for by the Constitution of the United States, and having been thus taken, the decision must be considered final, and no motion to reconsider was in order.

From this decision Mr. John Quincy Adams, of Massachusetts, appealed.[4] After debate the Chair was sustained by a vote of 97 to 85.

5645. The motion to reconsider may not be applied to the vote on a motion to suspend the rules.—On January 13, 1851,[5] Mr. Williamson R. W. Cobb, of Alabama, having called up the motion submitted by him on Tuesday previous to reconsider the vote by which the House, on the previous day, had refused to suspend the rules, so as to enable the gentleman from Indiana [Mr. George W. Julian] to present the memorial of the meeting of Anti-slavery Friends, held at Newport, Ind., on the subject of slavery and the repeal of the "Fugitive-slave law."

The Speaker[6] stated that, when he permitted this motion to be entered upon the Journal, he expressed doubts as to the propriety of entertaining it. Subsequent examination of the subject had confirmed him in the opinion that a motion to reconsider a vote upon a motion to suspend the rules was not in order. He therefore ruled the motion out of order.

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[1] For statement of the practice in regard to the motion to reconsider, see Globe, p. 510, February 4, 1853. (Second session Thirty-second Congress.)

[2] First session Twenty-eighth Congress, Journal, pp. 1093, 1097; Globe, pp. 665–675.

[3] John W. Jones, of Virginia, Speaker.

[4] On June 13 Mr. Adams gave his reasons for the appeal. He said the Constitution provided that the bill should be reconsidered with the President's objections. Reconsideration implied deliberation. But the vote had been taken under the operation of the previous question, which allowed no deliberation. Therefore the provision of the Constitution had been violated.

The Speaker, replying, asked how it was that a motion to reconsider was ever entertained? lt was only in virtue of the rules of the House. The bill was passed some days ago, and it was no sooner passed than a motion was made to reconsider it. That motion was rejected; all power under the rule was exhausted. Had it ever been heard of that a motion to reconsider, being once rejected, could be renewed? There was, however, a power higher than the rules which provided that whenever a bill was returned by the President of the United States with objections it was the duty of the House to proceed to reconsider it. Without that provision of the Constitution the House could never again have touched the bill; and the requirement of the Constitution having been complied with, there was no power in the House to touch the subject again.

Messrs. Thomas H. Bayly and George C. Dromgoole, of Virginia, replied to the point made by Mr. Adams, Mr. Dromgoole contending that Mr. Adams had confounded discussion with consideration.

[5] Second session Thirty-first Congress, Journal, p. 134; Globe, pp. 182, 225.

[6] Howell Cobb, of Georgia, Speaker.

In this decision of the Chair the House acquiesced.[1]

5646. On December 20, 1858,[2] a vote was taken on a motion to suspend the rules for the purpose of taking up a concurrent resolution from the Senate providing for adjournment over the holidays. There appeared on this vote 122 yeas and 75 nays.

Two-thirds not voting therefor, the rules were not suspended.

Mr. James Hughes, of Indiana, moved to reconsider the vote just taken.

The Speaker[3] said:

The Chair can not entertain the motion to reconsider. The motion to suspend the rules is one which can be repeated an indefinite number of times; and a motion to reconsider would not therefore be in order. * * *

5647. No bill, petition, memorial, or resolution referred to a committee may be brought back into the House on a motion to reconsider.

All bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed.

The rules contemplate that a committee may report a matter to the House for printing and recommitment.

Present form and history of section 2 of Rule XVIII.

Section 2 of Rule XVIII provides:

No bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment,[4] shall be brought back into the House on a motion to reconsider; and all bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed.

This rule was reported and adopted as a new rule in the revision of 1880,[5] the Committee on Rules in their report explaining its purpose as follows:

Clause 2 of Rule XVIII is added for the purpose of preventing a Member from bringing back into the House, on a motion to reconsider, any matter which he has obtained unanimous consent to introduce or submit for reference or to report from a committee for printing and recommitment. Such proceeding being a matter of favor and courtesy outside of the regular order of business, it is certainly not proper that undue advantage should be taken of that consent by bringing up out of order any matter so introduced, submitted, or reported.

This was not a new rule in 1880, however, as the prohibition in regard to bringing back bills introduced during the Monday morning call[6] had been adopted in the revision of 1860;[7] and on January 11, 1872, the prohibition was extended to bills

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[1] On June 5, 1840, a motion to reconsider the vote whereby the rules had been suspended was admitted without question by Mr. Speaker Hunter. (First session Twenty-sixth Congress, Journal, p. 1081; Globe, p. 447.)

On September 2, 1850, also, an instance occurs of reconsidering and laying on the table a motion to reconsider a vote which had been agreed to by a two-thirds vote under suspension of the rules. (First session Thirty-first Congress, Journal, p. 1358.)

[2] Second session Thirty-fifth Congress, Globe, p. 152.

[3] James L. Orr, of South Carolina, Speaker.

[4] In the present practice bills are rarely reported for printing and recommitment. It is quite common for the committees to order them printed under the provisions of the printing law without having recourse to the House.

[5] Second session Forty-sixth Congress, Record, p. 203.

[6] This was the earlier method of introducing bills.

[7] Record, first session Thirty-sixth Congress, March 15, 1860.

introduced and referred by unanimous consent.[1] On March 21, 1871,[2] Mr. Speaker Blaine referred to the inconvenience and vexatiousness of the practice of getting bills before the House by the motion to reconsider.[3]

5648. There is a question as to whether or not the rule forbidding a bill to be brought back from a committee on a motion to reconsider applies to a case wherein the House, after considering a bill, commits it.—On December 10, 1894,[4] the Committee of the Whole House on the state of the Union rose, and the Chairman reported that the Committee having had under consideration the bill (H. R. 6642) had directed him to report the same with the recommendation that the bill and amendments be committed to the Committee on Public Buildings and Grounds.

The report of the Committee was then agreed to, and the said bill was accordingly committed to the Committee on Public Buildings and Grounds.

Mr. Alexander M. Dockery, of Missouri, moved to reconsider the vote last taken.

The Speaker[5] held that the motion should not be entertained, inasmuch as the bill having been committed to a committee could not be brought back into the House on a motion to reconsider, and that such motion would therefore be without effect.

5649. On May 13, 1896,[6] the House had voted that the contested election case of Rinaker *v.* Downing, from Illinois, which had been under consideration, should be recommitted to the Committee on Elections No. 1, with certain instructions.

Mr. William H. Moody, of Massachusetts, having made the usual motions, to reconsider and that that motion lie on the table, objection was made to a pro forma agreement to these motions.

Mr. James D. Richardson, of Tennessee, raised the point that when a matter had once been before the House and been recommitted, it was not in order to bring that matter again before the House by a motion to reconsider.

The Speaker[7] said:

Without undertaking to decide, if the gentleman desires to cite any authority, the idea of the Chair is that this rule was intended to apply to cases of formal reference; for instance, reference after a first reading. Those matters are not to be brought back upon a motion to reconsider. The Chair thinks the rule was intended to cover a first reference, the policy of the rules of the House of Representatives having

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[1] See report of Mr. S. S. Cox from Committee on Rules, second session Forty-second Congress, Globe, p. 359.

[2] First session Forty-second Congress, Globe, pp. 212, 213.

[3] An instance of the disarrangement of business resulting from this practice is afforded by the older practice. On December 23, 1835, Mr. John M. Patton, of Virginia, moved to reconsider the vote by which the House had referred to the Committee on the District of Columbia a petition presented by Mr. George N. Briggs, of Massachusetts, from sundry citizens of Massachusetts, who prayed for the abolition of slavery in the District of Columbia. The motion to reconsider was the subject of a long debate, which involved the merits of the slavery question. The motion was finally agreed to, yeas 148, nays 61. The motion of reference being again before the House a motion was made to lay that motion and the petition on the table as the most effective method of ending agitation on the subject. (First session Twenty-fourth Congress, Journal, p. 84; Debates, pp. 2042–2077.)

[4] Third session Fifty-third Congress, Journal, p. 22.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] First session Fifty-fourth Congress, Record, p. 5208.

[7] Thomas B. Reed, of Maine, Speaker.

always been to cause everything to be referred to a committee before action by the House. The opinion of the Chair is that the rule was intended to cover such cases as that, and not cases where a report has been made by a committee and the matter is sent back with instructions.

5650. On January 21, 1901,[1] the House recommitted to the Committee on the District of Columbia the bill (H. R. 13660) "relating to the Washington Gas Light Company, and for other purposes," with certain instructions.

On the same day Mr. Joseph W. Babcock, of Wisconsin, proposed to enter a motion to reconsider the vote.

The Speaker,[2] after referring to section 2 of Rule XVIII,[3] admitted the motion, subject to a point of order in case one should be made and sustained.

On January 28,[4] the motion to reconsider was called up and acted on without question as to the procedure.

5651. After a committee has reported a matter it is too late to reconsider the vote by which it was referred.—On May 18, 1876,[5] Mr. Otho R. Singleton, of Mississippi, from the Committee on Printing, to which was recommitted a resolution heretofore reported by that committee, instructing the Committee on Appropriations to insert certain sections in the sundry civil appropriation bill relative to the management of the Government Printing Office, with instructions to modify the same, reported the same back with an amendment, as instructed by the House. Mr. Singleton moved to reconsider the vote by which the report was recommitted to the Committee on Printing.

Mr. Eugene Hale, of Maine, made the point of order that the Committee on Printing having reported back a resolution recommitted to the committee a motion to reconsider the vote by which the resolution was recommitted was not in order.

The Speaker pro tempore[6] sustained the point of order, holding that the report having been made it had passed the stage where a motion to reconsider the vote of recommitment could be made.[7]

5652. When the House has passed a bill and disposed of a motion to reconsider the vote on its passage, it is too late to move to reconsider the vote sustaining the decision of the Chair which brought the bill before the House.—On April 29, 1850,[8] Mr. George W. Jones, of Tennessee, moved to reconsider the vote by which the House had, on Friday last, sustained the decision of the Chair bringing before the House the joint resolution (No. 16) authorizing the President of the United States to accept and attach to the Navy two vessels offered by Henry Grinnell, esq., of New York, to be sent to the Arctic seas in search of Sir John Franklin and his companions, which had previously passed from under its consideration by a process other than the one by which the reconsideration had been proposed.

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[1] Second session Fifty-sixth Congress, Record, pp. 1262, 1266.

[2] David B. Henderson, of Iowa, Speaker.

[3] See section 5647 of this chapter.

[4] Record, pp. 1577–1581.

[5] First session Forty-fourth Congress, Journal, p. 973.

[6] Samuel S. Cox, of New York, Speaker pro tempore.

[7] It is now a rule of the House that no bill may be brought back from a committee on a motion to reconsider. See section 5647 of this chapter.

[8] First session Thirty-first Congress, Journal, pp. 860, 861, Globe; p. 843.

The Speaker[1] held:

The motion now made to reconsider is ruled out of order, because it is not in order to move a reconsideration of any measure after subsequent action has been had by the House, which renders it impossible for the House to reverse that action. In the present case, subsequent action has been had, for the joint resolution which was brought before the House by the operation of the decision referred to, was engrossed and passed, and a motion to reconsider made and disposed of. So that, if now the decision of the Chair should be reconsidered, no effect could result. In the opinion of the Chair, therefore, the motion to reconsider the vote on the appeal is out of order, and can not be entertained.

From this decision of the Chair Mr. Jones appealed, and on the next day the appeal was laid on the table, the decision being thereby sustained.

5653. The motion to reconsider may not be applied to a vote for the previous question which has been partially executed. (Speaker overruled.)—On July 8, 1850,[2] the House was considering resolutions relating to the relations of Hon. George W. Crawford to a certain claim (the Galphin claim). Several amendments to the resolutions had been voted on, when Mr. W. S. Featherston, of Mississippi, moved to reconsider the vote by which the main question had been ordered to be put.

Mr. Robert C. Baker, of Massachusetts, raised the question of order that the motion was not in order, on the ground that the previous question had been partly executed.

The Speaker[1] decided that the motion to reconsider having been made within the time prescribed by the rules, the House has the right to reconsider the vote ordering the main question, notwithstanding the previous question had been partly executed by voting upon most of the pending questions. He referred to the fact that during the present session (on the 12th of February) the right of a Member to make a similar motion under like circumstances with those now existing was admitted by the Speaker and acquiesced in by the House. He therefore overruled the point of order and would entertain the motion.

From this decision of the Chair Mr. Robert C. Winthrop, of Massachusetts, appealed, and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the negative, yeas 94, nays 102.

5654. On September 5, 1850,[3] the House was considering, under a special order, the bill of the Senate (No. 307) entitled "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States."

On the previous day an amendment offered by Mr. Linn Boyd, of Kentucky, in the nature of a substitute had been voted on under the operation of the previous question and had been defeated. The question on the third reading of the bill was decided in the negative, and Mr. Boyd moved to reconsider the vote whereby the third reading of the bill was refused.

This motion to reconsider was the pending question when the bill came up September 5.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Thirty-first Congress, Journal, pp. 1074, 1101, 1398.

[3] First session Thirty-first Congress, Globe, p. 1352.

After a motion to lay the motion to reconsider on the table had been negatived the previous question was ordered, and under its operation the House voted to reconsider, yeas 131, nays 75.

The question then recurred on ordering the bill to a third reading, pending which Mr. Joseph Grinnell, of Massachusetts, moved that the vote be reconsidered by which the House on the previous day disagreed to the amendment submitted by Mr. Boyd, and on his motion demanded the previous question, which was ordered.

Then the vote whereby Mr. Boyd's amendment was disagreed to was reconsidered, and the question recurred on agreeing to the amendment of Mr. Boyd.

Mr. Robert Toombs, of Georgia, submitted an amendment to the amendment of Mr. Boyd, pending which Mr. John Wentworth, of Illinois, moved that the bill and pending amendments be committed with instructions.

This was disagreed to. Then Mr. David T. Disney, of Ohio, moved that the vote by which the main question had been ordered to be put be reconsidered.

The Speaker[1] stated that, in conformity with a decision of the House against a decision of his own (made a short time since), he should rule the motion not in order, on the ground that the previous question had been partly executed.

From this decision of the Chair Mr. Disney appealed, and the appeal being laid on the table, the Chair was sustained.

5655. The vote whereby the previous question is ordered may be reconsidered once only.—On January 22, 1855,[2] during the consideration of the bill to provide for railroad and telegraph communication between the Atlantic States and Pacific Ocean, a question arose as to reconsideration of the previous question, and the Speaker[3] said:

> The Chair has already stated this morning that a vote of the House ordering the main question to be put can not be reconsidered more than once. The main question was ordered upon the passage of the bill on Saturday, reconsidered again, and ordered to-day by the House. The Chair thinks that, under the rules, it can not be reconsidered a second time.

5666. A motion to reconsider may be made after a motion for the previous question has been made.

A motion to reconsider the vote on the third reading of a bill may be made and acted on after a motion for the previous question on the passage has been made, but the motion to reconsider may not be debated.

On May 20, 1856,[4] the House had ordered to be engrossed and read a third time the bill (H. R. 326) granting public lands to the State of Wisconsin, and the question recurred on its passage.

Mr. Henry Bennet, of New York, moved the previous question.

Pending this motion Mr. John Letcher, of Virginia, moved a reconsideration of the vote by which the bill was ordered to be engrossed and read a third time, and was proceeding to debate his motion, when Mr. Israel Washburn, jr., of Maine,

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[1] Howell Cobb, of Georgia, Speaker.

[2] Second session Thirty-third Congress, Globe, p. 355.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Thirty-fourth Congress, Journal (of first and second session), p. 1009; Globe, pp. 1259, 1260.

made the point of order that debate was not in order after the demand of the previous question.

Mr. Letcher declared that if that were so one Member by moving the previous question could thereby cut off debate on the motion to reconsider. Mr. Howell Cobb, of Georgia, also took this view.

The Speaker[1] said that the motion to reconsider was in order and preceded the motion for the previous question. It was a privileged question; but under the rules of the House it must be decided without debate. The call for the previous question cut off all debate; but the privileged question would be received and passed upon by the House. The Chair was of the opinion that it was the logical conclusion from the rules of the House that this question should be decided without debate. The difficulty suggested by the gentleman from Virginia was the same on one side as the other. If a Member moved to reconsider, the previous question having been called, then, if he be allowed to debate it, one Member would cut off from the House the right to close debate. If, as the gentleman from Georgia said, a Member had the right, but could not debate it, it put it in the power of the Member calling the previous question to cut off debate. But that was under the rules of the House. The difficulty was the same in the one case as in the other.

Mr. Letcher having appealed, the decision of the Chair was sustained by a vote of 92 yeas to 38 nays.[2]

5657. The motion to reconsider and the motion to lay that motion on the table are admitted while the previous question is operating.—On January 31, 1889,[3] the House was considering the bill (H. R. 10614) to organize the Territory of Oklahoma under a special order which provided that the previous question at a certain time—

shall then be considered as ordered upon all such amendments and upon ordering said bill to be read a third time and upon the passage of the same, and the votes thereon shall then be taken in the House.

Under the operation of the previous question as provided in the order a portion of the amendment had been agreed to, when Mr. S. S. Yoder, of Ohio, moved to reconsider the vote whereby one of these amendments had been agreed to.

Mr. Charles E. Hooker, of Mississippi, made the point of order that under the previous question which had been ordered the motion to reconsider was not in order.

The Speaker[4] said:

Under the rules of the House the motion to reconsider is one of very high privilege, and it is a motion which relates directly to the proposition pending and on which a vote of the House has been taken. In other words, the vote of the House upon a proposition is not final and conclusive upon the House itself until there has been an opportunity to reconsider it, and therefore the motion to reconsider and lay on the table is, in fact, a vote upon the amendment itself. The Chair thinks the point of order is not well taken.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] On June 5, 1840, the House reversed—yeas 78, nays 85—a decision of Mr. Speaker Hunter that a motion to reconsider might be interjected between the demand for the previous question and the putting of the previous question. (First session Twenty-sixth Congress, Journal, p. 1081; Globe, p. 447.)

[3] Second session Fiftieth Congress, Journal, p. 381; Record, p. 1380.

[4] John G. Carlisle, of Kentucky, Speaker.

Mr. Lewis E. Payson, of Illinois, moved to lay the motion to reconsider on the table, and that motion also was put and voted on without any point of order being raised.

5658. On March 12, 1900,[1] the House was considering the contested election case of Wise *v.* Young, and the previous question was ordered on the resolutions of the majority and the substitute proposed by the minority. The substitute was disagreed to, yeas 128, nays 132. The vote having been announced, Mr. James D. Richardson, of Tennessee, moved to reconsider.

Mr. Edgar Weeks, of Michigan, moved to lay the motion to reconsider on the table, and the motion was agreed to, yeas 132, nays 129.

The question then recurred on the resolutions of the majority.

5659. On March 1, 1877,[2] the House was considering the following resolution submitted by Mr. Fernando Wood, of New York, on the preceding day:

Resolved, That the vote of Henry N. Solace, claiming to be an elector from the State of Vermont, be not counted.

Mr. James H. Hopkins, of Pennsylvania, having submitted an amendment in the nature of a substitute, the previous question was ordered, on motion of Mr. Wood.

The vote being taken on Mr. Hopkins's amendment, it was rejected, yeas 115, nays 147.

Mr. Lafayette Lane, of Oregon, moved to reconsider the vote last taken.

Mr. Fernando Wood made the point of order that, the previous question being in operation, the motion to reconsider was not in order.

Mr. Nathaniel P. Banks, of Massachusetts, made the further point of order that the previous question must be exhausted before the motion to reconsider could be entertained; and, further, that it was not in order to move the reconsideration of a vote on ordering the main question when it was partly executed.

The Speaker[3] overruled the point of order and held the motion to be in order on the ground that in the event of an affirmative vote on a question of reconsideration, it was immediately divested of the previous question, and therefore by analogy admitted the motion to reconsider.

5660. On July 20, 1876,[4] the Speaker pro tempore announced as the regular order of business the consideration of the joint resolution of the House (H. J. Res. 96) to provide for the protection of the Texas frontier on the lower Rio Grande, the pending question being the amendment reported by the Committee of the Whole House on the state of the Union as a substitute for the second section of the said joint resolution; on which amendment the yeas and nays had been ordered at the time of the adjournment on the preceding day.

It appears from the context of the Journal that the previous question was on the preceding day ordered on all the amendments, and on the joint resolution to its engrossment.

The question being taken on the pending amendment, there were 89 yeas and 96 nays, the yeas and nays having been ordered.

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[1] First session Fifty-sixth Congress, Record, p. 2795.

[2] Second session Forty-fourth Congress, Journal, pp. 587, 592–594; Record, p. 2049.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Forty-fourth Congress, Journal, pp. 1299–1301; Record, pp. 4753, 4754.

Mr. John Randolph Tucker moved to reconsider the vote by which the yeas and nays were ordered on agreeing to the aforesaid amendment.

Mr. George G. Hoskins, of New York, made the point of order that, the previous question being partly executed, it was not now in order to move a reconsideration of the main question.

The Speaker pro tempore [1] sustained the point of order.

5661. On July 8, 1850,[2] the House was considering the resolutions of the committee appointed to investigate the connection of the Hon. George W. Crawford with the Galphin claim. Mr. Robert C. Schenck, of Ohio, had offered an amendment in the nature of a substitute, and Mr. Jacob Thompson, of Mississippi, had offered an amendment to Mr. Schenck's substitute.

On July 6 the previous question had been ordered on the resolution and amendments, and on July 8, under the operation thereof, the amendment of Mr. Thompson was agreed to, and then the substitute as amended was disagreed to.

Mr. Graham N. Fitch, of Indiana, moved to reconsider this vote whereby the substitute as amended had been disagreed to.

Mr. Nathan Evans, of Ohio, moved that the motion to reconsider be laid on the table.

Mr. John R. Thurman, of New York, made the point of order that it was not in order to move a reconsideration pending the operation of the previous question.

The Speaker,[3] "under the uniform practice of the House," overruled the point of order.

Mr. Thurman having appealed, the appeal was laid on the table, and the decision was thereby sustained.

5662. On February 16, 1855,[4] the House was considering a resolution to close debate in the Committee of the Whole House on the state of the Union on the bill (H. R. 595) making an appropriation for mail steamers. An amendment had been offered to the resolution, the previous question ordered on the resolution and amendment, and under the operation thereof the amendment agreed to.

Thereupon Mr. James L. Orr, of South Carolina, moved to reconsider the vote whereby the amendment was agreed to.

Mr. George W. Jones, of Tennessee, made the point of order that, as the previous question had been ordered on the resolution, the motion to reconsider was not in order.

The Speaker [5] said:

> The Chair overrules the question of order and decides that the motion to reconsider the vote by which the amendment was adopted is in order. Such has been the practice of the House every week, nay, almost every day, since the occupant of the Chair has had a seat in this body, and the Chair is not disposed to change the practice.

Thereupon the motion to reconsider was admitted, and then a motion to lay the motion to reconsider on the table was made and carried on a vote by yeas and nays.

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[1] Milton Sayler, of Ohio, Speaker pro tempore.

[2] First session Thirty-first Congress, Journal, pp. 1087, 1101; Globe, p. 1353.

[3] Howell Cobb, of Georgia, Speaker.

[4] Second session Thirty-third Congress, Globe, p. 774.

[5] Linn Boyd, of Kentucky, Speaker.

Then the question recurred on the passage of the resolution.

5663. A motion to reconsider the vote on the engrossment of a bill may be admitted after the previous question has been moved on a motion to postpone.—On July 27, 1842,[1] the House had under consideration a bill (H. R. 548) to reduce the compensation of the Members of the Senate, Members of the House of Representatives, and the Delegates of the Territories, and repealing all other laws on the subject.

The bill having been ordered to be engrossed, the question recurred on the passage.

Mr. Almon H. Read, of Pennsylvania, moved to postpone the consideration of the bill until the next day, and that it be printed.

Mr. Edward Stanly, of North Carolina, moved the previous question, and thereupon Mr. Benjamin G. Shields, of Alabama, moved to reconsider the vote ordering the bill to be engrossed.

Thereupon Mr. Millard Fillmore, of New York, submitted the following question of order:

> The previous question having been moved upon the motion made by Mr. Read to postpone[2] the consideration of the said bill, it is not in order at this time to move a reconsideration of the vote ordering the bill to be engrossed.

The Speaker[3] decided that, as the question on seconding[4] the previous question had not been taken, the motion to reconsider was in order.

The decision was sustained, 143 yeas to 34 nays, Mr. Fillmore having appealed.

5664. After a conference has been agreed to and the managers for the House appointed it is too late to move to reconsider the vote whereby the House acted on the amendments in disagreement.—On June 9, 1896,[5] the House had insisted on its disagreement to certain Senate amendments to the sundry civil appropriation bill, had agreed to a conference, and the Speaker had appointed the conferees, when Mr. Charles S. Hartman, of Montana, moved to reconsider the vote whereby the House refused to agree to certain of the Senate amendments.

The Speaker[6] said:

> The Chair thinks, the conferees having been appointed, it is now too late to make that motion.

5665. The motion to reconsider the vote whereby an order of the House had been agreed to was admitted, although the execution of that order had began.—On February 8, 1894,[7] Mr. Thomas B. Reed, of Maine, moved to reconsider the vote by which, on the preceding day, the House had passed an order for taking absent Members into custody.

Mr. Richard P. Bland, of Missouri, made the point that the order being in process of execution and partly executed it was not in order to move to reconsider the vote by which it was passed.

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[1] Second session Twenty-seventh Congress, Journal, p. 1175; Globe, p. 799.

[2] For relations of motion to postpone to the previous question, see sections 5443, 5444 of this volume.

[3] John White, of Kentucky, Speaker.

[4] The demand for the previous question no longer requires to be seconded. (See sections 5443–5445 of this volume.)

[5] First session Fifty-fourth Congress, Record, p. 6360.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Fifty-third Congress, Journal, p. 149; Record, p. 2035.

The Speaker[1] entertained the motion to reconsider.

5666. A motion to reconsider may be entertained, although the bill or resolution to which it applies may have gone to the other House or the President.—On May 27, 1840,[2] a motion was made by Mr. Julius C. Alford, of Georgia, that the House reconsider the vote of the previous day on the passage of the bill from the Senate (No. 12) entitled "An act supplemental to the act entitled 'An act to grant preemption rights to settlers on the public lands,' approved June 22, 1838."

Mr. John Jameson, of Missouri, stated that he understood that the bill had been taken by the Clerk to the Senate, in which House it originated, and was consequently now beyond the control of the House, and therefore the motion to reconsider could not be entertained.

The Speaker[3] decided that the motion to reconsider was in order under the fiftieth rule,[4] which provided that "when a motion had been once made and carried in the affirmative or negative, it shall be in order for any Member of the majority to move for the reconsideration thereof on the same or the succeeding day."

From this decision Mr. David Petrikin, of Pennsylvania, took an appeal to the House. The decision of the Chair was sustained.[5]

5667. On June 14, 1844,[6] a motion was made by Mr. Perley B. Johnson, of Ohio, to reconsider the vote by which the House passed the bill from the Senate (No. 20) entitled "An act to provide for the adjustment of land claims within the States of Mississippi and Alabama, south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers."

Mr. Benjamin White, of Maine, inquired of the Speaker whether the bill had been returned to the Senate. The Speaker replied that it had.

Mr. White then raised the question of order, whether it was in order to entertain a motion to reconsider, after the papers upon which the vote of reconsideration was founded had gone out of the possession of the House.

Pending a decision, the House adjourned. On the next day, June 15, the Speaker[7] decided against the point of order made by Mr. White.

From this decision Mr. White appealed, and the decision of the Chair was sustained. So it was decided by the House that it is in order to entertain a motion to reconsider a vote, after the papers upon which it is founded have gone out of the possession of the House.

5668. On April 10, 1846,[8] a motion was made by Mr. James Dixon, of Connecticut, to reconsider the vote by which the House on the preceding day agreed to the resolutions offered by Mr. Charles J. Ingersoll, of Pennsylvania, calling upon

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Twenty-sixth Congress, Journal, p. 1033; Globe, p. 124.

[3] Robert M. T. Hunter, of Virginia, Speaker.

[4] Now section 1 of Rule XVIII.

[5] Where a bill thus reconsidered has been sent to the Senate or to the President it is customary to send a request for its return. In 1820, in a famous case, Mr. Speaker Clay had declined to entertain the motion to reconsider after the papers had gone to the Senate. (See section 5605 of this volume.)

[6] First session Twenty-eighth Congress, Journal, pp. 1125, 1131; Globe, p. 686.

[7] John W. Jones, of Virginia, Speaker.

[8] First session Twenty-ninth Congress, Journal, p. 657.

the President of the United States for an account of all payments made on President's certificates from the fund appropriated by law, through the agency of the State Department, for the contingent expenses of foreign intercourse, etc.

Mr. Robert McClelland, of Michigan, submitted as a question of order that the resolution having been delivered to the President of the United States, a motion to reconsider was not now in order.

The Speaker[1] stated that it being expressly provided by the fifty-fifth rule[2] of the House, that "When a motion has been once made, and carried in the affirmative or negative, it shall be in order for any Member of the majority to move for a reconsideration thereof on the same or the succeeding day;" this motion was in order and he so decided.[3]

Upon appeal, this decision of the Chair was sustained.

5669. A motion being made to reconsider the vote on a bill which has gone to the Senate, a motion to ask the recall of the bill is privileged.— On June 14, 1844,[4] a motion had been made to reconsider the vote whereby the House had passed the bill of the Senate (No. 20) to provide for the adjustment of land claims within certain States, when Mr. George C. Dromgoole, of Virginia, moved the following order:

Ordered, That a message be forthwith sent to the Senate, informing that body of the pendency of a motion in this House to reconsider the vote by which Senate bill No. 20, etc., was passed, and respectfully requesting that the said bill may be returned.

Mr. John White, of Kentucky, raised the question of order that the motion of Mr. Dromgoole was not in order.

The Speaker[5] decided that the order was one relating to the proceedings now before the House, and appurtenant thereto, and therefore in order.

Mr. White having appealed, the decision of the Chair was sustained.

Thereupon the motion of Mr. Dromgoole was agreed to.

5670. On April 1, 1864,[6] the House had disagreed to the Senate amendments to the bill (H. R. 15) to provide a temporary government for the Territory of Montana, and had asked a conference of the Senate, transmitting the papers to that House.

Mr. George H. Pendleton, of Ohio, moved to reconsider the above votes. And pending that motion, he moved that the Clerk request the return of the said bill from the Senate.

The Speaker[7] said:

The pendency of a motion to reconsider compels the House to send to the Senate for the return of the bill, unless a motion be made to lay on the table the motion to reconsider.

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[1] John W. Davis, of Indiana, Speaker.

[2] See section 5605 of this volume.

[3] The record of the debate shows (Globe, p. 649) that the Speaker declared that in the present case a copy of the resolution, and not the original resolution, had gone to the President, so that it was still within the reach of the House. The Speaker also had read the precedent of May 27, 1840, on the public-lands bill, on which the motion to reconsider had been pending after the bill was engrossed.

[4] First session Twenty-eighth Congress, Journal p. 1131; Globe, p. 742.

[5] John W. Jones, of Virginia, Speaker.

[6] First session Thirty-eighth Congress, Journal, pp. 455–457; Globe, p. 1389.

[7] Schuyler Colfax, of Indiana, Speaker.

Such motion not being made, the motion to send for the bill was agreed to, and soon after the bill was returned from the Senate. The motion to reconsider was called up the succeeding day.

5671. On January 16, 1877,[1] the Senate, while revising its rules, agreed to a rule providing that when a motion to reconsider a bill that had been sent to the House should be made, it should be accompanied by a motion requesting the House to return the bill to the Senate. This was intended to obviate the difficulty experienced by the fact that the Senate usage did not permit a motion to reconsider after the bill had passed from out the possession of the body.

5672. The fact that the House had informed the Senate that it had agreed to a Senate amendment to a House bill was held not to prevent a motion to reconsider the vote on agreeing.—On February 7, 1854,[2] Mr. Thomas B. Florence, of Pennsylvania, moved that the vote by which the House, on the preceding day, agreed to the amendment of the Senate to the bill of the House (H. R. 50) entitled "An act making appropriations for the payment of invalid and other pensions of the United States, for the year ending June 30, 1855," be reconsidered.

Mr. James L. Orr, of South Carolina, made the point of order that the vote could not be reconsidered, the Senate having been notified of the agreement by the House to their amendment, and the bill having thereby passed beyond the control of the House.[3]

The Speaker pro tempore[4] overruled the point of order, on the ground that the fifty-sixth rule of the House conferred upon any Member of the majority the right to move a reconsideration on the same day or the day succeeding that upon which the vote was given.

From this decision of the Chair Mr. Orr appealed, and on July 25, 1854, when the motion to reconsider was again called up, the decision of the Chair was sustained.

5673. While the motion to reconsider may be entered at any time during the two days prescribed by the rule, even after the previous question is ordered or when a question of the highest privilege is pending, it may not be considered while another question is before the House.—On July 1, 1856,[5] there was before the House a motion to reconsider the vote by which the bill of the House (No. 181) providing for the admission of the State of Kansas into the Union had been lost on the preceding day. There had been considerable debate, when Mr. William A. Howard, of Michigan, rising to what he claimed was a question of higher privilege, proposed to submit a report of the special Kansas investigating committee, which involved the right of a Delegate to his seat.

Mr. George S. Houston, of Alabama, made the point that the motion to reconsider could not thus be displaced, quoting the fifty-sixth rule.

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[1] Second session Forty-fourth Congress, Record, p. 660.

[2] First session Thirty-third Congress, Journal, pp. 336, 1199; Globe, pp. 375, 1913.

[3] The Globe for February 7 (p. 375) shows that the bill was in possession of the House awaiting enrollment at the time the motion to reconsider was made.

[4] George W. Jones, of Tennessee, Speaker pro tempore.

[5] First session Thirty-fourth Congress, Globe, p. 1525.

The Speaker[1] said:

The Chair is of the opinion that the report is a privileged one, and that it may be received at this stage of the proceedings. The motion to reconsider is a privileged motion, and takes precedence of every other motion relating to the ordinary business of the House, except a motion to adjourn; but that class of business which belongs to the right of a Member to a seat in this House is of higher privilege. Therefore the report from the special committee takes precedence of the motion to reconsider.

Mr. James L. Orr, of South Carolina, having appealed, Mr. Alexander H. Stephens, of Georgia, called attention to the fact that a report relating to the right of a Member to his seat raised a question of privilege, and according to the parliamentary law a question of privilege had precedence of a privileged question. The question of reconsideration was a privileged question, while the other was a question of privilege.

Mr. Orr held, first, that the report did not relate to the seat of a Member in such a way as to make it a matter of privilege, and, secondly, that the rule in regard to reconsideration was so explicit that no authority could override it.

Mr. Thomas S. Bocock, of Virginia, contended that the distinction between privileged questions and questions of privilege was made by Jefferson's Manual and not by the rules, and that the manual applied only where the rules were silent. The rule giving priority to questions of personal privilege was from the manual, but the rules of the House had come in and altered that so far as the motion to reconsider was concerned. In 1820, during the pendency of the subject of the admission of Missouri, Mr. Randolph, who opposed the Missouri Compromise, determined the next day after the passage of the measure to move to reconsider. He submitted the motion and was informed by the Speaker of the House, Mr. Clay, of Kentucky, that there was a question before the House which stood in the way of submitting a motion to reconsider. When that matter was disposed of, the bill had gone out of the possession of the House and he was informed that his motion was too late. Then came the rule to secure to every Member the right to move to reconsider before the bill is carried out of the House.

The Speaker said that the point made by Mr. Bocock presented no difficulties, since if another subject was before the House the motion to reconsider must be received and entered on the Journal, but could not be considered until the business before the House had been disposed of. That was the constant practice and rule of the House. * * * The high privilege given the motion to reconsider by the rule gave the motion precedence over any motion relative to the subject to which the motion to reconsider refers—except a motion to adjourn; but when received, it must relate to some business legitimately before the House, or its consideration be postponed until it can be taken up in order. When it was in order, it would supersede every motion except the motion to adjourn.

Mr. Orr withdrew his appeal.

5674. On April 12, 1894,[2] during proceedings under a call of the House, a motion that Mr. John A. T. Hull, of Iowa, be excused was decided in the negative.

Upon the announcement of the result of the vote, Mr. Thomas C. Catchings, of Mississippi, moved the adoption of the resolution which he then sent to the Clerk's desk.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 327, 328; Record, pp. 3704–3708.

Before the resolution submitted by Mr. Catchings was read Mr. John F. Lacey, of Iowa, moved to reconsider the vote just taken.

Mr. Thomas B. Reed, of Maine, made the point that the question must be first taken on the motion to reconsider.

The resolution submitted by Mr. Catchings was then read as follows:

Resolved, That all leaves of absence, except for sickness, be, and the same are hereby, revoked, and the Sergeant-at-Arms is directed to notify all Members absent, except on account of sickness, that their attendance upon the sessions of the House is required; and that further proceedings under this call be dispensed with.

Mr. Reed made the further point that the resolution proposed by Mr. Catchings was not in order in the absence of a quorum.

After debate,

The Speaker pro tempore[1] overruled both points of order submitted by Mr. Reed, holding as follows:

The Chair confesses that he has experienced some difficulty in arriving at a conclusion in this case. The motion to reconsider is a privileged motion, and the motion of the gentleman from Mississippi, if held to be in order, would also be privileged. The question for the Chair is, Which of these motions should be first submitted to the House? If the motion of the gentleman from Mississippi is in order and should prevail, it disposes of the motion to reconsider the vote on excusing the gentleman from Iowa [Mr. Hull], and it would also obviate any necessity for making a motion to excuse other gentlemen who failed to answer on a call of the House.

The language of the rule which has been cited is that—

"When a motion has been made and carried or lost, it shall be in order for any Member of the majority, on the same or succeeding day, to move for the reconsideration thereof, and such motion shall take precedence of all other questions except the consideration of a conference report, a motion to fix the day to which the House shall adjourn, to adjourn, or to take a recess," etc.

The motion to reconsider, as will be seen, takes precedence over all other questions except those mentioned in the rule, and it may be made at any time during the clay on which the vote sought to be reconsidered is taken or on the succeeding day. As the rule provides, a roll call may be interrupted in order that this motion to reconsider may be entered. But it does not follow that it is then to be disposed of. The Chair finds a decision—which must be the law—made in 1856, when the then Speaker decided (a question similar to this being pending) that under the rule it was in order at any time upon the same or the subsequent day to submit and have entered a motion to reconsider, but that it could not be considered while another question was before the House.

Without attempting to shut off the gentleman from Iowa, who made this motion to reconsider, the Chair recognized the gentleman from Mississippi, who was first on his feet and who first addressed the Chair; and he submitted a motion which he sent up. Now, when that motion is submitted, if it be in order, it is entitled, under this decision, to consideration; and the motion to reconsider, which may then be entered and which the House permits to interrupt the matter pending in order that it may be entered, is not to be considered, under the language of this decision of 1856, while the other question is before the House.

Now, this other question being before the House, the Chair thinks it must be first considered; and if the motion made by the gentleman from Mississippi be carried, it dispenses with the motion to excuse the gentleman from Iowa, because all gentlemen are excused under this motion, so that there would really be no necessity for voting upon a motion to reconsider, because the necessity for the original motion would be dispensed with by agreeing to the motion of the gentleman from Mississippi.

Mr. Lacy appealed from the decision just rendered, and the appeal was laid on the table on motion of Mr. Catchings.

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[1] James D. Richardson, of Tennessee, Speaker pro tempore.

5675. On August 15, 1856,[1] the bill (H. R. 316) making appropriations for the transportation of the United States mails by ocean steamers and otherwise, was reported from the Committee of the Whole House on the state of the Union with an amendment.

On motion of Mr. Lewis D. Campbell, of Ohio, the previous question was ordered, and the Speaker announced that the question was on agreeing to the amendment.

Thereupon Mr. James Thorington, of Iowa, moved that the votes whereby certain bills had on the preceding day been committed to the Committee of the Whole, and the vote whereby the bill of the House (H. R. 317) granting land to the State of Iowa and the Territory of Minnesota, in alternate sections, to aid in the construction of railroads therein named, was laid on the table, be severally reconsidered.

Mr. George W. Jones, of Tennessee, made the point of order, that inasmuch as the main question had been ordered upon a different subject it was not now in order to submit the motion to reconsider.

The Speaker[2] pro tempore decided that, under the rule, it was in order at any time upon the same or subsequent day to submit and have entered the motion to reconsider, but that it could not be considered while another question was before the House.

From this decision of the Chair Mr. George W. Jones appealed. On the succeeding day the appeal was laid on the table, the decision of the Chair being thereby sustained.

5676. On July 29, 1852,[3] the House laid on the table the bill (H. R. 290) granting a right of way and land to the State of Michigan for the construction of the Oakland and Ottawa Railroad.

Mr. Charles E. Stuart, of Michigan, moved that the vote last taken be reconsidered.

Pending this motion, the morning hour having expired,[4] Mr. Stuart moved that the House resolve itself into the Committee of the Whole House on the state of the Union.

This motion having been decided in the negative, the House resumed consideration of the bill (H. R. 299) to provide for executing the public printing, etc. The further consideration of this bill was postponed until the next day.

Mr. Stuart then moved that the House resolve itself into the Committee of the Whole House on the state of the Union.

Mr. Isham G. Harris, of Tennessee, called up the motion submitted by Mr. Stuart to reconsider the vote whereby the bill (H. R. 290) was laid on the table.

The Speaker[5] decided that it was not now in order to call up the said motion, especially as the privileged motion to go into Committee of the Whole had been

[1] First session Thirty-fourth Congress, Journal, pp. 1476, 1477; Globe, p. 2166.

[2] John S. Phelps, of Missouri, Speaker pro tempore.

[3] First session Thirty-second Congress, Journal, pp. 968, 969; Globe, p. 1985.

[4] The rule for the morning hour has varied at different times. (See section 3118 of Vol. IV, of this work.)

[5] Linn Boyd, of Kentucky, Speaker.

first submitted. He asked gentlemen under what rule the bill could be considered at this time, even if the motion to reconsider should be carried in the affirmative.

Mr. Harris having appealed, the appeal was laid on the table by a vote of yeas 112, nays, 39.

5677. When a motion to reconsider relates to a bill belonging to a particular class of business, the consideration of the motion is in order only when that class of business is in order.—On December 7, 1892,[1] the Speaker[2] proceeded to call the committees pursuant to clause 4 of Rule XXIV. The Committee on Naval Affairs being called, Mr. Hilary A. Herbert, of Alabama, in behalf of that committee, presented for consideration the bill (S. 139) terminating the number in the reduction of the Engineer Corps of the Navy. On motion of Mr. Herbert, the previous question was ordered; and being put, "Shall the bill pass?" it was decided in the affirmative.

Mr. William S. Holman, of Indiana, moved to reconsider the vote by which the bill was passed.

Mr. Herbert moved to lay the motion to reconsider on the table.

The hour for consideration of bills having expired,[3] the Speaker[2] announced that the consideration of the motion of Mr. Herbert would go over and be in order when the committees should be again called for the consideration of bills.

5678. On Friday, May 15, 1896,[4] Mr. Joseph A. Scranton, of Pennsylvania, rising to a parliamentary inquiry, said that on the previous day he gave notice that on this day he would call up the motion to reconsider the vote by which the bill (H. R. 3826) to provide for the election of a Delegate from Alaska was defeated on its third reading. It had since been suggested to him that, this being private-bill day, the consideration of such a motion would not be in order. He therefore asked the opinion of the Chair on that point.

The Speaker[5] said:

> The Chair thinks it would not be in order to-day, as it is not private business.

5679. On February 11, 1834,[6] a motion was made by Mr. John Quincy Adams, of Massachusetts, that the House reconsider the vote of yesterday (Monday, February 10) referring to the Committee on Ways and Means the memorial of merchants of the city of New York in favor of the warehousing system, etc.[7]

The Speaker[8] decided that this motion would not come up for consideration until Monday next, the day fixed by the rule for the presentation of memorials and petitions.[9]

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[1] Second session Fifty-second Congress, Journal, pp. 13 and 14; Record, p. 34.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] The morning hour in the Fifty-second Congress was an hour of sixty minutes only. (See section 3118 of Vol. IV of this work.)

[4] First session Fifty-fourth Congress, Record, p. 5298.

[5] Thomas B. Reed, of Maine, Speaker.

[6] First session Twenty-third Congress, Journal, pp. 316, 317.

[7] A motion for this purpose is no longer in order.

[8] Andrew Stevenson, of Virginia, Speaker.

[9] Rule 16 at this time provided that after the first thirty days of the session the presentation of petitions should be in order only on the first day of each week. (Journal, p. 1115.)

5680. On Friday, July 28, 1876,[1] Mr. Ezekiel S. Sampson, of Iowa, called up the motion to reconsider the vote by which the bill of the House (H. R. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes, was ordered to be engrossed.

Mr. William M. Springer, of Illinois, made the point of order that this being private-bill day it was not in order to call up a motion to reconsider a vote upon a public bill.

The Speaker pro tempore[2] sustained the point of order.

5681. On Friday, June 9, 1876,[3] Mr. Eppa Hunton, of Virginia, called up the motion to reconsider the vote by which the House had agreed to a resolution relating to public business submitted by him on a previous day.

Mr. John A. Kasson, of Iowa, made the point of order that it was not in order to call up and consider a motion to reconsider a vote upon general business upon a private-bill day.

The Speaker[4] pro tempore overruled the point of order.

5682. The motion to reconsider may be called up at any time when the class of business to which it relates is in order; but until it is called up the motion is not the regular order.—On January 13, 1893,[5] the Committee of the Whole House having risen, Mr. Louis E. Atkinson, of Pennsylvania, submitted the question of order, whether the business next in order was not the consideration of the bill (H. R. 1466) for the relief of the personal representatives of Henry H. and Charles H. Sibley, heretofore reported from the Committee of the Whole House.

The Speaker[6] stated that the bill having been acted on by the House, a motion to reconsider that action was made and was still pending, and that it was in order to call up the motion to reconsider at any time.[7] but until so called up its consideration would not be the regular order.

5683. The House having, by unanimous consent, entertained a matter during time set apart for other business it was held that the question of reconsideration might also be admitted.—On Friday, March 6, 1840,[8] in the time allotted by the rules for the consideration of private business, Mr. Millard Fillmore, of New York, moved to reconsider a vote whereby a certain paper relating to the New Jersey contested election cases had been referred.

Mr. David Petrikin, of Pennsylvania, thereupon submitted the following question of order:

> That a motion to reconsider can not be debated and considered after the Speaker has announced the orders of the day, on any day allotted for the consideration of private bills, except such motion of reconsideration pertains to a question within the rules setting aside Friday and Saturday for private bills.

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[1] First session Forty-fourth Congress, Journal, p. 1347; Record, p. 4941.

[2] Milton Sayler, of Ohio, Speaker pro tempore.

[3] First session Forty-fourth Congress, Journal, p. 1077; Record, p. 3728.

[4] Samuel S. Cox, of New York, Speaker pro tempore.

[5] Second session Fifty-second Congress, Journal., pp. 41–43; Record, p. 549.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] As to modifications of this principle caused by the rules giving certain times to certain classes of business, see sections 5673–5681.

[8] First session Twenty-sixth Congress, Journal, pp. 528, 531; Globe, p. 246.

The Speaker[1] decided that the House, by general consent having received and referred the papers, the motion to reconsider that reference was in order, and superseded the orders of the day, until it should be disposed of.[2]

Mr. Petrikin having appealed, two questions of order were raised and entertained as to the right of moving to lay this appeal on the table, and after these questions had been decided on appeal, the original appeal was put, and the decision of the Chair was, on the succeeding day, affirmed by the House, yeas 88, nays 86.

5684. A motion to reconsider, when once entered, may remain pending indefinitely, even until a succeeding session of the same Congress.—On January 27, 1875,[3] a proposition was made to call up for consideration a motion made on January 7, 1874, at the preceding session of the same Congress, to reconsider the vote whereby the House had recommitted the bill (H. R. 796) "to protect all persons in their civil and political rights."

The Speaker[4] held that it was in order to call the motion up for consideration.

5685. The motion to reconsider the vote on a proposition having been once agreed to, and the said vote having again been taken, a second motion to reconsider may not be made[5] unless the nature of the proposition has been changed by amendments.—On June 25, 1842,[6] the House reconsidered the vote whereby it had passed a bill for the relief of Hugh Stewart.

Then the question recurring on the passage of the bill, it was passed under operation of the previous question.

A motion was thereupon made by Mr. John C. Clark, of New York, that the House do reconsider the vote on the question, "Shall the bill pass?"

The Speaker[7] decided that it was not in order to move a second time that the House do reconsider the vote on the question that the bill do pass, that motion having been already made upon the bill, and decided.

5686. On March 20, 1844,[8] the House proceeded to reconsider the vote upon the passage of the bill from the Senate (No. 37) entitled "An act to repeal the act entitled 'An act to amend the act of March 10, 1838, entitled, "An act to change the time of holding the circuit and district courts in the district of Ohio." ' "

The votes on the passage and third reading were reconsidered, the bill was amended, and then again read a third time and passed.

After intervening business, a motion was made by Mr. Samuel Simons, of Connecticut, to again reconsider the vote upon the passage of the bill.

The Speaker[9] decided that the motion to reconsider was not in order, the motion having been once made and acted upon.

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[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] A rule now provides that the vote referring a bill to a committee may not be reconsidered. (See sec. 5647 of this chapter.)

[3] Second session Forty-third Congress, Record, p. 785.

[4] James G. Blaine, of Maine, Speaker.

[5] See also section 6037 of this volume.

[6] Second session Twenty-seventh Congress, Journal, p. 1022; Globe, p. 688.

[7] John White, of Kentucky, Speaker.

[8] First session Twenty-eighth Congress, Journal, p. 618; Globe, p. 414.

[9] John W. Jones, of Virginia, Speaker.

From this decision Mr. Alexander Duncan, of Ohio, appealed, and the Chair was sustained by a vote of 74 to 73, the Speaker breaking the tie by voting in the affirmative.[1]

5687. (*Speaker overruled.*) On September 6, 1850,[2] the House was considering, under a special order, the bill of the Senate (No. 307) entitled "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States."

On September 4 the House had refused to order the bill to a third reading, but had reconsidered this vote, and on September 5 had adopted an amendment in the nature of a substitute, proposed by Mr. Linn Boyd, of Kentucky, and providing for the organization of a territorial government of New Mexico for the exclusion of the Wilmot proviso, and for allowing the people to decide the question of sanctioning or prohibiting slavery.

The question being on the third reading of the bill as thus amended, the House decided the question in the negative.

Mr. Volney E. Howard, of Texas, moved that this vote be reconsidered. This motion being ruled out of order, Mr. Howard appealed. The House then adjourned.

On September 6 the House resumed consideration of the bill. The Speaker[3] said:

Since the adjournment the Speaker has examined the precedents relating to the subject, so far as he could find them. This question has never been decided, so far as the Chair is informed, directly as it is presented in the present case. A motion to reconsider the vote on a bill after it has been once reconsidered has been held for several years past, as the Chair knows, to be out of order. The only difference between these cases and the bill now before the House is found in the fact that since the bill was first rejected it has been amended. The question then is, whether this is or is not the same bill upon which the vote has once been reconsidered.

The Chair decided yesterday that it was the same bill, and, therefore, that the motion to reconsider was not in order. In the Twenty-second Congress[4] a decision was made to the effect that this rule would admit a motion to reconsider the same proposition, without reference to any amendment that might be made. A motion was made by Mr. Churchill C. Cambreleng, of New York, that the House do again reconsider the vote, on the motion made by Mr. Mark Alexander, of Virginia, to strike out the tenth section of the bill. This motion was objected to as not being in order, the forty-first rule of the House declaring that "when a motion has been once made, and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof on the same or succeeding day," etc. The Speaker decided that the motion was clearly in order. From this decision Mr. John Quincy Adams, of Massachusetts, took an appeal. The House sustained the decision of the Speaker, thus authorizing the reconsideration of the same proposition without reference to any amendment whatsoever.

In the Twenty-seventh Congress the question was made, whether a bill which had been passed, reconsidered, and passed again, could again be reconsidered. Mr. J. C. Clark, of New York, moved that the House reconsider the vote on the passage of the bill. The Speaker decided that it was not in order to move a second time that the House do reconsider the vote on the question that the bill do pass, that motion having been already made upon this bill and decided. From this decision there was no appeal, the House having acquiesced in it. And at the second session of the same Congress a decision was made to the same effect. There may be other decisions, but the Chair has not been able to find them.

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[1] This vote by the Speaker was not necessary, as the decision stands unless a positive vote be given against it. (See sec. 5239 of this volume; also see sec. 185 of Reed's Parliamentary Rules.)

[2] First session Thirty-first Congress, Journal, pp. 1402, 1404–1407; Globe, p. 1762.

[3] Howell Cobb, of Georgia, Speaker.

[4] On June 27, 1822. (First session Twenty-second Congress, Journal, p. 992 Debates, p. 3803.)

The decisions to which the Chair has referred are conflicting upon the point whether a motion to reconsider can be entertained where there is no amendment. The last precedents quoted—denying the right to reconsider—are in conformity with the practice of the House of late years, as before stated by the Chair.

The question whether the motion can be entertained where the bill has been amended subsequent to the first reconsideration has not been decided by the House, so far as the Chair is informed, but he holds that this difference in the case does not place it beyond the general rule, which precludes a second reconsideration. The Speaker therefore adheres to his decision of yesterday, and rules, inasmuch as there is no precedent to the contrary applicable to the case, that the motion to reconsider the vote by which the House had refused to order the bill to a third reading is not in order.

Mr. Volney E. Howard, of Texas, who took the appeal, maintained that the rule applied to things of substance, and not of name; that, therefore, the bill as rejected yesterday not being identical with the bill which was rejected on Wednesday, and which subsequently was reconsidered, was not involved within the rule which precluded the reconsideration a second time of the same proposition.

On a yea-and-nay vote the decision of the Chair was reversed by a vote of 124 to 82.

5688. On March 24, 1892,[1] the House, pursuant to the special order, resumed consideration of the bill (H. R. 4426) for the free coinage of silver, for the issue of coin notes, and for other purposes.

The motion of Mr. Julius C. Burrows, of Michigan, to lay the bill on the table being negatived, Mr. Tom L. Johnson, of Ohio, moved to reconsider the vote by which the House refused to lay the bill on the table.

This latter motion to reconsider was agreed to, and the question recurred on the motion of Mr. Burrows to lay the bill on the table.

On this motion being put, the House refused to lay the bill on the table.

Mr. Johnson, of Ohio, moved to reconsider the vote by which the House refused to lay the bill on the table.

Mr. James B. Reilly, of Pennsylvania, made the point of order that the motion was not in order.

The Speaker[2] sustained the point of order on the ground that the House had already reconsidered a vote refusing to lay the bill on the table, and having again refused to lay the bill on the table it was not in order to repeat the motion to reconsider, thus indefinitely piling up motions to reconsider.

5689. The vote whereby the yeas and nays are ordered may be reconsidered by a majority; but if the House votes to reconsider, the yeas and nays may again be ordered by one-fifth.

When the yeas and nays are not recorded on the Journal, any Member may make the motion to reconsider, without regard to his vote.[3]

It was once held that the yeas and nays might be demanded on a motion to reconsider the vote whereby the yeas and nays were ordered.

On December 1, 1877,[4] the House was considering the motion of Mr. Roger Mills, of Texas, to suspend the rules and adopt the following resolution:

Resolved, That the Committee on Ways and Means be instructed to so revise the tariff as to make it purely and solely a tariff for revenue and not for protecting one class of citizens by plundering another.

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[1] First session Fifty-second Congress, Journal, pp. 113–115; Record, p. 2550.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See also sections 5611–5613 of this chapter.

[4] First session Forty-fifth Congress, Record, pp. 811, 812; Journal, p. 290.

On the demand for the ayes and noes there were 25 in the affirmative and 56 in the negative, and the yeas and nays were ordered.

Mr. Hiester Clymer, of Pennsylvania, moved to reconsider the vote ordering the yeas and nays.

Mr. John H. Reagan, of Texas, made the point of order that, as Mr. Clymer had voted in the negative, he had no right to make the motion to reconsider.

The Speaker[1] said:

Where there is no record of a vote, it is usual to recognize any gentleman as entitled to make the motion to reconsider.

Points of order having been made by Messrs. John R. Eden, of Illinois, and J. C. S. Blackburn, of Kentucky, as to the right to reconsider the order of the yeas and nays, the Speaker said:

The Chair thinks a majority will have to reconsider. The remedy is a plain one, for if the reconsideration is carried, the gentlemen from Texas or any other Member can again demand the yeas and nays, and one-fifth of those present is sufficient to order the yeas and nays. It would not be in order to again reconsider, as in that event motions to reconsider could be made interminably. * * * The right of one-fifth of those present to call for the yeas and nays is a constitutional right. The motion to reconsider is under the rules, and, as has been read at the desk, the question would immediately recur upon the call for the yeas and nays again, and one-fifth would be sufficient to call for them. The motion to reconsider under the rules gives the House opportunity to change its mind in reference to ordering the yeas and nays if that be the wish of the House. That is the reason for the rule. If a motion to reconsider were carried, the question would again recur on ordering the yeas and nays, and, if one-fifth of those present voted in the affirmative, under the Constitution they would have the right to order the yeas and nays. The Chair would rule in such a case that a second motion to reconsider would not be in order.

On the motion to reconsider, the yeas and nays were demanded, and the point was made that such demand was not in order, it not being in order to have the yeas and nays on the motion to reconsider the vote by which the yeas and nays were ordered.

The Speaker overruled the point, and had the following from the Constitution read:

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and the nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

The Speaker then said:

It is for the House to determine the question. Under the rules the motion to reconsider is in order, and the reason for the rule is, if there should be a mistake it could be corrected, or if the House should change its mind it has the right to do so. The rules of the House can only produce a temporary delay. (This in response to a query from Mr. Morrison as to whether the rules could undo the Constitution temporarily.) The right to demand the yeas and nays is unimpaired, for if one-fifth of the Members present still desire the yeas and nays on the proposition, the yeas and nays will have to be taken. Reconsideration only affords opportunity to the House under the rules to take more deliberate action.

The yeas and nays were then ordered and the question taken on reconsideration.

5690. On April 20, 1826,[2] the House ordered that the motion to lay on the table the resolution declaring the expediency of sending ministers to the Congress at Panama be taken by yeas and nays.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Nineteenth Congress, Journal, p. 796: Debates, pp. 2458, 2490.

On April 21, Mr. Joseph Vance, of Ohio, moved to reconsider that order.

Mr. John Forsyth, of Georgia, objected to the power of the House to reconsider its decision in the case.

The Speaker[1] decided that it was competent for a majority to reconsider the order, but that the question would immediately recur, "Shall the motion to lay on on the table be taken by yeas and nays?" That it must be so taken, if desired by one-fifth of the Members present.

5691. On February 14, 1848,[2] Mr. Orlando Kellogg, of New York, offered the following resolution:

Resolved, That the Committee on Ways and Means be instructed to inquire into the expediency of increasing the duty on bar, bloom, pig, and manufactured iron imported from foreign countries into this; and that they report by bill or otherwise.

The resolution was read, when Mr. Kellogg moved the previous question.

Mr. Kingsley S. Bingham, of Michigan, moved that the resolution be laid on the table, and called for the yeas and nays, which were ordered by the House.

Mr. Kellogg moved that the order by the House of the yeas and nays be reconsidered.

Mr. James Pollock, of Pennsylvania, raised the question of order that it required four-fifths to reconsider an order for the yeas and nays.

The Speaker[3] decided that, according to the precedents, a majority might reconsider the order; but that the question would immediately recur on ordering the yeas and nays, when one-fifth would be sufficient for that purpose.

The motion to reconsider prevailed, but the ayes and noes were again ordered.

5692. The vote whereby the yeas and nays are refused may be reconsidered.—On April 26, 1900,[4] the Committee of the Whole House on the state of the Union had risen and reported the Post-Office appropriation bill, with amendments.

A separate vote having been demanded upon the amendment relating to the hours of labor of letter carriers, Mr. Amos J. Cummings, of New York, asked for the yeas and nays, which were refused.

On a vote by division on the amendment there were ayes 74, noes 53.

Mr. Cummings then demanded tellers, which were refused.

Mr. John F. Fitzgerald, of Massachusetts, rising to a parliamentary inquiry, asked if it would be in order to move to reconsider the vote whereby the yeas and nays were refused.

The Speaker[5] said:

The Chair is decidedly of opinion that the motion to reconsider is in order, and therefore the Chair will put the question to the House. The question is on reconsidering the vote by which the yeas and nays were refused.

5693. A quorum is not necessary on a motion to reconsider the vote whereby the yeas and nays were ordered.—On August 14, 1888,[6] the yeas and

[1] John W. Taylor, of New York, Speaker.

[2] First session Thirtieth Congress, Journal, p. 405; Globe, p. 344.

[3] Robert C. Winthrop, of Massachusetts, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 4730.

[5] David B. Henderson, of Iowa, Speaker.

[6] First session Fiftieth Congress, Record, p. 7546; Journal, p. 2595.

nays were ordered on the motion that the Committee of the Whole House on the state of the Union be directed to pass over the fortificatons appropriation bill.[1]

Mr. Knute Nelson, of Minnesota, moved to reconsider the vote whereby the yeas and nays were ordered.

There appeared on division, ayes 5, noes 47.

Mr. Richard W. Townshend, of Illinois, made the point of no quorum.

The Speaker[2] said:

Upon a motion to reconsider the vote by which the yeas and nays were ordered a quorum is not necessary. No quorum is required to order the yeas and nays. The Constitution provides simply that the yeas and nays shall be taken upon the demand of one-fifth of those present. On this question the noes have it; and the House refuses to reconsider the vote by which the yeas and nays were ordered.

5694. A motion to reconsider is not debatable if the motion proposed to be reconsidered was not debatable.—On February 8, 1842,[3] a motion was made by Mr. Caleb Cushing, of Massachusetts, that the House do reconsider the vote of the previous day, refusing to receive the petition of forty-six inhabitants of Haverhill, in the State of Massachusetts, praying the adoption, immediately, of measures peaceably to dissolve the union of these States.

Mr. Cushing being about to debate the subject-matter of the petition, on his motion to reconsider the vote refusing to receive it, the Speaker[4] decided that, as the House had refused to receive the petition, it was not in order to debate the prayer or subject-matter thereof at this time; that the motion of reconsideration, being a privileged motion, took precedence of any business now before the House, and the question thereon would be put at this time, if pressed, but without debate. If, however, it was intended to debate the subject, it must lie over and be taken up in the class of petitions (to which class it appertained) under the fifty-fifth rule.[5]

From the decision of the Chair Mr. Cushing appealed, and on the appeal the Chair was sustained.

As Mr. Cushing persisted in his intention to debate the subject, the Speaker decided that the motion to reconsider must go over, and be taken up in the order established for debating petitions by the fifty-fifth rule.

5695. On January 29, 1838,[6] the House was considering a motion to reconsider the vote whereby the memorial of the delegation from the Cherokee Nation had been laid on the table.

The question having been stated by the Speaker, Mr. Horace Everett, of Vermont, rising to a parliamentary inquiry, asked whether the motion to reconsider was subject to debate.

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[1] The rule no longer provides for this proceeding.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Twenty-seventh Congress, Journal, p. 331; Globe, p. 218.

[4] John White, of Kentucky, Speaker.

[5] The fifty-fifth rule provided that petitions, memorials, etc., should "be presented by the Speaker, or by a Member in his place," with a brief verbal statement of the contents by the introducer; that they should not be debated on the day of their being presented, etc., but should lie on the table, to be taken up in the order in which they were presented. This rule is obsolete, all petitions now being presented through the petition box, the Member indorsing on the petition the name of the committee having jurisdiction of the subject.

[6] Second session Twenty-fifth Congress, Journal, p. 324; Globe, p. 145.

The Speaker[1] decided that, inasmuch as by the rules of the House "the motion to lie on the table shall be decided without debate," the motion to reconsider a vote of the House on a motion to "lie on the table" must be decided without debate.

From this decision Mr. Everett took an appeal, but subsequently withdrew the same.

5696. On Monday, June 1, 1840,[2] a day set apart under the then existing rules for the presentation of resolutions by Members, a resolution was presented by Mr. F. O. J. Smith, of Maine, relating to the mode of proceeding to business in Committee of the Whole, and was agreed to by the House.

On the same day, and while the presentation of resolutions was still in order, Mr. George H. Proffit, of Indiana, moved to reconsider the vote whereby the resolution had been agreed to, and on that motion proceeded to debate.

Mr. John Bell, of Tennessee, raised the question of order that the question of reconsideration could not now be debated, but must lie over under the rule which directed that all resolutions introduced on the day set apart for resolutions which should give rise to debate should lie over for discussion under the rules.

The Speaker[3] decided that it was now in order to debate the motion to reconsider, under the rule which provided that a motion to reconsider should take precedence of all other questions except the motion to adjourn.

5697. On December 21, 1848,[4] Mr. Daniel Gott, of New York, offered this resolution:

> Whereas the traffic now prosecuted in the metropolis of the Republic in human beings as chattels is contrary to natural justice and to the fundamental principles of our political system, and is notoriously a reproach to our country throughout Christendom and a serious hindrance to the progress of republican liberty among the nations of the earth: Therefore,
>
> *Resolved,* That the Committee for the District of Columbia be instructed to report a bill as soon as practicable prohibiting the slave trade in said District.

This resolution was agreed to by a vote of 98 yeas to 87 nays.

Then Mr. Charles E. Stuart, of Michigan, moved that the vote by which the resolution was passed be reconsidered.

Mr. Stuart proceeded to debate the question, when Mr. Jacob Collamer, of Vermont, raised the question of order that, inasmuch as resolutions giving rise to debate must, under the rule, lie over one day before being debated, the question of reconsideration must lie over also.

The Speaker[5] sustained the point of order, and decided that a debate on the motion to reconsider could not be allowed to interrupt the call of States for resolutions prescribed by the rules, but must be postponed until tomorrow, in the same manner as an original debate on the resolution would have been. The Speaker said that he believed it had been uniformly decided that motions to reconsider always followed in some degree the character of the business to which they belonged. For example: By the rules of the House Fridays and Saturdays were set apart for the consideration of private bills. If a motion to reconsider a private bill were made on

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Twenty-sixth Congress, Journal, p. 1072; Globe, p. 433.

[3] Robert M. T. Hunter, of Virginia, Speaker.

[4] Second session Thirtieth Congress, Globe, p. 84; Journal, p. 135.

[5] Robert C. Winthrop, of Massachusetts, Speaker.

a public bill day, the Chair had decided that it would go over until private bill day. Precisely in the same way with public business; if a motion had been made to reconsider a public bill on private bill day, the Chair had decided that the rule which gave preference to private business overruled the motion to reconsider, and that the House must proceed with private business.

There was an express rule of the House which provided that the Chair should call for petitions, reports, and then resolutions, by States, and that no resolution should be debated on the day on which it was offered.[1] If, therefore, a motion to reconsider a vote by which the House had passed a resolution should be decided to be debatable on the day on which it was offered, the effect would obviously be to interrupt every call of the States for resolutions, and to evade the rule which declared that they should not be debated. In this view of the matter, the Chair decided that the motion to reconsider was not debatable to-day; but that it must lie over, subject to debate, until to-morrow, as the original resolutions would have done if the previous question had not been called for.

Mr. Charles J. Ingersoll having appealed, the decision of the Chair was sustained.

5698. On December 23, 1851,[2] Mr. Amos Tuck, of New Hampshire, moved to reconsider the vote adopting the resolution limiting debate in Committee of the Whole House on the state of the Union on the bill relating to the assignment of bounty-land warrants.

Mr. George W. Jones, of Tennessee, made the point of order that the motion to reconsider might not be debated, because the original proposition was not debatable.[3] It was like the case of a motion to reconsider a motion to lay on the table. The motion to lay on the table not being debatable, the motion to reconsider was not.

The Speaker[4] sustained the point of order.

5699. On March 5, 1878,[5] a motion was made to consider the bill providing for a permanent form of government for the District of Columbia, and there were ayes 104, noes 90, on a vote by tellers.

Mr. Omar D. Conger, of Michigan, moved to reconsider[6] this vote, and was proceeding to debate his motion, when Mr. Ezekiel S. Sampson, of Iowa, raised the question of order that, as the original motion was not debatable, the motion to reconsider was not.

The Speaker[7] said:

A question of priority of business is not debatable; and if the original proposition is not debatable, certainly the motion to reconsider is not. The point made by the gentleman from Iowa is well taken; and the gentleman from Michigan is not entitled to debate his motion.

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[1] This rule no longer exists. Bills and resolutions are referred under a rule now.

[2] First session Thirty-second Congress, Globe, p. 146.

[3] The original proposition was in the form of a motion relating to the order of business, and was not debatable.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Second session Forty-fifth Congress, Record, pp. 1486, 1487; Journal, p. 592.

[6] Under the later rulings the vote on the question of consideration may not be reconsidered. See section 5626 of this chapter.

[7] Samuel J. Randall, of Pennsylvania, Speaker.

5700. As to whether or not it is the order to debate the motion to reconsider a vote taken under the operation of the previous question.[1]— On December 21, 1853,[2] the House, under the operation of the previous question, agreed to a resolution instructing the Committee on Commerce in regard to the subject of rivers and harbors.

Mr. Cyrus L. Dunham, of Indiana, moved to reconsider the vote by which the resolution was agreed to, and was proceeding to debate the same.

Mr. Thomas L. Clingman, of North Carolina, rose to a question of order, as to the right of a Member to debate the motion to reconsider, the vote upon the resolution having been taken under the operation of the previous question.

The Speaker[3] decided that the previous question had exhausted itself by the vote upon the resolution, and that consequently the motion to reconsider was debatable.[4]

5701. On February 15, 1901,[5] a motion to reconsider the vote whereby the House had passed the bill (S. 2245) "directing the issue of a duplicate lost check drawn by William H. Comegys," etc., was called up.

Mr. William H. Moody, of Massachusetts, was proceeding to debate the motion to reconsider, when the Speaker[6] said:

> The Chair will state that upon an examination of the Record he finds that the previous question was ordered upon this bill, so that it is not debatable. There is nothing in the entry on the docket to show it, but an examination of the Record shows that to be the situation. The question, therefore, is on the motion to reconsider.

5702. Pending a motion to reconsider the vote on agreeing to a resolution, the resolution was amended by unanimous consent, after which the motion to reconsider was tabled.—On August 2, 1848,[7] the House considered and passed the resolution of the Senate (No. 39) authorizing the proper accounting officers of the Treasury to make a just and fair settlement of the claims of the Cherokee Nation of Indians, etc.

The resolution being passed, Mr. Jacob Thompson, of Mississippi, moved that the vote on the passage of the resolution be reconsidered.

After debate, the said resolution, on motion of Mr. Thomas L. Clingman, of North Carolina, was amended by the unanimous consent of the House, by striking out the word "settlement," in the fourth line of the engrossed resolution, and inserting "statement" in lieu thereof.

The question then recurring on the motion to reconsider, the motion was laid on the table.

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[1] See, however, section 5494 of this volume.

[2] First session Thirty-third Congress, Journal, p. 127; Globe, pp. 76–78.

[3] Linn Boyd, of Kentucky, Speaker.

[4] The Speaker, after debate had proceeded some time, stated that after more reflection upon the question of debating the present motion, he was of the opinion that, under the rule which prohibits debate upon resolutions "on the very day of their being presented," he should not have permitted the debate to progress. Hereafter, in similar cases, he should so hold; but otherwise (as in his decision when the question of order was raised) in the case of motions to reconsider generally.

[5] Second session Fifty-sixth Congress, Record, p. 2480.

[6] David B. Henderson, of Iowa, Speaker.

[7] First session Thirtieth Congress, Journal, p. 1149.

§ 5703. When a motion to reconsider is decided in the affirmative the question immediately recurs on the question reconsidered.—On April 26, 1850,[1] Mr. Frederick P. Stanton, of Tennessee, moved to reconsider the vote by which the House, on the preceding day, refused to lay upon the table the joint resolution of the House (No. 16) authorizing the President of the United States to accept and attach to the Navy two vessels offered by Henry Grinnell, esq., of New York, to be sent to the Arctic seas in search of Sir John Franklin and his companions.

After intervening motions had been put and decided, the motion to reconsider was decided in the affirmative, 86 yeas to 62 nays.

So the vote by which the House refused to lay the joint resolution (No. 16) upon the table was reconsidered.

The Speaker then stated the question to be upon the motion to lay the joint resolution upon the table.

Mr. George W. Jones, of Tennessee, raised the question of order that the House having on the preceding day refused to lay the joint resolution upon the table, and subsequently, on that day, the question being upon its engrossment, and his colleague, Mr. Savage, being entitled to the floor, the House having gone into the Committee of the Whole House on the state of the Union, the joint resolution thereby passed from before the House and took its place upon the Speaker's table, to be taken up in its order when the House should proceed to the business on the Speaker's table, and consequently that the vote just taken to reconsider the vote by which the House refused to lay it upon the table did not bring it from its place on the Speaker's table before the House.[2]

The Speaker[3] stated that, so far as he had had an opportunity of examining the precedents, it appeared that in every instance where a motion to reconsider had been passed in the affirmative the question immediately recurred upon the question reconsidered. He therefore decided that the affirmative vote just taken on the motion to reconsider the vote by which the House refused to lay the joint resolution upon the table brought the resolution before the House, and that the question now recurred upon the original motion to lay it upon the table.

Mr. Jones having appealed, the decision of the Chair was sustained.

5704. When the vote whereby an amendment has been agreed to is reconsidered the amendment becomes simply a pending amendment.

A bill is not considered, in the practice of the House, passed or an amendment agreed to if a motion to reconsider is pending, the effect of the motion to reconsider being to suspend the original proposition.

As to the result when the Congress expires leaving unacted on a motion to reconsider the vote whereby a resolution of the House is passed. (Footnote.)

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[1] First session Thirty-first Congress, Journal, p. 847; Globe, p. 832.

[2] The Speaker's table should not be confounded with "the table" of the motion to lay on the table. The Speaker's table receives bills from the Senate, messages, etc., and from it they are distributed to the proper committees or are brought before the House. At different times the business going to the Speaker's table has increased or decreased, according to the changes in the rules relating to the order of business. At one time it was so considerable as to have a calendar of its own.

[3] Howell Cobb, of Georgia, Speaker.

If a bill, before the disposal of a motion to reconsider the vote on its passage, should be enrolled, signed, and approved by the President, its validity as a law probably could not be questioned. (Footnote.)

On February 19, 1898,[1] the House was considering the bankruptcy bill (S. 1035) under a special order which provided that during that day the bill should be considered in the House under the five-minute rule, and that at 4 p. m. a vote should be taken.

The House Committee on the Judiciary had reported the Senate bill with all after the enacting clause stricken out and a substitute inserted. On February 18 Mr. Oscar W. Underwood, of Alabama, presented an amendment to the substitute, and by unanimous consent obtained an order that the first thing at 4 o'clock on the next day there should be a vote on his amendment to the substitute.

As the hour of 4 o'clock approached, amendments being offered under the five-minute rule, Mr. Rowland B. Mahany, of New York, offered this amendment:

This act shall expire by limitation at the expiration of two years from and after the date of its becoming a law, except as to such cases as may be then pending, which shall proceed in the same manner as if this act were still in force.

On a vote by tellers the amendment was agreed to, ayes 132, noes 129.

Mr. David B. Henderson, of Iowa, moved to reconsider the vote whereby the amendment was agreed to, and Mr. Mahany moved to lay Mr. Henderson's motion on the table.

On a yea-and-nay vote the motion to lay on the table the motion to reconsider was negatived, yeas 145, nays 156.

The question then recurring on the motion to reconsider, it was agreed to.

Thereupon Mr. John Dalzell, of Pennsylvania, suggested the point of order that the hour of 4 o'clock had arrived, and the vote on the passage of the bill was in order.

The Speaker[2] said:

The Chair has examined that matter somewhat, and finds that the understanding, as presented by the Chair to the House, was that at 4 o'clock a vote should be taken upon the amendment of the gentleman from Alabama. The Chair thinks, in accordance with the custom of the House in similar cases, that would cut off any pending amendment, and therefore, the point of order being made, it seems to the Chair that proposition should come up. * * * Prior to the hour of 4 o'clock the motion of the gentleman from New York [Mr. Mahany] was submitted to the House, was voted upon by the House, and was carried; but there was then a motion to reconsider, and under our parliamentary system neither a bill nor an amendment is passed or adopted until the motion to reconsider is disposed of. The Speaker is not allowed to sign a bill during the pendency of a motion to reconsider. Consequently it still remains an inchoate affair. So that if the motion to reconsider had not been disposed of at all the amendment would probably still not be adopted.

But it is not necessary to decide that to dispose of this matter, because there was a motion to reconsider and a motion that that motion to reconsider be laid upon the table, which latter motion was defeated. Thereupon the Speaker put to the House the question of reconsideration, and it was carried, and the amendment became simply a pending amendment. The Chair was proceeding to put it to the House when the gentleman from Pennsylvania made the point of order, and on that point of order the Chair decided that the amendment, being a pending amendment, must be like those amendments which fail to be offered even, in accordance with the custom of the House in similar cases, where the

[1] Second session Fifty-fifth Congress, Record, pp. 1777, 1918, 1942–1945.

[2] Thomas B. Reed, of Maine, Speaker.

House has made a direct provision for a vote at a definite time. That vote was not taken at 4 o'clock simply because a roll call was pending.

Now, when a roll call is pending, according to the custom of the House, it projects itself even beyond the time of a recess, so that on Friday afternoon, when a roll call is pending at 5 o'clock, it goes on and is finished, notwithstanding the fact that the rules of the House require a recess of the House at 5 o'clock. It seems to me that covers the whole matter.[1]

5705. The Speaker declines to sign an enrolled bill until a pending motion to reconsider has been disposed of.—On May 27, 1840,[2] Mr. Julius C. Alford, of Georgia, moved that the House reconsider the vote whereby it had, on the preceding day, passed the bill (S. 12) supplemental to the act entitled "An act to grant preemption rights of settlers on the public lands," approved June 22 1838.

The motion to reconsider was held to be in order, although the bill had been sent to the Senate, and the motion was under consideration when Mr. Edmund Burke, of New Hampshire, from the Committee on Enrolled Bills, reported the bill to be truly enrolled.

The Speaker[3] said that he should decline to sign the said bill until the motion to reconsider was settled.

After further debate, the motion to reconsider was decided in the negative, and thereupon the Speaker signed the said bill, and it was sent to the Senate for the signature of the President of that House.

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[1] The Digest and Manual for many years contained the following note, originally placed there on the authority of Mr. Barclay, for many years Journal clerk:

"Where a Congress expires without acting on the motion to reconsider, for the want of time or inclination, the motion of course fails and leaves the original proposition operative." (Opinion of Mr. Speaker Orr and of Mr. Speaker Banks in the case of resolutions directing the payment of money out of the contingent fund of the House, where Congress adjourned sine die pending motions to reconsider the vote by which they were adopted. These opinions were evidently given after the final adjournment of the House, and are not official.)

The courts have also commented upon the subject:

"The effect of the pendency of a motion to reconsider, according to the universal usage, is to suspend the original proposition. When, however, a bill has, pending the motion to reconsider and before that motion is acted on, been presented to the President and receives his approval, the validity of the act, it would seem, could not be questioned on account of the pendency of such motion, the signing of the enrolled bill by the Speaker and Vice-President being complete and unimpeachable evidence of its passage." (See Field *v.* Clark, 143 U.S. Sup. Ct. Repts., p. 650, Feb. 29, 1892.)

[2] First session Twenty-sixth Congress, Journal, pp. 1033–1036.

[3] Robert M. T. Hunter, of Virginia, Speaker.

Chapter CXXIV.

DILATORY MOTIONS.

1. **Rule and its history. Section 5706.**
2. **Limited application of principle prior to 1890. Sections 5707–5712.**[1]
3. **Principle established generally in 1890 by Mr. Speaker Reed. Sections 5713–5723.**
4. **In relation to point of no quorum. Sections 5724–5730.**
5. **In relation to various motions. Sections 5731–5734.**
6. **In relation to demand for tellers. Sections 5735, 5736,**
7. **Demand for yeas and nays not to be held dilatory. Section 5737.**
8. **Special rule as to reports from Committee on Rules. Sections 5738–5742.**
9. **In relation to motions to suspend the rules. Sections 5743–5752.**

5706. No dilatory motion shall be entertained by the Speaker.

Review of the conditions which resulted in the rule empowering the Speaker to decline to recognize for dilatory motions.

Discussion of the power of the Speaker in relation to the rights of the House.

Present form and history of section 10 of Rule XVI.

Section 10 of Rule XVI provides:

> No dilatory motion shall be entertained by the Speaker.

This rule originated in the revision of 1890. It was not included among the rules of the Fifty-second and Fifty-third Congresses, but was restored in the Fifty-fourth. In their report[2] the committee making the revision of 1890 said:

> This clause is merely declaratory of parliamentary law. There are no words which can be framed which will limit Members to the proper use of proper motions. Any motion the most conducive to progress in the public business or the most salutary for the comfort and convenience of Members may be used for purposes of unjust and oppressive delay. The majority may be kept in session for a long time against reason and good sense, sometimes at the whim of a single Member, and sometimes for a still longer period, at the will of one-fifth who are misusing the provision of the Constitution for yeas and nays, by the aid of simple motions proper in themselves, but which are improperly used.
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> In the early days such prostitution of legitimate motions caused by anger, willfulness, and party zeal was not so much as named among legislators, To-day the abuse has grown to such proportions that the parliamentary law which governs American assemblies has found it necessary to keep pace with the evil, and to enable the majority, by the intervention of the Presiding Officer, to meet by extraordinary means the extraordinary abuse of power on the part sometimes of a very few Members. Why

[1] Motions held dilatory during proceedings of the electoral count of 1877. (Sec. 1955 of Vol. III.) Instance of prolonged dilatory proceedings. (Sec. 6738 of this volume.)

[2] First session Fifty-first Congress, House Report No. 23.

should an assembly be kept from its work by motions made only to delay and to weary, even if the original design of the motion was salutary and sensible? Why should one-fifth even be entitled to waste a half hour of themselves and of four other fifths by a motion to adjourn, when the majority manifestly do not want to adjourn?

If the suggestion should be made that great power is here conferred, the answer is that as the approval of the House is the very breath in the nostrils of the Speaker, and as no body on earth is so jealous of its liberties and so impatient of control, we may be quite sure that no arbitrary interruption will take place, and, indeed, no interruption at all, until not only such misuses of proper motions is made clearly evident to the world, but also such action has taken place on the part of the House as will assure the Speaker of the support of the body whose wishes are his law. So that in the end it is a power exercised by the House through its properly constituted officer.[1]

Once before in the history of the House there had been a rule in relation to dilatory motions.[2] On February 1, 1875,[3] during prolonged dilatory proceedings intended to arrest the passage of the bill (H. R. 796) "to protect all persons in their civil and political rights," Mr. James A. Garfield, of Ohio, from the Committee on Rules, reported a rule which provided that "whenever a question is pending before the House the Speaker shall not entertain any motion of a dilatory character except one motion to adjourn and one motion to fix the day to which the House shall adjourn," with a further proviso to prevent the too precipitate ordering of the previous question. The rule was agreed to by the House, although the minority made strenuous objection, led by Mr. Samuel J. Randall, of Pennsylvania. And at the next Congress, on December 7, 1875,[4] when Mr. Randall offered the resolution to agree to the rules of the last House, this rule as to dilatory motions was specially excepted, and the House concurred. Thus obstruction was officially reinstated.

5707. The constitutional right of the House to "determine the rules of its proceeding" may not be impaired or destroyed by the indefinite repetition of dilatory motions.—On May 29, 1882,[5] Mr. Thomas B. Reed, of Maine, as a privileged question, called up a report from the Committee on Rules submitting a resolution relating to dilatory motions.

Motions to adjourn and to adjourn over were made, and finally, after much delay, Mr. Samuel J. Randall, of Pennsylvania, moved that when the House adjourn it be to meet on Thursday next.

Mr. Reed made the point of order that the proposition was not in order at this time, on the ground that pending a proposition to change the rules of the House, dilatory motions could not be entertained by the Chair.

After debate on the point of order, the Speaker[6] sustained the same on the ground that the constitutional right of the House to determine its rules could not be impaired or destroyed by the indefinite repetition of dilatory motions, and that in the absence of specific direction as to procedure with respect to the adoption or

[1] Previous to this rule the Speaker had ruled as to dilatory motions. This report was undoubtedly written by Mr. Speaker Reed, who had already acted on the principle involved. (See sec. 5713.)

[2] On January 25, 1875, a proposition was made for a rule to prevent dilatory motions for the remainder of the session, but it failed to receive the two-thirds vote needed to suspend the rules and give it a passage. (Second session Forty-third Congress, Journal, p. 248; Record, p. 700.)

[3] Second session Forty-third Congress, Journal, p. 360; Record, pp. 892–902.

[4] First session Forty-fourth Congress, Record, p. 174.

[5] First session Forty-seventh Congress, Journal, p. 1362; Record, pp. 4305–4325.

[6] J. Warren Keifer, of Ohio, Speaker.

changing of its rules, it must be held, in order to make effective that constitutional right, that dilatory motions, whether so intended or not, that accomplish that result were not in order.[1]

5708. On January 27, 1875,[2] during the prolonged dilatory proceedings over the civil rights bill, the Speaker[3] said:

The Chair has repeatedly ruled that pending a proposition to change the rules dilatory motions could not be entertained, and for this reason he has several times ruled that the right of each House to determine what shall be its rules is an organic right expressly given by the Constitution of the United States. The rules are the creature of that power, and of course they can not be used to destroy the power. The House is incapable, by any form of rules, of divesting itself of its inherent constitutional power to exercise its function to determine its own rules. Therefore the Chair has always announced that upon a proposition to change the rules of the House he would never entertain a dilatory motion.

5709. The Speakers, during the period when the rules made in order a motion to excuse a Member from voting, held the motion dilatory when applied to votes on adjourning or for a call of the House, since it might be used to prevent adjourning or the procuring of a quorum.

Instance of prolonged obstruction by the repetition of motions and the multiplication of roll calls.

While one appeal is pending another may not be taken.

The ordering of the previous question on a resolution does not carry the business to such new stage as to justify the repetition of a motion to lay on the table.

On May 11, 1854,[4] Mr. William A. Richardson, of Illinois, submitted the following resolution:

Resolved, That all debate in the Committee of the Whole House on the state of the Union on the bill of the House (No. 236) to organize the Territories of Nebraska and Kansas shall cease at 12 o'clock m. to-morrow (if the committee shall not sooner come to a conclusion upon the same); and the committee shall then proceed to vote on such amendments as may be pending or offered to the same, and shall then report it to the House, with such amendments as may have been agreed to by the committee.

On this resolution Mr. Richardson moved for the previous question.

Then followed prolonged dilatory operations, such as the alternation of the motions to lay on the table, for a call of the House, to excuse individual Members from voting,[5] to reconsider votes whereby individual Members were excused from voting, to adjourn, to fix the day to which the House should adjourn, and, after calls of the House had been ordered, to excuse individual absentees. After twenty successive roll calls on repetitions of these motions, the question again recurred on the demand for the previous question on the resolution.

Mr. John Z. Goodrich, of Massachusetts, moved a call of the House. Pending which, Mr. James Maurice, of New York, moved that he be excused from voting upon the same.

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[1] This was before the adoption of the rule relating to dilatory motions in such cases. The Record (p. 4324) gives Mr. Speaker Keifer's ruling at length.

[2] Second session Forty-third Congress, Record, p. 806.

[3] James G. Blaine, of Maine, Speaker.

[4] First session Thirty-third Congress, Journal, pp. 735, 757, 762, 765, 854; Globe, pp. 1166, 1191, 1192.

[5] Such a motion is no longer allowable.

Mr. Thomas L. Clingman, of North Carolina, made the point of order that, inasmuch as the motion for a call of the House takes precedence of all motions except to adjourn, it is not in order to move to be excused from voting upon such a motion.

The Speaker [1] sustained the point of order, and decided the motion of Mr. Maurice to be out of order.

From this decision of the Chair Mr. Lewis D. Campbell, of Ohio, appealed. Pending which, Mr. John Wheeler, of New York, moved that the appeal be laid on the table.

Pending which, Mr. Maurice moved to be excused from voting thereon.

The Speaker decided that the motion was not in order, on the ground that the same question was involved in the decision already pending on appeal.

From this latter decision Mr. Maurice proposed to take an appeal.

And the Speaker refused to entertain the same, on the ground that two appeals could not be pending at one time.

After three roll calls on motions to adjourn and to fix the day to which the House should adjourn, Mr. Wheeler's motion to lay the appeal on the table was carried, 104 yeas to 48 nays. So the appeal was laid on the table and the decision of the Chair was sustained.

The question recurring on Mr. Goodrich's motion for a call of the House, after two roll calls on motions to adjourn and to fix the day to which the House should adjourn, Mr. James Meacham, of Vermont, moved that he be excused from voting on the motion for a call of the House. The Speaker again ruled this motion not in order, and on an appeal was sustained, 99 yeas to 34 nays.

On May 15 the struggle was still continuing, 109 roll calls having been had since Mr. Richardson submitted his resolution. The previous question having been ordered on a modification of this original resolution, which made the date of closing debate on the bill the 20th instant, the question then recurred on agreeing to the resolution.

Pending which, Mr. Israel Washburn, jr., of Maine, moved that the resolution be laid on the table.

The Speaker decided the motion to be out of order, a similar motion having already been voted upon, and no action having since been had upon the resolution, except to order the previous question thereon.

From this decision of the Chair Mr. Israel Washburn, jr., appealed.

Pending which, Mr. Edwin B. Morgan, of New York, moved to be excused from voting thereon.

Mr. Thomas L. Clingman, of North Carolina, made the point of order that it was not in order to entertain a motion to excuse a Member from voting after the main question was ordered to be put.

The Speaker overruled the point of order, on the ground that the forty-second rule of the House conferred that privilege.[2]

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[1] Linn Boyd, of Kentucky, Speaker.

[2] At this time Rule 42 provided: "All motions to excuse a Member from voting shall be made before the House divides, or before the call of the yeas and nays is commenced; and the question shall then be taken without further debate." This rule was dropped in the revision of 1890.

A rule which allowed a brief verbal statement of reasons to be given by any Member for requesting to be excused from voting was rescinded January 2, 1845.

From this decision of the Chair Mr. Clingman appealed.

Pending which, Mr. Elihu B. Washburne, of Illinois, moved that the appeal be laid on the table.

And the question being put, it was decided in the negative, yeas 75, nays 111.

Thereupon, after several dilatory motions, the vote was taken on the question, "Shall the decision of the Chair stand as the judgment of the House?" and it was decided in the negative, 63 yeas to 94 nays. So the decision of the Chair was reversed.

5710. On May 20, 1858,[1] the House was considering the question arising over the credentials of James M. Cavanaugh and W. W. Phelps as Members-elect from the State of Minnesota.

Mr. Galusha A. Grow, of Pennsylvania, moved that the whole subject be laid on the table.

Pending this, Mr. Israel Washburn, jr., of Maine, moved that when the House adjourn it adjourn until Saturday next.

Pending which, Mr. Edwin B. Morgan, of New York, moved that he be excused from voting on the motion.

The Speaker[2] decided that it was not in order to move to be excused from voting on a motion to adjourn over, as otherwise the House might be prevented, against its will, from adjourning. The Speaker said:

> The Chair doubts whether it is competent to entertain the motion of the gentleman from New York [Mr. Edwin B Morgan] to be excused from voting on the proposition to adjourn over. The gentleman will perceive that if that motion were made by every gentleman on the floor, the House would put itself in a position that it never could adjourn, inasmuch as a motion to adjourn over takes precedence of a motion to adjourn.

5711. On February 20, 1866,[3] Mr. Thaddeus Stevens, of Pennsylvania, from the joint committee of fifteen, reported a concurrent resolution declaring that no Senator or Member should be admitted from any of the eleven insurrectionary States until Congress should have declared such State entitled to representation. Mr. Stevens asked for the previous question upon this resolution, whereupon dilatory proceedings arose, and a motion to adjourn having been negatived on a yea-and-nay vote Mr. William E. Finck, of Ohio, moved that when the House adjourn it be to meet on Friday next. On this motion the yeas and nays were ordered, when Mr. Philip Johnson, of Pennsylvania, asked to be excused from voting on the question, whereupon Mr. Sydenham E. Ancona, of Pennsylvania, called for the yeas and nays on excusing Mr. Johnson.

The Speaker[4] said:

> The Chair, in conformity with the decisions of the Speaker during the Thirty-seventh and Thirty-eighth Congresses, declines to entertain a motion to excuse a Member from voting on motions to adjourn or to adjourn over. The ground for that decision is very evident, for by calling the yeas and nays on such motions it might be in the power of one-fifth of the Members present to prevent a majority of the House from ever adjourning, or at least delay the adjournment for an unreasonable period.

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[1] First session Thirty-fifth Congress, Journal, p. 866; Globe, p. 2277.

[2] James L. Orr, of South Carolina, Speaker.

[3] First session Thirty-ninth Congress, Globe, pp. 944, 945.

[4] Schuyler Colfax, of Indiana, Speaker.

From this decision Mr. Charles A. Eldridge, of Wisconsin, appealed.

The Speaker said:

The Chair declines to entertain the appeal, on the same ground that he refuses to entertain the motion to be excused from voting. Gentlemen will find precedents for this decision of the Chair in the proceedings of the Thirty-seventh and Thirty-eighth Congresses. It should always be in the power of the majority of the House to adjourn whenever they shall see fit. But if gentlemen can ask to be excused from voting on a motion to adjourn, and demand the yeas and nays upon it, or take an appeal from the decision of the Chair refusing to entertain such motion, and demand the yeas and nays on the appeal, then one-fifth of the House could prevent the majority from adjourning, and this could, of course, be prolonged for hours.

Again, on the same day, on a motion for a call of the House, Mr. Philip Johnson, of Pennsylvania, asked to be excused from voting. The Chair again declined to entertain the motion, and on Mr. Eldridge appealing declined to entertain the appeal, saying as he did so: "The Speaker, of course, renders himself liable to the future censure of the House if his conduct should be disapproved."

5712. On April 4, 1888,[1] the House was considering the proposition to refund the direct tax of 1861. A motion for a recess being made and submitted to the House, Mr. C. R. Breckinridge, of Arkansas, moved, under Rule VIII, that Mr. Benton McMillin, of Tennessee, be excused from voting.

Mr. Lucien B. Caswell, of Wisconsin, made the point of order that it was not in order to move to excuse a Member from voting on a motion for a recess.

The Speaker[2] ruled as follows:

The Chair will cause the Clerk to read the first paragraph of Rule VIII.[3]

"Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless on motion made before division or the commencement of roll call, and decided without debate, he shall be excused, or unless he has a direct personal or pecuniary interest in the event of such question."

Now, it has been held that this does not apply in the case of a motion to adjourn or to adjourn over or for a call of the House; and the reason seems to be that if the motion to excuse Members from voting were entertained in such a case it might be in the power of a Member to prevent the House from adjourning at all, or from compelling the attendance of Members, and thus the House might be kept in session indefinitely or be destroyed as a legislative body. Those reasons do not apply on the question of taking a recess.

5713. Finding the ordinary and proper parliamentary motions used solely for delay and obstruction, Mr. Speaker Reed ruled them out as dilatory and was sustained on appeal.

The object of a parliamentary body is action, not stoppage of action; and the methods of procedure may not be used to stop legislation.

As to the duty of the Speaker to carry out the will of the House.

On January 31, 1890,[4] the House was considering the West Virginia contested election case of Smith *v.* Jackson, and the Speaker had counted a quorum on the question of the approval of the Journal. The Speaker thereupon announced that the yeas were 161 and the nays none, and declared the Journal approved.[5]

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[1] First session Fiftieth Congress, Record, pp. 2709, 2710.

[2] John G. Carlisle of Kentucky, Speaker.

[3] This rule has since been changed. See section 5941 of this volume.

[4] First session Fifty-first Congress, Journal, p. 181; Record, p. 999.

[5] These proceedings took place under general parliamentary law, the House not having adopted rules.

The Speaker recognized Mr. John Dalzell, of Pennsylvania, who arose to address the House, when Mr. William D. Bynum, of Indiana, claimed the floor on a question of personal privilege, and being recognized by the Speaker, addressed the House on that question.

At the conclusion of Mr. Bynum's remarks Mr. William M. Springer, of Illinois, moved that the House adjourn.

The Speaker ruled the motion not in order.

From this ruling Mr. Springer appealed.

The Speaker[1] thereupon made the following statement to the House as the grounds of his ruling:

The House will not allow itself to be deceived by epithets. The facts which have transpired during the last few days have transpired in the presence of this House and of a very large auditory. No man can describe the action and judgment of this Chair in language which will endure unless that description be true.

A man much more famous than any in this Hall said many years ago that nobody could write him down but himself. Nobody can talk any Member of this House down except himself.

Whatever is done has been done in the face of the world, and is subject to its discriminating judgment. The proceedings of this House, so far as the Chair is concerned, have been orderly, suitable in conformity to the rules of parliamentary law, and the refusal of the Chair to entertain the motion to adjourn at this juncture is strictly in accordance therewith.

There is no possible way by which the orderly methods of parliamentary procedure can be used to stop legislation. The object of a parliamentary body is action, and not stoppage of action. Hence, if any Member or set of Members undertakes to oppose the orderly progress of business, even by the use of the ordinarily recognized parliamentary motions, it is the right of the majority to refuse to have those motions entertained, and to cause the public business to proceed.

Primarily the organ of the House is the man elected to the Speakership. It is his duty in a clear case, recognizing the situation, to endeavor to carry out the wishes and desires of the majority of the body which he represents. Whenever it becomes apparent that the ordinary and proper parliamentary motions are being used solely for purposes of delay and obstruction; when Members break over in an unprecedented way the rule in regard to the reading of the Journal; when a gentleman steps down to the front, amid the applause of his associates on the floor, and announces that it is his intention to make opposition in every direction, it then becomes apparent to the House and to the community what the purpose is. It is then the duty of the occupant of the Speaker's chair to take, under parliamentary law, the proper course with regard to such matters; and in order that there might not be any misunderstanding as to whether or not it is the wish or desire of the majority of the House—apparent as it seems to be—the question of the appeal from the refusal of the Chair to entertain the motion will be put to the House for its judgment and determination.[2]

The question being on the appeal, Mr. William McKinley, jr., of Ohio, moved to lay it on the table, and the question being put, there appeared, yeas 163, nays 0: so the appeal was laid on the table, the presence of a quorum being ascertained.

5714. A motion must be manifestly for delay in order to justify its rejection as dilatory.—On January 16, 1903,[3] the Committee of the Whole House was considering a resolution referring a list of claims to the Court of Claims, the resolution being open to amendment under the five-minute rule.

Mr. Thaddeus M. Mahon, of Pennsylvania, moved that debate on the pending section and amendment be limited to one minute.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] It was after this ruling that the rule was made.

[3] Second session Fifty-seventh Congress, Record, pp. 895, 896.

Mr. Sereno E. Payne, of New York, moved to amend by striking out "one minute" and inserting "three hours."

This amendment being disagreed to, Mr. Payne then proposed "two hours," which being also disagreed to, he proposed "one hour."

Mr. James D. Richardson, of Tennessee, made the point of order that the motion was dilatory.

The Chairman,[1] after permitting debate on the point of order, said:

The gentleman from Tennessee makes a point of order that the motion of the gentleman from New York to limit debate to one hour is dilatory. The Chair, taking into consideration the character of this bill, which includes eighty-five bills, each one having a separate report, thinks that one hour would not be too much time in which to debate these several questions, and therefore thinks that the motion of the gentleman from New York is not dilatory and is in order. The question is upon the motion of the gentleman from New York to amend the motion of the gentleman from Pennsylvania.

5715. When motions or appeals have been made with an evident purpose of obstruction, the Speaker, acting under the rule, has held them dilatory, either on a point of order being made or without it.—On August 27, 1890,[2] Mr. Marriott Brosius, of Pennsylvania, presented a resolution directing the Sergeant-at-Arms to procure the attendance of absent Members.

Pending this, Mr. R. H. Clarke, of Alabama, moved that the House adjourn.

Mr. Brosius made the point of order that the motion was a dilatory one, and therefore not in order.

The Speaker[3] sustained the point of order.

From the decision Mr. Clarke appealed.

The Speaker declined to entertain the appeal.

The question recurring on agreeing to the resolution submitted by Mr. Brosius, Mr. Charles H. Turner, of New York, moved to lay the resolution on the table.

Mr. Brosius made the point of order that the motion was a dilatory one, and therefore not in order.

The Speaker sustained the point of order.

From the decision Mr. Turner appealed.

The Speaker declined to entertain the appeal.

Then Mr. Turner demanded a division of the question.

The Speaker ruled that the question was not divisible.

Mr. Turner appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.[4]

5716. On March 29, 1894,[5] the House was in the midst of proceedings to secure the attendance of absent Members.

Mr. Josiah Patterson, of Tennessee, had presented a resolution to provide for the arrest of Members absent without leave and to provide that the order of arrest should be a continuing one until further order of the House.

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[1] James A. Hemenway, of Indiana, Chairman.

[2] First session Fifty-first Congress, Journal, p. 997; Record, p. 2939. This and the following decisions were made after the adoption of the rule empowering the Speaker to decline to entertain dilatory motions.

[3] Thomas B. Reed, of Maine, Speaker.

[4] For other rulings as to dilatory motions, see first session Fifty-first Congress, Journal, pp. 627, 810, 812, 931, 942, 958, 1029, and second session Fifty-first Congress, pp. 22, 111, 144, 166.

[5] Second session Fifty-third Congress, Journal, pp. 284, 286, 287; Record, pp. 3333–3340.

Mr. Thomas B. Reed, of Maine, demanded that the proposed order be divided and that the vote be taken separately on each of the three propositions which, he insisted, were embraced therein.

Mr. William M. Springer, of Illinois, made the point that a proposition designed to secure absent Members was not subject to the demand that it be divided.

The Speaker pro tempore[1] sustained the point of order and held that the pending proposition could not be divided.

Mr. Sereno E. Payne, of New York, appealed from the decision of the Chair.

Mr. Springer moved to lay the appeal on the table.

Mr. Payne moved that the House adjourn; and the question being put, Will the House adjourn? it was decided in the negative.

The appeal was then laid on the table.

Mr. John F. Lacey, of Iowa, moved to reconsider the vote by which the appeal was laid on the table.

Mr. Alexander M. Dockery, of Missouri, made the point that the motion was not in order.

Mr. Payne moved that the House adjourn; and the question being put, Will the House adjourn? it was decided in the negative.

So the House refused to adjourn.

The Speaker[2] then sustained the point of order submitted by Mr. Dockery respecting the motion of Mr. Lacey, and held that the motion to reconsider the vote by which the appeal from the decision of the Chair was laid on the table could not be considered during a call of the House.

Mr. Lacey stated that he appealed from the decision just made.

The Speaker declined to entertain the appeal.

5717. On the same day, March 29, 1894,[3] the House was still considering the order offered by Mr. Josiah Patterson, of Tennessee, directing the Sergeant-at-Arms to take into custody absent Members.

Mr. Sereno E. Payne, of New York, moved that the House adjourn.

The Speaker[2] declined to entertain the motion, holding that there had been no transaction of business since the previous motion to adjourn was disagreed to.

Mr. Payne appealed from the decision of the Chair in declining to recognize him for the motion to adjourn.

The Speaker[2] declined to entertain the appeal.

5718. On March 30, 1894,[4] the Speaker having held that a motion made by Mr. Charles A. Boutelle, of Maine, to proceed to consider the bill (H. R. 4956) "directing the coinage of silver bullion held in the Treasury, etc.," returned with the President's objections, was not in order, Mr. Boutelle stated that he appealed from the decision of the Chair.

The Speaker[2] declined to entertain the appeal.

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[1] William J. Stone, of Kentucky, Speaker pro tempore.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-third Congress, Journal, pp. 284, 286, 287; Record, pp. 3339, 3340.

[4] Second session Fifty-third Congress, Journal, pp. 292, 293, 295; Record, p. 3353.

5719. On April 30, 1894,[1] the House was considering the contested election case of Joy *v.* O'Neill, from Missouri, under a special order which provided that after two hours' debate the vote should be taken "without intervening motion."

A vote having been taken on one branch of the resolutions, Mr. John M. Wever, of New York, moved to reconsider the vote.

The Speaker sustained the point of order that the motion to reconsider was not in order under the special order.

Mr. John F. Lacey, of Iowa, appealed from the foregoing decision of the Chair.

The Speaker[2] declined to entertain the appeal, holding that the motion to reconsider and the appeal were intervening proceedings and were precluded by the special order.[3]

Mr. Thomas B. Reed, of Maine, appealed from the decision just rendered.

The Speaker declined to entertain the appeal.

The question being put, "Will the House agree to the first resolution reported by the committee?" the yeas and nays were demanded and ordered by one-fifth of the Members present.

Mr. Reed moved to reconsider the vote by which the yeas and nays were ordered.

The Speaker declined to entertain the motion.

Mr. Reed stated that he appealed.

The Speaker declined to entertain the appeal.

5720. On February 27, 1897,[4] the question before the House was on ordering the previous question on the bill (H. R. 10090) to amend the interstate commerce act.

Mr. James G. Maguire, of California, moved to lay the whole matter on the table.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the motion was dilatory.

The Speaker[5] sustained the point of order.

5721. On July 16, 1897,[6] the House was considering certain Senate amendments to the deficiency appropriation bill, and the one relating to the purchase of armor plate for the Navy was before the House.

Mr. Joseph D. Sayers, of Texas, moved that the House recede from its disagreement to the Senate amendment. The question was then taken on the motion of Mr. Sayers, and the Speaker announced that the ayes seemed to have it.

The yeas and nays having been ordered, and the roll call being about to proceed, Mr. William A. Stone, of Pennsylvania, moved that the House adjourn.

Mr. Joseph W. Bailey, of Texas, made the point of order that the motion was dilatory.

The Speaker[5] sustained the point of order.

5722. On January 19, 1898,[7] the House was in Committee of the Whole House on the state of the Union considering the diplomatic and consular appropriation bill.

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[1] Second session Fifty-third Congress, Journal, pp. 304, 305; Record, pp. 3422, 3423.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] This case is somewhat different from the general practice, because of the language of the special order.

[4] Second session Fifty-fourth Congress, Record, p. 2469.

[5] Thomas B. Reed, of Maine, Speaker.

[6] First session Fifty-fifth Congress, Record, p. 2661.

[7] Second session Fifty-fifth Congress, Record, pp. 761, 762.

A point of order having been made on an amendment offered by Mr. James Hamilton Lewis, of Washington, in relation to recognition of a state of war in Cuba, the Chair sustained the point of order, this being the second amendment relating to Cuban affairs ruled out in succession.

Mr. Lewis, of Washington, having entered an appeal, Mr. John Dalzell, of Pennsylvania, made the point of order that the appeal was dilatory.

The Chairman [1] sustained the point of order.

Mr. Lewis thereupon made the point of order that while a motion might be ruled out of order as dilatory, an appeal might not be thus ruled out.

The Chairman overruled the point of order.

5723. In a rare instance in the earlier history of the House a Speaker declined to entertain an appeal which was evidently trivial.—On August 31, 1842,[2] a resolution providing for extra compensation to the officers of the House was under consideration, and on a motion for the previous question the Speaker announced, ayes 91, noes 45.

Mr. Edward J. Black, of Georgia, called for tellers; but only twenty-one Members arose to vote for tellers, and the Speaker announced that tellers were not ordered.

Mr. Black called for a count of the other side on the vote for tellers.

The Speaker [3] said:

The Chair will not count. As tellers, under the rule, are ordered by one fifth of a quorum, the count of those opposed is never necessary.

Mr. Black appealed from the decision.

The Speaker said:

The Chair will not put the appeal.

5724. The Speaker being satisfied that a quorum was present and that a point of no quorum was made for dilatory purposes, declined to entertain it.—On January 25, 1896,[4] the House was considering the bill (H. R. 9099) for the regulation of cemeteries, etc., in the District of Columbia, and the previous question had been demanded on the engrossment and third reading of the bill.

On the division there were, ayes 104, noes 1.

Mr. Henry M. Baker, of New Hampshire, made the point that no quorum was present.

Mr. James D. Richardson, of Tennessee, called attention to the fact that a quorum had within a short time appeared on a roll call, and suggested that the point of no quorum was dilatory.

The Speaker [5] said:

The Chair does not feel quite certain that there is a quorum now. * * * The fact that it is dilatory does not make any difference if there is not a quorum present.

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session, Twenty-seventh Congress, Globe, p. 979.

[3] John White, of Kentucky, Speaker.

[4] Second session Fifty-fourth Congress, Record, p. 11 1133.

[5] Thomas B. Reed, of Maine, Speaker.

The Speaker having ascertained by a count that 180 Members, a quorum, were present, announced that the ayes had it, and that the previous question was ordered.

The question being then taken on the engrossment and third reading, there were, on a division, 119 ayes and 3 noes.

Mr. Baker made the point that no quorum was present.

The Speaker overruled the point of order.

On the passage of the bill there were, ayes 105, noes 5; and Mr. Baker made the point of no quorum.

The Speaker said:

The Chair overrules the point of order, it having been ascertained that a quorum is present. The ayes have it, and the bill is passed.

5725. On June 5, 1896,[1] the House was considering the contested election case of Martin *v.* Lockhart, from North Carolina, and the vote on the substitute resolutions offered by the minority had resulted in their rejection, 57 yeas to 156 nays.[2]

Immediately upon the announcement of the vote Mr. Joseph W. Bailey, of Texas, moved to recommit the resolution of the majority, and on a division there were, ayes 39, noes 70.

Mr. Bailey made the point of no quorum.

The Speaker pro tempore[3] overruled the point of order.

The question on the motion to recommit being taken by yeas and nays, there were, yeas 51, nays 148, "present" 1.

The question recurring immediately on the adoption of the resolution, there were, on division, 113 ayes and 5 noes.

Mr. Bailey made the point of no quorum.

The Speaker pro tempore overruled the point of order, a quorum having been disclosed by the roll call just had.

Mr. Bailey appealed from the ruling.

The Speaker pro tempore declined to entertain the appeal.

5726. The presence of a quorum having been ascertained, the Speaker has overruled points of "No quorum" made very soon thereafter.—On September 23, 1890,[4] the question on the approval of the Journal of Friday having been taken by yeas and nays, the Speaker[5] announced from a list noted and furnished by the Clerk, at the suggestion of the Speaker, the following-named Members as present in the Hall when their names were called, and not voting: Messrs. Lind, Bartine, Cooper, of Ohio, De Haven, McCord, McKenna, and O'Ferrall, the Speaker being present. Mr. Bartine and Mr. Lind, noted by the Clerk as present and not voting, were, at their request, recorded in the affirmative.

The Speaker thereupon stated that the Members present and refusing to vote (6 in number), together with those recorded as voting (160 in number), showed a total of 166 Members present, constituting a quorum present to do business, and

[1] First session Fifty-fourth Congress, Record, pp. 6166, 6167, 6173.

[2] The quorum was 179.

[3] Sereno E. Payne, of New York, Speaker pro tempore.

[4] First session Fifty-first Congress, Journal, p. 1071, Record, p. 10337.

[5] Thomas B. Reed, of Maine, Speaker.

that the yeas being 160 and the nays 0 the Journal of the proceedings of the sitting of Friday, September 19, as read, would stand approved.

The Journal of the proceedings of the sitting of Saturday, September 20, was then read, and the question being on its approval,

Mr. Charles T. O'Ferrall, of Virginia, made the point of order that no quorum was present.

The Speaker overruled the point of order on the ground that the proceedings had just disclosed the presence of a quorum.

5727. On December 9, 1890,[1] the question being on an amendment to the bill (S. 1044) for the erection of a public building at Madison, Ind., there appeared, on division, yeas 76, nays 33.

Mr. E. S. Williams, of Ohio, made the point of order that no quorum was present.

The Speaker thereupon proceeded to count the House, and announced the presence of 185 Members—more than a quorum—and that the amendment to the amendment was agreed to.

The said amendment, as amended, was then agreed to, and the said bill, as amended, read the third time, and, the question being on its passage, there appeared, on division, yeas 118, nays 6.

Mr. Williams, of Ohio, made the point of order that no quorum was present.

The Speaker[2] overruled the point of order, saying:

There is no doubt that there is a quorum here. The same number of Members are present as were here before.

5728. On February 26, 1903,[3] the pending question was on agreeing to the following resolutions, on which the previous question had been ordered:

Resolved, That George C. R. Wagoner was not elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is not entitled to a seat therein.

Resolved, That James J. Butler was elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is entitled to a seat therein.

Mr. Oscar W. Underwood, of Alabama, moved to recommit the resolutions.

Mr. Sereno E. Payne, of New York, moved the previous question on the latter motion, and the vote being taken by division there were ayes 156, noes 4.

Mr. Underwood, of Alabama, made the point of order that no quorum was present.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the point of no quorum was dilatory.

The Speaker pro tempore[4] said:

Evidently there is no quorum in the Hall. The Chair orders the doors to be closed. The Doorkeeper will take measures to enforce the attendance of absent Members. The yeas and nays will now be taken under the rule.

There appeared yeas 147, nays 12, answering present 19—more than a quorum, 177 being a quorum—and the previous question was ordered.

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[1] Second session Fifty-first Congress, Journal, p. 39; Record, p. 271.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-seventh Congress, Record, pp. 2726–2728.

[4] John Dalzell, of Pennsylvania, Speaker pro tempore.

The question was then taken on the motion to recommit, and on division there were ayes 5, noes 165. So the motion was disagreed to.

Mr. Underwood made the point of order that there was no quorum present.

The Speaker pro tempore overruled the point of order as dilatory.

The question was then taken on the first of the two resolutions, which was agreed to.

The question being taken on the second resolution, on division there were ayes 161, noes 2.

Mr. Underwood made the point of order that no quorum was present.

The Speaker pro tempore overruled the point of order as dilatory, and declared the resolution agreed to.

Mr. Wagoner then appeared and took the oath.

A little later Mr. Sereno E. Payne, of New York, moved a recess, and on that motion demanded the previous question.

A division being taken on ordering the previous question, there were ayes 169, noes 5. So the previous question was ordered.

Mr. Underwood made the point of order that no quorum was present.

The Speaker [1] said:

The Chair is obliged to overrule the point of order, for the reason that the recent call of the House shows that there was a quorum present, and it is well settled by the rules that the point of no quorum can not be made when a recent call of the House shows the presence of a quorum.

The question being then taken on the motion for a recess, it was agreed to, there appearing on division ayes 173, noes 4.[2]

On the calendar day of February 28 (legislative day of February 26) a vote by tellers on a motion to suspend the rules showed ayes 100, noes 33.

Mr. Underwood made the point of no quorum.

Mr. Payne made the point of order that the point was dilatory.

The Speaker [1] said:

The last roll call, only two minutes ago, disclosed the presence of 224 members—47 more than a quorum; and not a single roll call since the opening of the session to-day has failed to disclose a quorum. The Chair sustains the point of order.[3]

5729. On May 22, 1906,[4] a yea-and-nay vote had developed the presence of 233 Members (192 being a quorum). Shortly after, a quorum failed to vote on a division on a motion that the House resolve itself into Committee of the Whole.

Mr. John S. Williams, of Mississippi, made the point of order that a quorum was not present.

The Speaker [5] ruled:

Under the practice, a vote having just been taken by the yeas and nays, the most accurate way of taking it, disclosed a quorum * * *. The Chair overrules the point.

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[1] David B. Henderson, of Iowa, Speaker.

[2] It will be noted that on this division an actual quorum voted. The minority had to a large extent left the Hall before the quorum of record was developed by the call, and had remained away during the proceedings.

[3] For similar proceedings see contested election case of Miller *v.* Elliott, first session Fifty-first Congress. See sec. 1034 of Vol. II of this work.

[4] First session Fifty-ninth Congress, Record, pp. 7248, 7249.

[5] Joseph G. Cannon, of Illinois, Speaker.

5730. On February 21, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of no quorum was made and the roll was called under the rule. The roll call showing a quorum and the Committee of the Whole House having resumed its sitting, after a short interval Mr. Frank Clark, of Florida, made a point of no quorum.

Mr. James A. Tawney, of Minnesota, made the point that the proceeding was dilatory.

The Chairman[2] said:

The Chair at this time sustains the point made by the gentleman from Minnesota that it is dilatory, because in the opinion of the Chair at this time, so recently after the roll has been called, it is dilatory.

Not long after, Mr. John S. Williams, of Mississippi, again suggested the absence of a quorum, saying that he did it in no dilatory spirit.

The Chairman said:

The gentleman says he makes the motion in sincerity and not in a dilatory spirit, so the Chair will count.

5731. Under certain circumstances the motions to reconsider and adjourn and the question of consideration have been held dilatory.

The Speaker has declined to entertain debate or appeal on a question as to dilatoriness of a motion.

On May 18, 1906,[3] the House had under consideration the bill (H. R. 9297) for the relief of Henry E. Rhoades, assistant engineer, United States Navy, retired, which had been reported from Committee of the Whole House after proceedings evidently dilatory.

The previous question was ordered on the bill, yeas 143, nays 69.

Mr. John S. Williams, of Mississippi, moved to reconsider the vote whereby the previous question was ordered.

Mr. James M. Miller, of Kansas, made the point of order that the motion was dilatory.

Mr. Williams desired to be heard on the point of order, holding that it should be open to discussion.

The Speaker[4] said:

Not at all; the Chair will say to the gentleman from Mississippi, because if it were open for discussion and open for appeal, the gentleman can see at once that would heap one dilatory motion, if this be dilatory, upon another, and the rule itself would be nullified. Now, the Chair having had clause 10 of Rule XVI read, and the vote being as the Chair stated, 143 yeas and 69 nays, it is perfectly patent to the Chair and, in the opinion of the Chair, to every Member of this House, including the gentleman from Mississippi, that this is a dilatory motion.

Mr. William said:

Mr. Speaker, in order to emphasize the difference of opinion existing between the Chair and the gentleman from Mississippi, I respectfully appeal from the decision of the Chair.

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[1] Second session Fifty-ninth Congress, Record, pp. 3572, 3573.

[2] James E. Watson, of Indiana, Chairman.

[3] First session Fifty-ninth Congress, Record, pp. 7092, 7093.

[4] Joseph G. Cannon, of Illinois, Speaker.

The Speaker held:

The Chair has just stated that the very object of the rule would be defeated if a motion to appeal were entertained, and it is so patent that it is dilatory that the Chair would be willing to put the question to the gentleman from Mississippi [Mr. Williams] himself on his word.[1]

The bill having been passed, the House next proceeded to consider the bill (H. R. 850) for relief of the estate of Samuel Lee, etc.[2]

Mr. John S. Williams, of Mississippi, raised the question of consideration.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the motion was dilatory.

The Speaker sustained the point of order.

Later,[3] during proceedings on this bill, the Speaker held a motion to adjourn dilatory, although the hour at which the House, under ordinary circumstances, might be expected to adjourn had arrived.

On May 19,[4] the day after the bill passed, Mr. Miller moved that the vote by which the bill passed be reconsidered, and that the motion to reconsider do lie on the table.

This motion to reconsider was laid on the table.

Thereupon Mr. Williams proposed a motion to reconsider the vote whereby the title of the bill had been amended.

Mr. Miller made the point of order that the motion was dilatory.

The Speaker held:

The House will notice from the Journal, as well as the recollection of Members, the votes that were taken on this bill upon yesterday. There were one or more amendments to the bill reported from the Committee of the Whole House. Those amendments were agreed to by the House. The bill was engrossed and read a third time and passed, and then there was a vote upon amending the title. Then the House adjourned. This morning a motion was made to reconsider the vote by which the bill was passed, and we have just voted upon a motion to lay that motion upon the table, and the House has agreed to the motion by a majority. The Chair will state to the gentleman from Mississippi that it does seem to the Chair that, all things considered, the Chair, in ruling upon the point of order that the motion is dilatory, must sustain the point. * * * The Chair will state further in reply to the gentleman that the vote by which the bill was passed was the material vote, the substantial vote, and a motion to reconsider that vote was made and that motion was laid on the table. The question of amending the title may be likened to the "leather and prunella" that surround many questions, and the Chair must adhere to its decision and sustain the point of order.

5732. On the calendar day of February 28, 1903[5] (legislative day of February 26), the conference report on the Military Academy appropriation bill was presented; and having been read, Mr. James D. Richardson, of Tennessee, proposed to move the question of consideration.

Mr. Sereno E. Payne, of New York, made the point of order that the motion was dilatory.

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[1] The motion to reconsider when applied to the vote by which a bill has been passed might be considered to stand on a somewhat different basis from the motion as applied to a vote on a subsidiary proposition.

[2] Record, p. 7097.

[3] Record, p. 7101.

[4] Record, pp. 7105, 7106.

[5] Second session Fifty-seventh Congress, Record, p. 2828.

The Speaker [1] said:

The gentleman from Tennessee raises the question of consideration; the gentleman from New York makes the point of order that that is a dilatory motion. The right to raise the question of consideration is not one given by the Constitution, but by the rules of the House. The rules of the House also provide that dilatory motions shall not be entertained by the Speaker. Therefore that motion is governed by the dilatory rule. It is perfectly plain to the Chair, and possibly to the gentleman making the motion, that this is a dilatory motion. At least the Chair is perfectly conscientious in so holding, and sustains the point of order.

Mr. Richardson having proposed to appeal, the Speaker held the appeal out of order as dilatory.[2]

5733. On December 18, 1900,[3] the House was considering the bill (S. 1929) to provide for eliminating certain grade crossings in the city of Washington, the Committee of the Whole House on the State of the Union having risen in order that the House might fix a time for closing general debate.

A resolution fixing the time for closing general debate was offered, and the previous question demanded. On a vote by yeas and nays, there were yeas 157, nays 87, so the previous question was ordered.

The resolution was then agreed to, the yeas and nays being again taken and resulting, yeas 147, nays 86.

The question then recurring on the motion that the House resolve itself into Committee of the Whole to continue consideration of the bill, it was agreed to, 161 to 66, the yeas and nays being again taken.

This vote being announced, Mr. William S. Cowherd, of Missouri, moved to reconsider.

Mr. James A. Norton, of Ohio, made the point of order that this motion was dilatory.

The Speaker [1] sustained the point of order.

5734. A motion fixing the time of five-minute debate in Committee of the Whole has been ruled out when dilatory.—On June 8, 1906,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the State of the Union, when Mr. James A. Tawney, of Minnesota, moved that debate on the pending paragraph be now closed.

Mr. John J. Fitzgerald, of New York, moved an amendment fixing the limit of time at twenty minutes.

Mr. John S. Williams, of Mississippi, moved an amendment to the amendment, fixing the time at half an hour.

On division on Mr. Williams' amendment there were ayes 39, noes 78. Mr. Williams demanded tellers and they were ordered, and there were ayes 37, noes 83.

Mr. Fitzgerald's amendment was then disagreed to, ayes 34, noes 63.

Mr. Champ Clark then moved an amendment fixing the time at five minutes.

Mr. Tawney made the point of order that the motion was dilatory.

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[1] David B. Henderson, of Iowa, Speaker.

[2] These proceedings occurred at a time when prolonged dilatory tactics had been employed.

[3] Second session Fifty-sixth Congress, Record, p. 409.

[4] First session Fifty-ninth Congress, Record, p. 8135.

The Chairman [1] sustained the point of order.

5735. The Speaker has ruled a demand for tellers dilatory when satisfied that it was made only for purposes of delay.

The motion to reconsider has been ruled out as dilatory when manifestly made for purpose of delay.

On March 7, 1898,[2] pending the presentation of a bill from the Committee for the District of Columbia, Mr. Joseph W. Bailey, of Texas, moved that the House adjourn.

The question being put, there were on division ayes 76, noes 125.

Mr. Bailey demanded tellers, and tellers were ordered and appointed, when Mr. John J. Jenkins, of Wisconsin, demanded the yeas and nays.

The question was taken on ordering the yeas and nays, and the Speaker announced that a sufficient number had risen, and that the yeas and nays were ordered.

Mr. Bailey demanded tellers on the vote for the yeas and nays.

Mr. David B. Henderson, of Iowa, made the point of order that the demand was dilatory.

The Speaker [3] sustained the point of order.

Mr. Bailey appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.

Later on the same day, the House having proceeded to the consideration of the bill (S. 2323) relating to the incorporation of Columbian College, the vote on the third reading of the bill was taken by yeas and nays, there appearing 218 yeas, 1 nay, 23 answering "present."

Immediately the question was put on the passage of the bill, and on a division there appeared 119 ayes, 3 noes.

Mr. Bailey made the point of no quorum.

The Speaker overruled the point of order.

Mr. Bailey appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.

Mr. Bailey having demanded the yeas and nays, there were yeas 208, nays 0, answering "present" 9.

The Speaker having declared the bill passed, Mr. Bailey moved to reconsider the vote by which the bill was passed.

The Speaker declined to entertain the motion upon the ground that the gentleman was making it as a dilatory motion.

Thereafter during this day the point of no quorum was several times ruled out of order as dilatory, and the Chair declined to entertain appeals.

5736. On March 25, 1898,[4] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill.

Several points of order having arisen over the attempt of a Member to speak under the five-minute rule on a subject not before the committee, and several

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[1] James E. Watson, of Indiana, Chairman.

[2] Second session Fifty-fifth Congress, Record, pp. 2559–2566.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-fifth Congress, Record, p. 323.

dilatory motions having been ruled out of order, the question was put on the pending amendment.

On a division, the Chairman announced that there were ayes 62, noes 99.

Mr. Joseph W. Bailey, of Texas, demanded tellers.

Mr. Sereno E. Payne, of New York, made the point of order that this demand was dilatory, since the amendment on which the division had just taken place was simply the pro forma one, which was almost invariably withdrawn in Committee of the Whole.[1]

The Chairman[2] held—

It is not only the privilege but the duty of the Chair, as it seems to me, at all times when a question of order is raised, to consider the circumstances under which it has been raised. Here a purely formal amendment to strike out the last word is made. * * * The vote is taken upon that amendment. The vote shows that the Chair is not likely to have been mistaken, the total being 62 to 99. It is not so close as to indicate that the Chair erred in his count or in his conclusion as to whether the motion is carried or lost. * * * The gentleman having stated some time ago that he started out this afternoon for the purpose of consuming time, and as it seems perfectly apparent that the demand is made clearly for the purpose of consuming time, the Chair sustains the point of order.

Mr. Bailey appealed from the decision of the Chair.

Mr. John Dalzell, of Pennsylvania, made the point of order that the appeal was dilatory.

The Chairman sustained the point of order.

5737. The constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory.—On January 21, 1898,[3] the Committee of the Whole House having risen, Mr. John Dalzell, of Pennsylvania, moved that the House adjourn.

Tellers having been ordered, they reported ayes 62, noes 106.

Mr. Dalzell demanded the yeas and nays.

Mr. Joseph W. Bailey, of Texas, made the point of order that the demand for the yeas and nays was plainly dilatory.

The Speaker[4] said:

Under the Constitution of the United States one-fifth of the Members present have always the right to order the yeas and nays.

Thereupon the question of ordering the yeas and nays was submitted to the House.

5738. Pending consideration of a report from the Committee on Rules the Speaker is forbidden to entertain dilatory motions.—Section 61 of Rule XI[5] provides:

* * * Pending consideration thereof [a report from the Committee on Rules], the Speaker may entertain one motion that the House adjourn, but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of.

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[1] Members who wish to speak under the five-minute rule, but have no amendment to offer, obtain the floor by offering the pro forma amendment to strike out the last word or the last two words. After the Member has concluded, he is usually allowed by unanimous consent to withdraw the amendment which has served his purpose. If there is objection, however, the vote must be taken on the amendment, since in Committee of the Whole amendments may not be withdrawn as in the House.

[2] James S. Sherman, of New York, Chairman.

[3] Second session Fifty-fifth Congress, Record, p. 847.

[4] Thomas B. Reed, of Maine, Speaker.

[5] For full form and history of this rule see section 4621 of Vol. IV of this work.

5739. Pending consideration of a report from the Committee on Rules appeals and the motion to reconsider have been ruled out as dilatory within the meaning of the rule.—On September 20, 1893,[1] Mr. Thomas C. Catchings, of Mississippi, had reported from the Committee on Rules a resolution relating to the immediate call of committees for reports, and several points of order had been made and decided, when the question recurred on the demand of Mr. Catchings for the previous question on agreeing to the resolution.

Mr. Sereno E. Payne, of New York, thereupon demanded that the question of consideration of the resolution be put.

The Speaker[2] declined to entertain the demand inasmuch as the House had already entered upon the consideration of the resolution, also upon the ground that, as held in the Fifty-second Congress, the question of consideration could not be demanded against a report from the Committee on Rules.

Mr. Payne appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.

Mr. Julius C. Burrows, of Michigan, thereupon moved to lay on the table the pending resolution reported by the Committee on Rules.

The Speaker declined to entertain the motion.

Mr. Burrows appealed from the decision of the Chair.

The Speaker declined to entertain the appeal, a similar motion having heretofore on a former occasion been decided out of order pending a report from the Committee on Rules.

The question recurring on the demand of Mr. Catchings for the previous question on agreeing to the resolution reported from the Committee on Rules, it was decided in the affirmative.

So the previous question was ordered.

Mr. Burrows moved to reconsider the vote by which the previous question was ordered.

Mr. James D. Richardson, of Tennessee, made the point of order that, pending the consideration of the report from the Committee on Rules, the motion to reconsider was dilatory and not in order.

The Speaker entertained the motion of Mr. Burrows to reconsider.

5740. Construction of the rule permitting one motion to adjourn and thereafter no other dilatory motion pending consideration of a report from the Committee on Rules.—On April 1, 1892,[3] the House was considering a resolution reported from the Committee on Rules for the appointment of a special committee to investigate certain charges against the Census Bureau.

During the consideration of the resolution Mr. Lucas M. Miller, of Wisconsin, moved that the House adjourn.

This motion was negatived; whereupon Mr. Miller moved that the House take a recess until 5 p.m.

Mr. Thomas C. Catchings, of Mississippi, made the point of order that pending the consideration of a report from the Committee on Rules only one motion, to adjourn, was in order.

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[1] First session Fifty-third Congress, Journal, pp. 96, 97, and 98.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Fifty-second Congress, Record, p. 2837; Journal, p. 126.

The Speaker[1] sustained the point of order.

5741. On September 20, 1893,[2] objection having been made to the reception of a report from the Committee on Rules by Mr. Julius C. Burrows, of Michigan, the Speaker overruled the objection, and Mr. Burrows appealed from the decision.

Mr. Ashbel P. Fitch, of New York, moved to lay the appeal on the table.

Pending this, Mr. Burrows moved that the House take a recess for one hour.

Mr. Thomas C. Catchings, of Mississippi, submitted the point of order that, pending action on the resolution just reported from the Committee on Rules, the motion for a recess was dilatory and not in order.

It being suggested by Mr. Burrows that the report, having been only submitted or tendered, was not before the House and had not been called up pursuant to the provisions of clause 57, Rule XI.[3]

After debate, the Speaker[1] held that the report from the Committee on Rules was before the House, and that pending the consideration of such report a motion for a recess was not in order.

The question recurring on the motion of Mr. Fitch to lay on the table the appeal of Mr. Burrows from the decision of the Chair overruling the objection of Mr. Burrows to the reception of the report from the Committee on Rules, and the question being put, "Shall said appeal lie on the table?" it was decided in the affirmative, yeas 173, nays 55.

The Speaker thereupon stated that the question recurred on the motion of Mr. Burrows to dispense with the morning hour for reports.

Whereupon, Mr. Thomas B. Reed, of Maine, submitted the point of order that, pending the report from the Committee on Rules, which had just been held to be before the House for consideration, it was not in order to recur to the motion of Mr. Burrows to dispense with the morning hour until the report from the Committee on Rules was disposed of.

After debate, the Speaker sustained the point of order, holding that the consideration of the report from the Committee on Rules took precedence of the pending motion of Mr. Burrows to dispense with the morning hour.[4]

Mr. Catchings thereupon demanded the previous question on agreeing to the resolution reported from the Committee on Rules.

Mr. William P. Hepburn, of Iowa, moved that the House take a recess for two hours.

Mr. Joseph H. Outhwaite, of Ohio, submitted the point of order that, pending the report from the Committee on Rules, a motion for a recess was not in order.

Pending debate on the question of order, Mr. Reed submitted a motion that when the House adjourn today it be to meet on the day after to-morrow.

The Speaker declined to entertain the motion.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-third Congress, Journal, pp. 96, 97, 98.

[3] See section 4621 of Vol. IV of this work.

[4] The present morning hour is different, and there is no provision for dispensing with it. See section 3118 of Vol. IV of this work.

The Speaker thereupon sustained the point of order against the motion of Mr. Hepburn for a recess, holding as follows:

There are certain motions under the rules of the House which are privileged. The fifth clause of Rule XVI contains this language:

"A motion to fix the day to which the House shall adjourn, a motion to adjourn, and to take a recess shall always be in order, and the hour at which the House adjourns shall be entered on the Journal."

Now, another part of the rules provides that a report from the Committee on Rules shall always be in order. Here, therefore, we have four propositions that are always in order—to fix the day to which the House shall adjourn, to adjourn, to take a recess, and to call up for consideration a report from the Committee on Rules.[1]

All of these motions are of high privilege and are all in order at any time. The fourth clause of Rule XVI fixes a priority as between three of these motions—a motion to fix the day to which the House shall adjourn, to adjourn, and to take a recess. The rule prescribes in what order they shall be received and considered:

"4. When a question is under debate no motion shall be received but to fix the day to which the House shall adjourn, to adjourn, to take a recess, to lay on the table, for the previous question, * * * which several motions shall have precedence in the foregoing order," etc.

That is, as between the three motions, to fix the day, to adjourn, and to take a recess, if all three were pending, and they may be at the same time, that the question should be first taken on the motion to fix the day to which the House shall adjourn, next on the motion to adjourn, and the third on the motion to take a recess.

The rule specifically prescribes, therefore, the order in which they shall be voted upon. Now, added to these privileged motions is the fourth one; that is to say, the consideration of a report from the Committee on Rules. But there is no provision in the rules regulating the priority of consideration as between the three motions named and a report from the Committee on Rules. There is no provision of the rule which provides whether the report from the Committee on Rules shall be voted on before the three motions or afterwards; and in the absence of any such provision, and in furtherance of what the Chair understands to be the scope, the purpose, and the intent of the rules of the House, the Chair holds that a report from the Committee on Rules is of equal privilege with a motion for a recess, to adjourn, or to fix a day to which the House shall adjourn, and that where a motion to take up a report from the Committee on Rules is made before a motion for a recess, that the report from the Committee on Rules must be voted upon first; that where it is made before a motion to fix the day to which the House shall adjourn, that the report must also be voted upon first; and the only exception provided in the rule that would give any priority or right of priority over the report of the Committee on Rules is the one motion to adjourn, and one only. That the Chair understands to be a fair, equitable, and just construction of the rule, and the Chair therefore holds, inasmuch as the report of the committee was called up for consideration before any motion for a recess is made, that, waiving the question as to the pendency of such motion, the vote must be first taken on the report.

Mr. Hepburn appealed from the decision of the Chair.

Mr. Outhwaite submitted the point that the appeal being a dilatory proceeding was not pursuant to the rule in order pending a report from the Committee on Rules.

The Speaker stated that the precise question involved in the appeal not having been decided by the House, and that the rule on the subject in question being of comparatively recent origin, in the judgment of the Chair the appeal should be entertained.

Mr. Fitch thereupon moved to lay the appeal on the table.

And the question being put, the appeal was laid on the table, yeas 178, nays 2.

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[1] Under the present rules the motions for a recess and to fix the day are not privileged.

5742. On July 30, 1894,[1] a report from the Committee on Rules having been agreed to, Mr. John A. Pickler, of South Dakota, moved to reconsider the vote by which the foregoing resolution reported from the Committee on Rules was agreed to.

Mr. Joseph H. Outhwaite, of Ohio, moved to lay the motion to reconsider on the table.

Pending which, Mr. Pickler moved that the House take a recess until 4 o'clock p. m.

Mr. Outhwaite made the point that, pending the consideration of a report from the Committee on Rules, a motion for a recess was not in order.

The Speaker pro tempore[2] sustained the point of order.

5743. Pending a motion to suspend the rules, the Speaker may entertain one motion that the House adjourn, but thereafter no other dilatory motion may be made.

Present form and history of section 8 of Rule XVI.

Section 8 of Rule XVI provides:

> Pending a motion to suspend the rules, the Speaker may entertain one motion that the House adjourn; but after the result thereon is announced he shall not entertain any other dilatory motion till the vote is taken on suspension.

This rule, in almost identically the same language, was reported from the Committee on Rules by Mr. Elihu B. Washburne, of Illinois, on February 25, 1868, and adopted by the House by a suspension of the rules. This was during the proceedings preliminary to the impeachment of President Johnson, and immediately after the rule was adopted Mr. Washburne presented the special order providing for the consideration of the articles of impeachment without dilatory motions. This special order was offered and adopted under a motion to suspend the rules, dilatory tactics being precluded by the new rule.[3]

5744. A motion to suspend the rules having been entertained and one motion to adjourn having been voted on, another motion to adjourn may not be made unless the failure of a quorum be demonstrated.

Instance wherein, under the former practice, business was halted because a quorum did not vote, although the Speaker declared that there was no doubt of the actual presence of a quorum.

On March 20, 1882,[4] Mr. Thomas B. Reed, of Maine, moved to suspend the rules and adopt the following resolution:

> *Resolved,* That House bill 4197, reestablishing the court of commissioners of Alabama claims, for the distribution of the unappropriated moneys of the Geneva award, be taken from the Committee of the Whole and be considered in the House as in Committee on the fourth Tuesday of March, and then from day to day until finally disposed of, not to interfere with the revenue and general appropriation bills.

A motion to adjourn having been made by Mr. William M. Springer, of Illinois, the yeas and nays were ordered, and there were in the affirmative 50, in the negative 101, not voting 141.

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[1] Second session Fifty-third Congress, Journal, pp. 520, 521; Record., p. 8009.

[2] William Everett, of Massachusetts, Speaker pro tempore.

[3] Second session Fortieth Congress, Globe, pp. 1424, 1425.

[4] First session Forty-seventh Congress, Record, pp. 2081, 2082, 2088.

The Speaker[1] then announced that the question recurred on the motion to suspend the rules and adopt the resolution, which had been read by the Clerk.

On a vote by tellers, there were 93 yeas and 1 nay.

Mr. William A. J. Sparks, of Illinois, made the point of order that no quorum had voted.

Mr. Richard P. Bland, of Missouri, thereupon moved that the House adjourn.

Mr. George M. Robeson, of New Jersey, made the point of order that only one dilatory motion was in order pending a motion to suspend the rules, and that that motion had been made and negatived.

Mr. Joseph C. S. Blackburn, of Kentucky, made the further point of order that, the lack of a quorum having developed, only two motions were in order, that there be a call of the House, and to adjourn.

The Speaker had read the rule:

Pending the motion to suspend the rules, the Speaker may entertain one motion that the House adjourn; but after the result thereon is announced he shall not entertain any other dilatory motion until the vote is taken on suspension.

Then, after debate as to the proper course to be pursued, the Speaker recognized a motion for a call of the House. The call having been concluded, Mr. Reed called for the regular order.

The Speaker announced that the regular order was the motion to suspend the rules and adopt the resolution presented by Mr. Reed.

Mr. Joseph C. S. Blackburn, of Kentucky, moved that the House adjourn, making the point that the motion to suspend the rules had come up anew, and therefore that another motion to adjourn was in order.

The Speaker said:

Upon the point of order made by the gentleman from Kentucky, the Chair desires to say that the gentleman from Maine, after proceedings under the call of the House had been dispensed with, called up the motion which was to suspend the rules and adopt the resolution which was read by the Clerk. That motion had been submitted to the House, and pending the consideration of it a motion was made that the House adjourn, which was lost. The Chair now holds that the motion of the gentleman from Maine has been pending ever since it was first stated to the House; that all the intervening business in connection with the call of the House has been business that was merely incident to the fact that a quorum did not vote; that the motion has been pending all the time, and the difficulty about announcing the result was that a quorum did not vote. The motion having been pending, and one motion having been made to adjourn and voted down, the Chair holds that the motion to adjourn is not now in order, and therefore overrules the point of order. The question is on the motion of the gentleman from Maine to suspend the rules and adopt the resolution.

On the motion to suspend the rules there were 106 yeas and 5 nays, not voting 181.

Mr. Blackburn having raised the point that no quorum had voted, and proposed to submit a motion to adjourn,

The Speaker ruled:

The point of order is made that it is the duty of the Chair at this stage of the proceedings, under the motion of the gentleman from Maine, to entertain a motion to adjourn. The Chair will state that since the making of the motion by the gentleman from Maine to suspend the rules and to adopt the resolution which has been read to the House, a motion to adjourn was made, was entertained, and voted

[1] J. Warren Keifer, of Ohio, Speaker.

down. The question now is whether at this stage, operating under the rules of the House, the Chair is called upon to entertain another motion to adjourn.

The Chair holds that ever since the motion was made by the gentleman from Maine and submitted to the House it has been pending, notwithstanding the call of the House and the proceedings under it. The gentleman from Illinois [Mr. Springer] submits that by virtue of the Constitution certain motions are in order. The Chair will remind the House that under section 5 of the first article of the Constitution the House is authorized "to determine the rules of its proceedings." In this case the Chair thinks the House has made its own rules; and the only duty incumbent upon the Chair is to give those rules construction.

The Chair might state that most, if not all, of the precedents cited relate to a condition of things and a state of business not similar to that now presented. The ordinary rule is to entertain at any time a motion to adjourn, and, other business having intervened, another motion to adjourn, and so on indefinitely. There is, however, no rule declaring absolutely that under all circumstances when the House discloses by its own vote only that there is no quorum, a motion for a call of the House or to adjourn is in order. It does not follow from any rule or precedent that this is true when we are operating under a rule such as has been read here to-day—the rule embodied in paragraph 8, of Rule XVI.[1]

That rule is imperative in its terms, and authorizes the Chair to entertain a motion to adjourn, and then prohibits the making of that motion again and all other dilatory motions, until, as the rule provides, a vote is had on that motion. Attempts to take a vote, either on a division, by tellers, or by yeas and nays, is not the vote that is intended by that rule. A vote announced by tellers, disclosing a quorum has not voted, does not determine the fact whether there is a quorum or not.

The Chair will state, although the question does not arise, that if it were disclosed by a call of the House, though we were operating under this rule which applies when there is a motion to suspend the rules—if it were disclosed by a call of the House there was no quorum present, then the rule would not apply, there being, in fact, no quorum present, and the motion to adjourn might be made. But in the absence of a call of the House disclosing that fact,[2] the Chair is bound to hold the rule means exactly what it says, that there shall be but one motion to adjourn pending a motion to suspend the rules—one motion until after the vote is taken.

Gentlemen complain it would leave the House powerless to adjourn. The Chair will state that it is within the power of the House to have a call of the House to disclose whether or not there is a quorum. If there is a quorum, then the only answer the Chair need make to that is, the House has the power to vote if gentlemen will obey the rules made by the House; and having had a vote on the pending question, then a motion to adjourn will be in order.

The Chair holds that it is not now in order to make a motion to adjourn, it having been disclosed by the last call of the House there was a much larger number present than a quorum. And the Chair will state it has now no doubt there is within the bar of the House at this time much more than a quorum. That fact has been ascertained by a count of the House.

The motion to adjourn is not in order.

5745. When a quorum fails on a vote to second a motion to suspend the rules, a second motion to adjourn is not considered a dilatory motion within the prohibition of the rule.—On December 17, 1888,[3] Mr. Samuel Dibble, of South Carolina, moved to suspend the rules and pass the bill (H. R. 10406) for the purchase of a site for a post-office in the city of Washington.

A second having been demanded, less than a quorum voted on the vote by tellers.

Mr. James H. Blount, of Georgia, moved that the House adjourn, and on a yea-and-nay vote the motion was negatived, 57 yeas, 127 nays.

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[1] See section 5743 of this volume.

[2] This was before the presence of a quorum could be ascertained otherwise than through the responses on a vote.

[3] Second session Fiftieth Congress, Record, pp. 300, 301; Journal, p. 103.

The tellers again took their places and the vote on the second was taken anew.

The tellers having reported 92 ayes and 0 noes, Mr. C. B. Kilgore, of Texas, made the point of no quorum.

Mr. Benjamin A. Enloe, of Tennessee, moved that the House adjourn.

Mr. William M. Springer, of Illinois, made the point of order that the second motion to adjourn was not in order.

The Speaker pro tempore,[1] directed the reading of section 8 of Rule XVI:

Pending a motion to suspend the rules the Speaker may entertain one motion that the House do adjourn; but after the result thereon is announced he shall not entertain any other dilatory motion till the vote is taken on suspension.

And held—

A quorum having failed to vote on the question of ordering a second, the Chair is of opinion that nothing is now in order except a motion to adjourn or for a call of the House. In the judgment of the Chair the motion to adjourn is in order. * * * The present occupant of the chair is not able to decide that a dilatory motion. He thinks, therefore, the motion to adjourn is in order and feels compelled to put the motion to the House.

5746. On February 20, 1899,[2] Mr. Sereno E. Payne, of New York, moved to suspend the rules and pass the bill (H. R. 12064) to encourage the holding of a Pan-American Exposition on the Niagara frontier, etc., and Mr. F. Brucker, of Michigan, demanded a second.

Pending this demand Mr. Joseph G. Cannon, of Illinois, moved that the House adjourn. The House, on division, refused to adjourn.

The question of seconding the motion to suspend the rules was then taken by tellers, and there were, ayes 93, noes 18.

Mr. Buckner made the point of "no quorum."

The Speaker counted the House and announced 163 present, not a quorum.

Mr. Sereno E. Payne, of New York, moved that the House adjourn.

The Speaker[3] said:

A motion that the House do now adjourn is in order.

5747. There being no doubt of the presence of a quorum a motion for a call of the House was held to be such dilatory motion as the rule forbids pending consideration of a motion to suspend the rules.—On July 8, 1892,[4] the pending question was a motion of Mr. Joseph E. Washington, of Tennessee, to suspend the rules and pass the bill organizing the government of the Territory of Utah.

The bill having been read, Mr. Sereno E. Payne, of New York, moved that the House do now adjourn, which motion was disagreed to.

The motion of Mr. Washington was then seconded on a vote by tellers.

Pending the question Mr. Julius C. Burrows, of Michigan, moved that there be a call of the House.

Mr. Alexander M. Dockery, of Missouri, made a point of order that the motion for a call of the House was not now in order.

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[1] James B. McCreary, of Kentucky, Speaker pro tempore.

[2] Third session Fifty-fifth Congress, Record, p. 2121.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-second Congress, Journal, p. 277; Record, p. 5922.

After debate the Speaker[1] sustained the point of order, holding as follows:

The rule provides that, pending a motion to suspend the rules, the Speaker may entertain one motion that the House adjourn, but after the result thereon is announced he shall not entertain any other dilatory motion until the vote is taken on suspension. In this case one motion to adjourn has been made and voted down by the House, and the gentleman from Michigan now moves a call of the House.

It appears from the report of the tellers that more than a quorum of the Members is present, so that there is a House for the transaction of business. The Chair will read a decision, or the effect of a decision, referred to in the Digest, of the second session of the Thirty-ninth Congress:

"Pending the motion to suspend the rules, so as to take an immediate vote on a proposition, a motion for a recess is not in order."

The compiler of the Digest says:

"This decision of the Speaker was sustained on appeal by yeas and nays, there being yeas 172 and nays 4, and it would seem to have settled the question that pending a similar motion dilatory motions, such as had been previously tolerated, would not be entertained by the House."

The Speaker then held that a motion for a recess was a dilatory motion, and that decision was sustained on appeal, as shown.

There being now present a quorum reported by the tellers, the Chair is of opinion that, whatever might be the intention of the gentleman from Michigan, within the meaning and spirit of this rule, the effect of this motion is dilatory in this, that it delays the House, a quorum being present, from the opportunity to vote on this pending motion to suspend the rules.

5748. Pending consideration of a motion to suspend the rules a motion for a recess was held to be such dilatory motion as is forbidden by the rule.—On December 1, 1877,[2] the House was considering the motion of Mr. Roger Q. Mills, of Texas, to suspend the rules and adopt a resolution instructing the Committee on Ways and Means as to tariff revision.

Mr. Hiester Clymer, of Pennsylvania, moved that the House take a recess.

The Speaker[3] said:

The Chair thinks that the motion for a recess is not in order pending a motion to suspend the rules.

5749. On November 3, 1893[4] the Speaker laid before the House the joint resolution (H. Res. 86) to pay session and per diem employees and other employees, and that they be retained during the coming recess, with amendments of the Senate.

Mr. James D. Richardson, of Tennessee, moved that the House concur in the amendments.

After debate Mr. Richardson moved to suspend the rules and concur in the amendments.

Mr. Joseph C. Hutcheson, of Texas, moved that the House take a recess until 2 o'clock and 55 minutes p. m.

Mr. Richardson, of Tennessee, made the point of order that the motion for a recess was not in order pending a motion to suspend the rules.

The Speaker[1] sustained the point of order.

5750. On March 2, 1867[5] Mr. James G. Blaine, of Maine, moved that the rules be suspended, so that the House should immediately proceed to vote on the question as required by the Constitution: Will the House on reconsideration agree

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Forty-fifth Congress, Record, pp. 811, 812; Journal, p. 290.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Fifty-third Congress, Journal, pp. 174, 175; Record, p. 3127.

[5] Second session Thirty-ninth Congress, Journal, pp. 572, 573; Globe, p. 1733.

to the passage of the bill (H. R. 1143) to provide for the more efficient government of the rebel States?

Mr. William E. Fink, of Ohio, having proposed to move that the House take a recess, the Speaker[1] decided that the motion for a recess was not in order, as the motion previously made was a motion to suspend all the rules in the way of an immediate vote on the pending bill, and being entitled to priority must be first voted on.

Mr. Fink having appealed, the decision of the Chair was sustained, yeas 173, nays 4.

5751. On December 1, 1877,[2] Mr. Roger Q. Mills, of Texas, moved that the rules be suspended to enable him to submit this resolution:

> *Resolved,* That the Committee on Ways and Means be instructed to so revise the tariff as to make it purely and solely a tariff for revenue, and not for protecting one class of citizens by plundering another.

After the yeas and nays had been ordered, and a motion to adjourn had been negatived, a motion was made to reconsider the vote whereby the yeas and nays were ordered, and that motion was decided in the negative.

Thereupon Mr. Fernando Wood, of New York, moved that the House take a recess until 10 a. m. Monday.

Mr. Mills made the point of order that the motion was not in order.

The Speaker[3] sustained the point of order on the ground that a motion to take a recess was not in order pending a motion to suspend the rules.

5752. A motion to suspend the rules and pass a bill, being seconded and under consideration, was held to suspend all rules inconsistent with this purpose, including a rule requiring a recess to be taken.—On Friday,[4] July 8, 1892,[5] Mr. Thomas C. McRae, of Arkansas, moved to suspend the rules and pass the bill (H. R. 8390) to amend an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes, approved September 29, 1890.

The motion of Mr. McRae was then seconded upon a vote by tellers.

Pending debate on the motion, the hour of 5 o'clock having arrived, Mr. John A. Caldwell, of Ohio, made the point of order that this being Friday, under clause 2 of Rule XXVI,[6] it was the duty of the Speaker to declare the House in recess until 8 p. m.

The Speaker,[7] overruling the point of order, held that the motion to suspend the rules having been seconded, it was in the possession of the House, and that the House had a right to vote on the motion, the effect of which, if carried, would be to suspend the rules for a recess at 5 o'clock as well as the other rules of the House.

After further debate, the rules were suspended and (two-thirds voting in favor thereof) the bill (H. R. 8390) was passed.

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] First session Forty-fifth Congress, Journal, pp. 290, 291; Record, pp. 812, 813.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] This day had, by special order, been substituted for Monday.

[5] First session Fifty-second Congress, Journal, pp. 274, 277; Record, p. 5919.

[6] See section 3281 of Vol. IV of this work.

[7] Charles F. Crisp, of Georgia, Speaker.

Chapter CXXV.

AMENDMENTS.[1]

1. The rule and its history. Section 5753.
2. In relation to secondary motions. Section 6754.
3. Restriction as to offering. Sections 5755–5757.
4. Inserting and striking out. Sections 5758–5771.
5. Amendments reported by committees. Sections 5772, 5773.
6. In relation to consideration by paragraphs. Sections 5774–5779.
7. Amendment of bills generally. Sections 5780–5782.
8. All portions must be in order. Sections 5783, 5784.
9. Amendment in the nature of a substitute. Sections 5785–5800.

5753. Under the rule relating to amendments four motions may be pending at once: To amend, to amend the proposed amendment, to amend by a substitute, and to amend the substitute.

An amendment in the nature of a substitute may not be voted on until the original matter is perfected.

History of the evolution of the amendment in the nature of a substitute.

In the House (as distinguished from the Committee of the Whole) an amendment, whether simple or in the nature of a substitute, may be withdrawn at any time before amendment or decision is had thereon.

Amendments to the title of a bill are in order after its passage, and were formerly debatable even though the bill had passed under the operation of the previous question; but a later rule prohibits such debate.

Present form and history of Rule XIX.

Rule XIX provides:

When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected; but either may be withdrawn[2] before amendment or decision is had thereon.

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[1] As to the rule that amendments must be germane. (See Chap. CXXVI, secs. 5801–5924 of this volume.)

[2] In Committee of the Whole amendments may not be withdrawn. (See sec. 5221 of this volume.) Amendments to the title of a bill or resolution shall not be in order until after its passage, and shall be decided without debate.

This rule was first framed in the revision of 1880. The Committee on Rules, in their report [1] at that time, said:

Rule XIX merely embraces, in the form of a rule, that which has long been the practice of the House without rule. Speaker Macon decided, in the Ninth Congress, that if a motion to amend the original matter was first submitted, it was not then in order to submit an amendment in the nature of a substitute. This decision was reversed by Speaker Polk in the Twenty-fourth Congress, who was sustained on appeal by a decisive vote; and the practice has since been in accordance with the latter decision.

This paragraph of the report does not give the entire history of this rule, which goes back to the Continental Congress. In that body a habit had grown up of displacing a pending proposition in order to take up another and entirely different matter. Thus, instead of a decision on the merits of a question, there was often a postponement forced by the merits of some other proposition. The Continental Congress abolished this practice by a rule: [2]

No new motion or proposition shall be admitted, under color of amendment, as a substitute for the motion or proposition under debate until it is postponed or disagreed to.

When the House of Representatives was organized under the Constitution, this rule, on April 7, 1789,[3] was made part of the rules; but the last clause, "until it is postponed or disagreed to" was dropped.

The early Speakers construed this rule as preventing what is now known as a substitute; that is, a proposition to strike out all after the enacting or resolving words and insert a new text. It does not appear that Mr. Speaker Macon ruled in the Ninth Congress, as stated in the report of 1880, but on January 11 and April 19, 1808,[4] Mr. Speaker Varnum did hold out of order, under the terms of the rule, amendments in the nature of substitutes. And on January 10, 1822,[5] in a case wherein it was proposed to strike out all after the word "Resolved" and insert a new but germane text, Mr. Speaker Barbour ruled that such an amendment was a substitute, and therefore inadmissible. The House seems to have seen the undesirability of rule that produced such a result, and on March 13, 1822,[6] about two months later, struck out all of the rule forbidding the substitute, leaving it in this form:

No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

That substitute amendments were thereafter admitted is to be inferred from a decision by Mr. Speaker Taylor, on January 31, 1826,[7] wherein he held that the motion of Mr. Daniel Webster, of Massachusetts, to strike out all after the word "Resolved" in the Panama resolution and insert a new text was not in order, while a motion to amend the original text was pending. In the time of Mr. Speaker Polk substitute amendments seem to have been admitted as a matter of course,

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[1] Second session Forty-sixth Congress, Record, p. 203.

[2] See Journal of Continental Congress, July 8, 1784.

[3] First session First Congress, Journal, p. 10.

[4] First session Tenth Congress, Journal, pp. 122, 283.

[5] First session Seventeenth Congress, Journal, p. 135.

[6] First session Seventeenth Congress, Journal, p. 351.

[7] First session Nineteenth Congress, Journal, pp. 794, 795.

and on January 6, 1836,[1] he ruled that an amendment might be made to the substitute.

The last clause, relating to amendments to the title, was added September 6, 1893,[2] to prevent debate on an amendment to the title after the bill had passed. Before this the practice of the House had permitted such debate. On March 8, 1836,[3] Mr. Speaker Polk had held that the title was a distinct part of the bill, and that an amendment to it was debatable, even when the vote on the bill itself had been taken under the operation of the previous question. And on February 26, 1845,[4] Mr. Speaker Jones ruled that a motion to amend the title admitted of limited debate on the general principles of the bill.

5754. With some exceptions an amendment may attach itself to secondary and privileged motions.

The motions to postpone, refer, amend, for a recess, and to fix the day to which the House shall adjourn may be amended.

An amendment may not attach to the motion for the previous question or the motions to lay on the table and adjourn when used in the House.

An amendment in the third degree is not permissible.

The older and the modern form for putting the previous question. (Footnote.)

Section XXXIII of Jefferson's Manual provides:

Suppose an amendment moved to a motion for the previous question. Answer: The previous question can not be amended. Parliamentary usage, as well as the ninth rule of the Senate, has fixed its form to be, "Shall the main question be now put?"[5]—i. e., at this instant; and as the present instant is but one, it can admit of no modification. To change it to tomorrow, or any other moment, is without example and without utility.[6] But suppose a motion to amend a motion for postponement, as to one day instead of another, or to a special instead of an indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion; that is, we may amend a postponement of a main question. So we may amend a commitment of a main question, as by adding, for example, "with instructions to inquire," etc. In like manner, if an amendment be moved to an amendment, it is admitted, but it would not be admitted in another degree, to wit, to amend an amendment to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment.[7] The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.[8]

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[1] See section 5793 of this chapter.

[2] First session Fifty-third Congress, Record, p. 1269; House Report No. 2.

[3] First session Twenty-fourth Congress, Debates, p. 2717.

[4] Second session Twenty-eighth Congress, Journal, p. 481; Globe, p. 354.

[5] This was the previous question of the first years of Congress. The Senate does not have the previous question now. In the House the old form of putting the previous question has been discarded, the Speaker now saying: "The gentleman from——demands the previous question. As many as are in favor of ordering the previous question will say aye; as many as axe opposed will say no."

[6] It is evident also that an amendment may not attach itself to the motion to lay on the table or the motion to adjourn when that motion is used, as in the House, in connection with a standing order fixing the hour of meeting. The motion for a recess and to fix the day to which the House shall adjourn may evidently be subjected to amendment.

[7] On April 20, 1826 (first session Nineteenth Congress, Debates, p. 2410), Mr. Speaker Taylor, in accordance with this principle, ruled out a proposed amendment in the third degree.

[8] The rule of the House allows a substitute with an amendment.

5755. It is not in order to offer more than one motion to amend at a time.—On February 27, 1841,[1] the House was considering the naval appropriation bill, when Mr. George Evans, of Maine, presented motions to strike out and insert as follows:

In the 13th line thereof strike out "one million four hundred and twenty-five thousand," and insert "two Millions."

In line 18 strike out "fifteen" and insert "twenty-five.

And so on for similar changes in six other lines of the bill.

Mr. George C. Dromgoole, of Virginia, made the point of order that it was not in order to offer a series of amendments at one time.

The Speaker[2] decided that it was not in order to offer more than one amendment at a time, and that the foregoing amendments were not in order.

From this decision Mr. Evans appealed, but on the succeeding day withdrew the appeal.

5756. A proposed amendment may not be accepted by the Member in charge of the pending measure, but can be agreed to only by the House.— On January 30, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 10308) to provide for a permanent census office, the pending question being on agreeing to an amendment proposed by Mr. Thomas H. Ball, of Texas.

To this amendment Mr. Elias S. Holliday, of Indiana, proposed an amendment.

Mr. Ball announced that he accepted the amendment to his amendment.

The Chairman[4] said:

The gentleman can not accept the amendment. it is for the Committee of the Whole to decide whether it shall be adopted or rejected.[5]

5757. On January 10, 1905,[6] the Committee of the Whole House on the state of the Union were considering the bill (H. R. 4831) to improve currency conditions, the pending question being on an amendment offered by Mr. Charles N. Fowler, of New Jersey.

Mr. Sidney J. Bowie, of Alabama, proposed an amendment to the amendment.

Mr. Fowler announced that he accepted the amendment offered by Mr. Bowie.

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[1] Second session Twenty-sixth Congress, Journal, p. 336; Globe, pp. 212, 216.

[2] Robert M. T. Hunter, of Virginia, Speaker.

[3] First session Fifty-seventh Congress, Record, p. 1145. [4] William H. Moody, of Massachusetts, Chairman.

[5] Although the principle that an amendment may be adopted only by the will of the body, yet there is one ruling the other way. On January 31. 1826 (first session Nineteenth Congress, Journal, p. 794), Mr. George McDuffie, of South Carolina, proposed an amendment to a resolution which had been offered by Mr. James Hamilton, of South Carolina, and which had already been amended by a vote of the House. Mr. Hamilton proposed to accept the amendment offered by Mr. McDuffie, whereat a question was raised as to the right of Mr. Hamilton to accept a modification after amendment by the House.

The Speaker (John W. Taylor, of New York) decided that the action proposed by Mr. Hamilton was in order, since the amendment proposed to be accepted did not affect the amendment previously inserted by the House.

[6] Third session Fifty-eighth Congress, Record, pp. 659, 660.

Mr. Charles F. Scott, of Kansas, said:

Mr. Chairman, I rise for a parliamentary inquiry. I understood the gentleman from New Jersey to accept the amendment of the gentleman from Alabama. Now, if he accepts it, does he not thereby make it part of his amendment, and must it not, therefore, stand with his amendment?

The Chairman [1] said:

The gentleman from New Jersey can not act for the Committee of the Whole; they must pass upon the question. The question is on agreeing to the amendment offered by the gentleman from Alabama to the amendment offered by the gentleman from New Jersey.

5758. When it is proposed to amend by inserting a paragraph, it should be perfected by amendment before the question is put on inserting.

When it is proposed to strike out a paragraph, it should be perfected by amendment before the question is put on striking out, although if the motion to strike out fails amendments may still be offered.

A negative vote on a motion to strike out and insert does not prevent the offering of another similar motion or a simple motion to strike out.

Words inserted by amendment may not afterwards be changed, except that a portion of the original paragraph including the words so inserted, may be stricken out if, in effect, it presents a new proposition, and a new coherence may also be inserted in place of that stricken out.

When it is proposed to perfect a paragraph, the motion to insert or strike out, if already pending, must remain in abeyance until the amendments to perfect have been moved and voted on.

Jefferson's Manual, in Section XXXV, provides:

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments before the question is put for inserting it. If it be received, it can not be amended afterwards, in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it can not be amended afterwards, because a vote against striking out is equivalent to a vote agreeing to it in that form.[2]

A motion is made to amend by striking out certain words and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those fast proposed. It is negatived. Then it is moved to strike out the same words, and insert nothing, which is agreed to. All this is admissible, because to strike out and insert A is one proposition. To strike out and insert B is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one.

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterwards be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B; in which case those who preferred it would join in rejecting A.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion instead of A and its coherence.

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] The rule of the House specially provides that a motion to strike out being lost shall not preclude amendment or a motion to strike out and insert.

Also Section XXXIII of the Manual provides:

Another exception to the rule of priority is when a motion has been made to strike out or agree to a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out or agreeing to the whole paragraph.

5759. Words once inserted in a paragraph by way of amendment, may not be stricken out by another motion to amend, but words on the same subject, even though inconsistent, may be added to the paragraph.

An early instance wherein a resolution making inquiry of the President of the United States, contained the condition, "if not incompatible with the public interest."

On January 31, 1826,[1] this resolution was before the House, on motion of Mr. James S. Hamilton, of South Carolina:

Resolved, That the President of the United States be requested to transmit to this House copies of all such documents, or parts of correspondence (not incompatible with the public interest to be communicated), relating to an invitation that has been extended to the Government of this country "by the Republics of Colombia, of Mexico, and of Central America to join in the deliberations of a congress to be held at the Isthmus of Panama," and which has induced him to signify to this House that "ministers on the part of the United States will be commissioned to join in those deliberations."

Mr. Hamilton having modified his resolution by striking out the words in parentheses, Mr. Daniel Webster, of Massachusetts, moved, in substance, to insert these words. The amendment was adopted.

Later, on February 2, Mr. James S. Stevenson, of Pennsylvania, proposed an amendment to strike out the words inserted, on motion of Mr. Webster, in Mr. Hamilton's resolution, and to add to the concluding words of the resolution these words: "making so much of his communication confidential as he may think proper."

Mr. Webster inquired if Mr. Stevenson's motion was in order.

The Speaker[2] decided that so much of the motion as went to strike out was not in order, these words having been inserted by a vote of the House; but that the part of the motion to add certain words was in order.

Mr. John Forsyth, of Georgia, appealed, and in his appeal said that with proper deference to the longer experience of the Chair, he could not but deem the proposition of Mr. Stevenson in order. The rule of the House to which the Speaker referred was that words inserted by way of amendment could not be struck out on motion. The propriety of this rule was quite obvious. The House having decided upon the propriety of the words forming part of the proposition, ought not to be called upon again to decide the same question. But it did not apply here. The proposition of the gentleman from Pennsylvania to add words, and to strike out others inconsistent with them, did not bring back the same question that has just been decided. It was perfectly distinct in its character, and had not yet been before the House. The House had decided that it would call on the President for such information as, in his opinion, might be safely communicated. The proposition was that this discretion might be limited to the manner in which the communication was to be

[1] First session Nineteenth Congress, Journal, p. 794; Debates, p. 1261.

[2] John W. Taylor, of New York, Speaker.

made, whether openly or confidentially. In making it, the gentleman proposed additional words to the resolution, and the necessary erasure of words inconsistent with them. The additional words were decided to be in order. If adopted, the whole resolution became nonsensical. To make it sense, the words proposed to be erased must be removed from the whole sentence. To erase them was out of order. * * * The whole amendment was in order or none of it.

The House sustained the decision of the Speaker.

5760. It is in order to insert by way of amendment a paragraph similar (if not actually identical) to one already stricken out by amendment.—On January 7, 1885,[1] the House was considering the bill to regulate commerce between the States, when Mr. Bishop W. Perkins, of Kansas, moved an amendment in the nature of a substitute for several sections of the bill.

Mr. John H. Reagan, of Texas, made the point of order that a certain amendment, being a copy of certain sections of a bill which had been disagreed to by the House, was not in order.

After debate on the point of order, the Speaker[2] overruled the same, on the ground that while a large portion of the proposed amendment was identical with some of the provisions stricken out of the pending bill it was not the same proposition then voted on.

5761. After a vote to insert a new section in a bill it is too late to perfect the section by amendment.—On May 19, 1882,[3] the House was considering the bill (H. R. 4167) to enable national banks to extend their corporate existence, when an amendment in the nature of an entirely new section was offered.

This new section was considered and agreed to.

Thereupon Mr. William H. Calkins, of Indiana, proposed an amendment to the section.

The Speaker[4] said:

> The Chair thinks that amendments would have been in order before the vote was taken upon adopting the new section as amended, but not now. * * * The section was offered in the form of an amendment, and while pending, amendments to that section were in order.

5762. On May 22, 1902,[5] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration of aliens into the United States, when an amendment in the form of a new section was offered, and after being perfected by amendments, was agreed to.

Thereupon Mr. John H. Stephens, of Texas, proposed a further amendment.

The Chairman[6] held that, as the new section had been agreed to, no other amendments to the section were in order.

5763. It is not in order to amend an amendment that has been agreed to; but the amendment with other words of the original paragraph may be stricken out in order to insert a new text of a different meaning.—On

[1] Second session Forty-eighth Congress, Journal, p. 191; Record, pp. 533, 534.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Forty-seventh Congress, Record, pp. 4128, 4129.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] First session Fifty-seventh Congress, Record, p. 5833.

[6] Henry S. Boutell, of Illinois, Chairman.

February 11, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 9206) relating to oleomargarine and other imitation dairy products, when Mr. James A. Tawney, of Minnesota, offered an amendment, which was agreed to.

Thereupon Mr. James W. Wadsworth, of New York, proposed an amendment to the amendment which had already been agreed to.

The Chairman[2] said:

> The committee has already adopted the amendment offered by the gentleman from Minnesota. * * * It is an amendment to that which the committee has already adopted. The original text would be open to amendment, but not the language of the amendment of the committee.

Then Mr. Wadsworth proposed an amendment striking out the section as amended by Mr. Tawney's amendment, and inserting a new text.

Questions of order arising as to this motion, the Chairman held it in order, causing the following from Jefferson's Manual to be read:

> But if it had been carried affirmatively to strike out the words and to insert A, it could not afterwards be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B; in which case those who preferred it would join in rejecting A.
>
> After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

5764. While it is not in order to strike out a portion of an amendment once agreed to, yet words may be added to the amendment.—On April 12, 1828,[3] during consideration of the tariff bill, a proposition was made to amend by striking out a portion of an amendment already agreed to by the House.

The Speaker[4] decided that the motion could not be received, as the amendment from which it was proposed to strike out a portion had been agreed to by the House. Although it was open to be amended by adding to it, it could not be altered by striking out any of the words to which the House had agreed.

5765. On February 25, 1837,[5] the House was considering the second amendment of the Senate to the bill (H. R. 756) making appropriations for fortifications, when, on motion of Mr. John Bell, of Tennessee, the said second amendment was amended by adding the following:

> SEC.—*And be it further enacted,* That the money which shall be in the Treasury of the United States on the first day of January, eighteen hundred and thirty-eight, reserving the sum of five millions of dollars, shall be deposited with the several States, on the terms, and according to the provisions, of the thirteenth, fourteenth, and fifteenth sections of the act to regulate the deposits of the public money, approved the twenty-third day of June, eighteen hundred and thirty-six.

Thereupon, Mr. Abijah Mann, jr., of New York, moved to amend further the said second amendment, by adding as follows:

> *Provided,* That said deposit shall be made with such States in proportion to the ratio of representation of such States in the House of Representatives of the Congress of the United States.

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[1] First session Fifty-seventh Congress, Record, pp. 1614–1616.

[2] John F. Lacey, of Iowa, Chairman.

[3] First session Twentieth Congress, Debates, p. 2309.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] Second session Twenty-fourth Congress, Journal, pp. 526–530; Debates, p. 1967.

Mr. Sherrod Williams, of Kentucky, raised a question of order as to whether an amendment could be moved to an amendment already adopted.

The Speaker[1] ruled the amendment to be in order, because it might come in as a second branch of the proposition. It would not be in order to move to strike out any part of the adopted amendment, but it would be in order to add a paragraph or a proviso to it.

5766. Words embodying a distinct substantive proposition being agreed to as an amendment, it is not in order to amend by striking out a part of those words with other words.—On January 16, 1906,[2] the Philippine tariff bill (H.R. 3) was under consideration in Committee of the Whole House on the state of the Union, when Mr. Richard Wayne Parker, of New Jersey, proposed an amendment which would strike out the latter portion of an amendment already agreed to, and a succeeding portion of the text, as follows, the portion in brackets being the text of the amendment already agreed to and the portion in parentheses being what he proposed to strike out:

[That in consideration of the rates of duty aforesaid, sugar and tobacco, both manufactured and unmanufactured (wholly the growth and product of the United States, shall be admitted to the Philippine Islands from the United States free of duty:] *And provided further,* That on and after the eleventh day of April, nineteen hundred and nine, all articles and merchandise going from the United States into the Philippine Islands, and all articles wholly the growth and product of the Philippine Islands coming into the United states from the Philippine Islands, shall be admitted free of duty)

Mr. Parker's amendment proposed to strike out the above as included in the parentheses and to insert the following:

iron and steel and their manufactures, cotton and its manufactures, petroleum, schists and bitumen and their derivatives, and instruments, machinery, and apparatus employed in agriculture, industry, and locomotion, all being wholly the growth and product of the United States, shall be subject to pay only 25 per cent of the duties collected on merchandise imported into the Philippine Islands.

Mr. Sereno E. Payne, of New York, having raised a question of order, the Chairman[3] ruled:

The Chair finds that the amendment proposed is to strike out the words, beginning in line 5, page 3, "wholly the growth and product of the United States shall be admitted to the Philippine Islands from the United States free of duty." These words form a part of the amendment to which the Committee has already agreed. While the question is not entirely free from doubt, the Chair is of the opinion that the amendment proposing to strike out what the Committee has once voted in is not in order.

5767. The motion to strike out and insert may not be divided for the vote.

A rule of the House provides that even though a motion to strike out a proposition be decided in the negative, yet the proposition may be amended, even by a motion to strike out and insert.

An amendment must be germane to the subject which it is proposed to amend.

Present form and history of section 7 of Rule XVI.

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 1150–1151.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

Section 7 of Rule XVI provides:

A motion to strike out and insert is indivisible, but a motion to strike out being lost shall neither preclude amendment nor motion to strike out and insert; and no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

This rule is in the form reported in the revision of 1880.[1] The portion relating to the motion to strike out dates from December 23, 1811,[2] when the House adopted the rule that "a motion to strike out and insert shall be deemed indivisible," and from March 13, 1822,[3] when this clause was added:

But a motion to strike out being lost, shall preclude neither amendment nor a motion to strike out and insert.

The portion of the rule relating to germaneness was a part of the first rules of April 7, 1789,[4] in this form:

No new motion or proposition shall be admitted under color of amendment as a substitute for the motion or proposition under debate.[5]

On March 13, 1822,[5] the form was changed to that which continues at this time as the last clause of section 7 of Rule XVI.

5768. When it is proposed to strike out certain words in a paragraph, it is not in order to amend by adding to them other words of the paragraph.—On April 3, 1902,[7] the bill (S. 1025) to promote the efficiency of the Revenue-Cutter Service was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

SEC. 8. That when any commissioned officer is retired from active service, the next officer in rank shall be promoted according to the established rules of the service, and the same rule of promotion shall be applied successively to the vacancies consequent upon such retirement.

Mr. James R. Mann, of Illinois, moved to strike out the words "according to the established rules of the service."

Mr. John F. Lacey, of Iowa, moved to amend the amendment by adding to the words proposed to be stricken out other words in the context of the paragraph.

The Chairman[8] held that the amendment of Mr. Lacey should be offered as an independent amendment rather than as an amendment to the amendment.

5769. A motion to strike out certain words being disagreed to, it is in order to strike out a portion of those words.—On March 2, 1904,[9] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following amendment was proposed and disagreed to:

Strike out, in line 1, page 15, the words "register of wills" and in line 2 the words "and the police court."

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[1] Second session Forty-sixth Congress, Record, p. 206.

[2] House Report No. 38, first session Twelfth Congress.

[3] First session Seventeenth Congress, Journal, p. 351.

[4] First session First Congress, Journal, p. 9.

[5] For a further history of this portion of the rule see section 5753 of this volume.

[6] First session Seventeenth Congress, Journal, p. 351.

[7] First session Fifty-seventh Congress, Record, p. 3636.

[8] Marlin E. Olmsted, of Pennsylvania, Chairman.

[9] Second session Fifty-eighth Congress, Record, p. 2693.

Thereupon Mr. Samuel W. Smith, of Michigan, moved to strike out the words "and the police court" in line 2.

Mr. Maecenas E. Benton, of Missouri, suggested the point that the amendment had already been voted on.

The Chairman [1] held:

The Chair will remind the gentleman that the amendment offered by the gentleman from Iowa (Mr. Smith] was to strike out the words "register of wills" in the first line and the words "and the police court" in the second line. No one called for a division. The proposition offered by the gentleman from Michigan [Mr. Samuel W. Smith] to strike out simply the words "and the police court" is a different proposition. Perhaps it would have been better to have called for a division of the amendment offered by the gentleman from Iowa, but that was not done, and the Chair must hold that this is a different proposition—one which has not been acted upon. The question then is upon the amendment offered by the gentleman from Michigan.

5770. It is in order to perfect words proposed to be stricken out by striking out a portion of them.—On April 20, 1904,[2] the House was considering the bill (H. R. 7262) to provide for the allotment of lands in severalty to the Indians in the State of New York, etc.

Mr. John J. Fitzgerald, of New York, proposed an amendment striking out certain lines in one section of the bill, these lines not comprising a separate paragraph by themselves, but standing consecutively.

Mr. Edward B. Vreeland, of New York, proposed an amendment striking out certain lines occurring consecutively, and within the portion proposed to be stricken out by Mr. Fitzgerald.

A question arising, the Speaker pro tempore [3] said:

The Chair will state the parliamentary situation to be that the gentleman from New York [Mr. Fitzgerald] offers to amend by striking out certain words. The other gentleman from New York (Mr. Vreeland] offers an amendment, which is to strike out certain words which are within and much less than the part proposed to be stricken out by the first amendment. * * * And under the rules the amendment offered by the second gentleman from New York [Mr. Vreeland] is in the nature of a perfection of the paragraph, and is therefore a preferential amendment, to be voted upon before the amendment offered by the gentleman from New York [Mr. Fitzgerald] is put.

5771. While amendments are pending to the section a motion to strike it out may not be offered.—On June 2,1906,[4] the bill (H. R. 15442) to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States was under consideration in Committee of the Whole House on the state of the Union, when several amendments to section 9 of the bill were offered and were pending.

Mr. Philip P. Campbell, of Kansas, moved to strike out the whole of section 9.

The Chairman [5] held:

That is not in order at this time until the section has been perfected.

5772. The question on agreeing to committee amendments is put by the Chair without motion from the floor.—On May 25, 1906,[6] the bill

[1] George P. Lawrence, of Massachusetts, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 5206.

[3] Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

[4] First session Fifty-ninth Congress, Record, p. 7783.

[5] Frank D. Currier, of New Hampshire, Chairman.

[6] First session Fifty-ninth Congress, Record, p. 7445.

(H. R. 18523) granting an increase of pension to Hugh Reid was under consideration in Committee of the Whole House when the Chairman was proceeding to take the sense of the House on the Committee amendments to the bill.

Mr. John S. Williams, of Mississippi, suggested that the Chair wait until some Member make the motion to agree to the amendments.

The Chairman [1] said:

The Chair will state that it is not necessary under the rule; that the Committee amendments are considered pending by virtue of the report of the Committee, and hence it is unnecessary to wait for a motion.

5773. Amendments reported by a committee are acted on before those offered from the floor—On December 28, 1826,[2] in the Senate, during consideration of the bankruptcy bill, the Chair [3] held that the amendments proposed by the committee would be first considered, then the propositions of other Senators would be in order.

This is the practice in the House also.[4]

5774. A bill being under consideration by paragraphs, a motion to strike out was held to apply only to the paragraph under consideration.— On May 24, 1900,[5] the bill (S. 3419) making further provision for the civil government of Alaska, and for other purposes, was under consideration in Committee of the Whole House on the state of the Union. This bill was printed in sections, a section sometimes including several paragraphs, and the sections were classified into chapters.

For convenience of amendment the Committee was proceeding with the reading paragraph by paragraph, as in the case of appropriation bills, rather than section by section.

The Clerk having read the first paragraph of chapter 12, Mr. James T. Lloyd, of Missouri, moved to strike out all of the chapter after the first section.

The Chairman [6] held:

The Chair is of opinion without unanimous consent it would not be in order. The Chair has stated that it would only be in order to strike out the section paragraph by paragraph as read. * * * The Chair ruled in accordance with the rule of the House. The practice is well settled and understood that you can not without unanimous consent strike out an entire chapter at one time. After reading by paragraphs or section you can not go back to a paragraph that has been read, but it is in order only to strike it out by paragraph or section. * * * Before we commenced, it was provided that at the conclusion of each paragraph the Committee amendments should be disposed of, rather than wait until the section is read.

5775. It is in order, by a motion to insert, to effect a transfer of paragraphs from the latter to the first portion of a bill.—On March 22, 1904,[7] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas S. Butler proposed

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[1] Adin B. Capron, of Rhode Island, Chairman.

[2] Second session Nineteenth Congress, Debates, p. 23.

[3] John C. Calhoun, of South Carolina, Vice-President.

[4] Of course, if a committee amendment is to be amended in the House, it may not be voted on until perfected.

[5] First session Fifty-sixth Congress, Record, p. 5981.

[6] John J. Jenkins, of Wisconsin, Chairman.

[7] Second session Fifty-eighth Congress, Record, pp. 3524–3527.

an amendment which in effect would transpose a part of the bill from the latter portion to a page in the first part. He moved to insert, presumably intending, when the part should be reached in the latter portion, to move to strike out.

After several points of order had been raised and discussed, the Chairman[1] held:

The gentleman from Pennsylvania offers an amendment which has been reported by the Clerk, following line 16, page 12, of the bill. The gentleman from Pennsylvania moves to amend by adding what is conceded is the language now in the draft of the bill before the House contained on page 23, from line 5 down to and including line 16 on page 26 of the bill. To this amendment the gentleman from Indiana [Mr. Overstreet] makes the point of order, first, that the amendment is not germane; second, that it contains new legislation; and third, that in parts it is contrary to existing law. The gentleman from Illinois [Mr. Mann] has also made the point of order against a certain paragraph in the amendment.

Now, the Chair wishes to have it clearly understood in the first place that this amendment, left as it is before the Committee, is an entirety, and any point of order sustained against any part of the amendment would, of course, throw out the entire amendment.

First, as to the question as to its being germane. The Chair understands that it is in the power of the House to make the artificial arrangement of a bill, and the Chair does not think that the transfer of what happens to be in a part of the bill which has not been yet read to a part of the bill which is now under consideration necessarily raises the question of its germaneness. The question of the amendment being germane is raised as a new and independent question when the amendment is offered. Now, as to this amendment being germane at this time, the Chair would be constrained to hold that it is germane to this part of the bill, unless it can be conclusively shown to the Chair that there is some other part of the bill to which the amendment preeminently belongs.

Now, the Chair is not convinced that there is any other part of the bill to which this amendment applies in preference to this part of the bill. The Chair therefore holds that the amendment at this point is germane. In making this ruling, however, the Chair wishes to be distinctly understood as not considering that this amendment changes the discretion in any way of the Postmaster-General in reference to the expenditure of funds appropriated for his Department. The law rescribes that the funds appropriated for the Post-Office Department shall be expended and accounted for by the Postmaster-General, and the Chair is of opinion that it is a matter of indifference in what part of this appropriation bill an item of appropriation occurs so far as the discretion rested in the Postmaster-General is concerned. It is very clear from the points of order raised by the gentleman from Indiana and the gentleman from Illinois that this amendment, regarded as an entirety, changes the existing law and contains new legislation.

The Chair has looked through the amendment hurriedly, but in line 22, on page 23 of the bill, the words "five years" seem to be changed from "ten years." The first two words in line I of page 25, together with the last words of page 24, reading "in the field" seem by reference to the present law to be new legislation, and the parts of the amendment referred to by the gentleman from Indiana, beginning at the bottom of page 25, and the parts referred to by the gentleman from Illinois, at the top of page 26, are new legislation or change of existing law, and without going into any further detail as to the number of instances in which the pending amendment changes existing law, it is very clear to the Chair that the amendment does contain new legislation, does change existing law, and the Chair, therefore, sustains the point of order.

5776. On February 1, 1965,[2] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Jesse Overstreet, of Indiana, offered this amendment:

Insert after line 8, page 1, the following:

"Salaries of post-office inspectors: For salaries of fifteen inspectors in charge of divisions, at $2,500 each; six inspectors, at $2,400 each; fifteen inspectors, at $2,250 each; fifteen inspectors, at

[1] Henry S. Boutell, of Illinois, Chairman.

[2] Third session Fifty-eighth Congress, Record, pp. 1734, 1735,

$2,000 each; seventy inspectors at, $1,600 each; sixty inspectors, at $1,400 each, and forty-two inspectors, at $1,200 each; in all, $362,050.

"For per diem allowance of inspectors in the field while actually traveling on official business away from their home, their official domicile, and their headquarters, $195,000: *Provided,* That the Postmaster-General may, in his discretion, allow post-office inspectors per diem while temporarily located at any place on business away from their home, or their designated domicile, for a period not exceeding twenty consecutive days at any one place, and may make rules and regulations governing the foregoing provisions relating to per diem: *And provided further,* That no per diem shall be paid to inspectors receiving annual salaries of $2,000 or more.

"For salaries of clerks and laborers at division headquarters, miscellaneous expenses at division headquarters, traveling expenses of inspectors without per diem, and of inspectors in charge, expenses incurred by field inspectors not covered by per diem allowance, and traveling expenses of the chief post-office inspector, $100,000: *Provided,* That of the amount herein appropriated not to exceed $2,000 may be expended, in the discretion of the Postmaster-General, for the purpose of securing information concerning violations of the postal laws, and for services and information looking toward the apprehension of criminals.

"For payment of rewards for the detection, arrest, and conviction of post-office burglars, robbers, and highway mail robbers, $15,000."

Mr. James R. Mann, of Illinois, made a point of order, saying:

The amendment, as I understand, is a provision in the bill on page 21 and running over several pages. * * * It changes at once a large number of separate paragraphs, each of which would have to be read by itself in the bill, and subject to amendment by itself in the bill; and now the gentleman offers all of these provisions as one amendment. If that amendment be in order, then the gentleman could offer, after the first paragraph of the bill, all the balance of the bill as one amendment, and prevent the amendment of different paragraphs of the bill. I think the gentleman ought to ask unanimous consent that he may take up that part of the bill at this place and insert it in this place in the bill, to which there probably would be no objection; but it does seem to me to offer a large number of paragraphs out of one place in the bill, where they should be read one at a time and subject to point of order each by itself, and offer them as one amendment in another place in the bill absolutely destroys the right of the committee properly to consider and amend the bill as it should be presented.

After debate, the Chairman said: [1]

The Chair will call the attention of the Committee to a ruling made at the last session, when the Post-Office appropriation bill was under consideration. That ruling is that "it is in order by a motion to insert to effect a transfer of paragraphs from the latter to the first portion of a bill." The chairman of the committee, therefore, has a right to move to transfer a paragraph from one place in the bill to another.

A motion to insert a paragraph containing different propositions can be divided, upon the request of any member of the committee, so that the rights of the committee are entirely safeguarded. If the committee sees fit to consider it as one paragraph, it can do so. If not, any member of the committee has the right to have the paragraph divided, and the different propositions contained in it considered separately.

The Chair overrules the point of order. The question is upon the amendment offered by the gentleman from Indiana [Mr. Overstreet].

5777. An amendment in the form of a new and separate paragraph may be offered to any part of the bill to which it is germane.—On March 10, 1902,[1] while the Committee of the Whole House on the state of the Union was considering the bill (H. R. 11728) relating to the free rural delivery service, and before the reading of the bill for amendment had been com-

[1] George P. Lawrence, of Massachusetts, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 2598, 2599.

pleted, Mr. Joshua S. Salmon, of New Jersey, proposed an amendment in the form of a new and separate paragraph.

Mr. Claude A. Swanson, of Virginia, made the point of order that such an amendment might be offered only at the end of the bill.

The Chairman [1] said:

The Chair is of the opinion that a separate paragraph does not necessarily go to the end of the bill. The Chair thinks that this amendment is obviously germane. * * * The Chair is of opinion that the paragraph which the gentleman offers is plainly germane to the bill and can be introduced as a separate paragraph, but the Chair is of the opinion, as suggested by the gentleman from Virginia, that it would be more appropriate and more regular and much better if the paragraph was offered after the subject which is treated of here has been acted upon by the House; that is, after sections 3 and 4 have been disposed of. The Chair will suggest to the gentleman from New Jersey that he withdraw his amendment and renew it again, which will prevent all question.

5778. Pro forma amendments were in use in five minutes' debate as early as 1868.—In a resolution agreed to on February 25, 1868,[2] providing the order of business for considering articles of impeachment against Andrew Johnson in Committee of the Whole, pro forma amendments are mentioned, indicating their use at that time in the five-minute debate.[3]

5779. The formal amendment striking out the last word is not in order in considering an amendment to a substitute, being in the third degree.— On June 6, 1902,[4] the Committee of the Whole House on the state of the Union was considering the bill (S. 3653) for the protection of the President of the United States, and for other purposes. This bill had been reported from the Committee on the Judiciary with an amendment striking out all after the enacting clause and inserting a new text.

To this new text an amendment had been offered, when Mr. David H. Smith, of Kentucky, moved to strike out the last word of the amendment, and on this motion was proceeding to debate.

Mr. George W. Ray, of New York, having made a point of order, the Chairman [5] said:

The point of order is made by the gentleman from New York [Mr. Ray] that the amendment proposed by the gentleman from Kentucky is not in order because it is an amendment in the third degree. The Chair will sustain the point of order.

5780. In 1886 the House abandoned the rule prohibiting the amendment of one bill by offering the substance of another bill pending before the House.—In the early days of the House it was not customary to allow the substance of a bill already pending before the House to be offered as an amendment to a bill under consideration. A ruling to this effect was made on

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[1] Frederick H. Gillett, of Massachusetts, Chairman.

[2] Second session Fortieth Congress, Journal, p. 407; Globe, p. 1425.

[3] The practice of making pro forma amendments in Committee of the Whole during the five-minute debate led to an attempt on March 29, 1880, to prohibit such amendments. (Second session Forty-sixth Congress, Journal, p. 907; Record, p. 1935.)

[4] First session Fifty-seventh Congress, Record, p. 6425.

[5] Charles H. Grosvenor, of Ohio, Chairman.

June 17, 1836.[1] This was in accordance with the practice of the House from the earliest times.

On December 17, 1808,[2] the Speaker[3] decided that it was not in order to offer as an amendment to a pending measure the substance of a proposition already referred to a Committee of the Whole.

On February 14, 1826,[4] a question arose and was debated in Committee of the Whole as to the propriety of offering as an amendment to the pending bill a matter referred to a standing committee and not reported by them.

On April 5, 1886,[5] on report from the Committee on Rules, the House repealed an old rule, which had been existing since 1837, and which prohibited the amendment of one bill by offering as an amendment any other bill pending before the House. The committee considered that this rule restricted unduly the right to amend.

5781. A bill is not amended on its first reading, but pending the engrossment and third reading.

A new bill may be engrafted by way of amendment on the words "Be it enacted," etc.

One House may pass a bill with blanks to be filled by the other House.

The amendment of the numbering of the sections of a bill is done by the Clerk.

The inconsistency of a proposed amendment with one already agreed to is not a matter for the decision of the Speaker.

Jefferson's Manual has these general provisions of the parliamentary law in relation to amendments:

In Section XXIV:

> A bill can not be amended on its first reading.[6]

In Section XXXV:

> If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House, but not within the competence of the Speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex of order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.[7]
>
> A new bill may be ingrafted, by way of amendment, on the words "Be it enacted," etc.[8] (1 Grey, 190, 192.)

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[1] First session Twenty-fourth Congress, Journal, p. 1033; Debates, p. 4331.

[2] Second session Tenth Congress, Journal, pp. 133–143. Also, again on January 22, 1810, second session Eleventh Congress, Journal, p. 196.

[3] Joseph B. Varnum, of Massachusetts, Speaker.

[4] First session Nineteenth Congress, Debates, p. 1358.

[5] First session Forty-ninth Congress, Journal, pp. 1156, 1166.

[6] It is the practice in the House to amend bills after the second reading and when the next question would be on the engrossment. Senate bills in the House are amended when the question is on the third reading.

[7] Thus, Mr. Speaker Stevenson, in 1828 (first session Twentieth Congress, Debates, pp. 1155, 2309), held: "The Chair has no right to judge on the point of compatibility," and quoted the provision of Jefferson's Manual in justification therefor.

[8] Of course the new bill must, under the rules of the House, be germane to the text which it displaces.

A bill passed by the one House with blanks.[1] These may be filled up by the other by way of amendments, returned to the first as such, and passed. (3 Hats., 83.)

The number prefixed to the section of a bill, being merely a marginal indication, and no part of the text of the bill, the Clerk regulates that—the House or committee is only to amend the text.

5782. When unanimous consent has been given for the consideration of a bill, amendments may be offered and may not be prevented by the objection of a member.—On November 16, 1877[2] Mr. Roger Q. Mills, of Texas, asked and obtained unanimous consent for the consideration of a resolution relating to the strength of the Army.

The resolution being under consideration, and a proposition having been made to amend it, objection was made to such amendment.

Thereupon the Speaker[3] held:

The gentleman asked unanimous consent to introduce the resolution. It is the province of the House to pass the resolution. It is not the duty of the Chair. Unanimous consent having been given for its introduction, the resolution is before the House for consideration and is open to amendment.

5783. The admissibility of an amendment should be judged from the provisions of its text rather than from the purpose which circumstances may suggest.—On January 22, 1902,[4] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 9315) "making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1902, and prior years, and for other purposes," when Mr. John A. T. Hull, of Iowa, made the point of order that the following paragraph involved new legislation:

For the establishment in the vicinity of Manila, P. I., of a military post, including the construction of barracks, quarters for officers, hospital, storehouses, and other buildings, as well as water supply, lighting, sewerage, and drainage necessary for the accommodation of a garrison of 2 full regiments of infantry, 2 squadrons of cavalry, and 2 batteries of artillery, to be available until expended, $500,000.

The Chairman[5] sustained the point of order, and the paragraph was ruled out.

Soon thereafter Mr. Joseph G. Cannon, of Illinois, offered the following amendment:

For the proper shelter and protection of officers and enlisted men of the Army of the United States lawfully on duty in the Philippine Islands, to be expended in the discretion of the President, $500,000.

Mr. James D. Richardson,, of Tennessee, made the point of order against the amendment.

After debate, the Chairman said:

The rules of the House provide that appropriations for deficiencies, whether for the military establishment, the naval establishment, the Post-Office, or Indian, or whatever purpose, are under the jurisdiction of the Committee on Appropriations rather than the general committees that care for the general appropriation bills covering the different Departments and subjects.

It is not for the Chair to determine whether a deficiency exists at the present time, or is likely to exist prior to the 1st day of July, the close of the fiscal year, in order to say whether or not the proposed amendment is in order; nor is it for the Chair to say whether or not it is wisdom on the part of the Committee or of the House to appropriate large amounts of money in a lump sum, as it is proposed to do

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[1] See Globe, second session Twenty-seventh Congress, for illustration of receiving motions for filling blanks as to numbers, by ranging them from highest to lowest, p. 436.

[2] First session Forty-fifth Congress, Record, pp. 458, 459; Journal, p. 223.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Fifty-seventh Congress, Record, pp. 889–895.

[5] James S. Sherman, of New York, Chairman.

in this case. It has been the custom of the House to so appropriate for a great length of time in all sorts of appropriation bills. It is for the Chair to look, it seems to the present occupant of the chair, at the text of the amendment, and not at the purpose of the amendment. That idea of the Chair is strengthened by rulings of former occupants of the chair.

In the last Congress, when the amendment for irrigation was proposed, amendment after amendment was ruled out of order by the then occupant of the chair, the Committee understanding all the time that each succeeding amendment was intended for the same purpose as the preceding one was, until finally an amendment was proposed in such form that the Chair ruled it in order, holding at that time that it was the text that must govern the Chair, rather than the purpose back of the amendment.

It seems to the Chair that the question to be determined here is whether this amendment as it appears, as it reads, regardless of the purpose that may be back of it, is an appropriation provided for by existing law. It is not for the Chair to determine what is the purpose of the amendment. Jefferson in his Manual says: "It is not for the Chair to draw the question of consistence within the vortex of order." And that is this case, as it seems to the Chair. But it is for the Chair to determine whether or not there is existing law for the object for which this appropriation is provided or proposed. The Chair finds such existing law in what is known as the Spooner amendment to the last Army appropriation bill, which provides that—

"All military, civil, and judicial powers necessary to govern the Philippine Islands, acquired from Spain by the treaties concluded at Paris on the 10th day of December, 1898, and at Washington on the 7th day of November, 1900, shall, until otherwise provided by Congress, be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion."

The Chair therefore is inevitably brought to the conclusion that there is existing law for this appropriation and that it is appropriate to make the appropriation upon a deficiency bill. The Chair therefore overrules the point of order.[1]

Mr. Richardson having appealed, the decision of the Chair was sustained, ayes 127, noes 110, on a vote by tellers.

5784. If a portion of a proposed amendment be out of order the whole of it must be ruled out.—On July 22, 1882,[2] Mr. Henry H. Bingham, of Pennsylvania, called up the bill (H. R. 859) regulating rates of postage on second-class mail matter at letter-carrier offices.

Mr. Richard W. Townshend, of Illinois, having offered an amendment,

Mr. Stanton J. Peele, of Indiana, made the point of order that the amendment was not germane; and Mr. Hernando D. Money, of Mississippi, made the point that it was the substance of a bill pending before the Committee on the Post-Office and Post-Roads.

After debate the Speaker[3] caused to be read section 4 of Rule XXI:

No bill or resolution shall at any time be amended by annexing thereto or incorporating therewith the substance of any other bill or resolution pending before the House,[4]

and then said:

The Chair does not think it matters whether the proposition is one that is to be found in several bills pending before the House or in only a single bill. But let us look at the question a little closer. The

[1] Section 1136, Revised Statutes, provides: "Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress and approved by a special appropriation for the same; and no such structures the cost of which shall exceed $20,000 shall be erected unless by special authority of Congress." This law was not brought to the attention of the Chairman in the debate and was not considered in relation to the ruling.

[2] First session Forty-seventh Congress, Record, pp. 6373–6375; Journal, p. 1704.

[3] J. Warren Keifer, of Ohio, Speaker.

[4] This rule no longer exists.

bill before the House is a bill to regulate the rates of postage on second-class mail matter at letter-carrier offices. The amendment proposed by the gentleman from Illinois is to reduce the rate of postage upon ordinary letters and newspapers. It undertakes to amend the statutes in another respect and entirely different from that proposed by the pending bill. The Chair is by no means satisfied that the amendment would be germane to this bill. This is not a general proposition to revise the postal laws of the United States; but if it be a fact that any portion of this amendment is, in substance, included in a pending bill or pending bills, then that portion would clearly not be in order. But there being a portion of the amendment not in order, as must be conceded, it is perfectly clear that the whole amendment must go out. If a portion of a proposition submitted is clearly not in order, the whole must be rejected, for under no cover of including that which is not in order with that which is could such an amendment be admitted. The Chair holds, therefore, the amendment is not in order under the point of order made against it.

5785. It was settled by the practice of the House, before the adoption of the rule, that there might be pending with the amendment, and the amendment to it, another amendment in the nature of a substitute and an amendment to the substitute.

Form of a substitute amendment for the text of an entire bill. (Footnote.)

After an amendment in the nature of a substitute is agreed to, the vote must then be taken on the original proposition as amended by the substitute.

On July 2, 1850,[1] the House resumed the consideration of the report of the select committee appointed to investigate the conduct and relation of the Hon. George W. Crawford to the claim of the representatives of George Galphin, together with the resolutions, submitted in the report of the majority of the committee. These resolutions recited that the claim was not a just demand against the United States, and that while the act of Congress made it the duty of the Secretary of the Treasury to pay the principal it did not authorize the payment of interest.

There was pending a motion of Mr. Robert Toombs, of Georgia, to add to the resolutions the following:

Resolved, That there is no evidence submitted by the committee to whom was referred the letter of the Hon. George W. Crawford, asking "an investigation" into his conduct in reference to the claim of the representatives of George Galphin, which impugns his personal or official conduct in relation to the settlement of said claim by the proper officers of the Government.

To this amendment Mr. Robert C. Schenck offered the following as an amendment:

Insert at the end thereof the following words: "*Provided, however,* That this House is not to be understood as approving his relation to that claim in continuing to be interested in the prosecution of it when it was to be examined, adjusted, and paid by one of the Departments of the Government, he himself being at the same time at the head of another of those Departments; but the House considers that such connection and interest of a member of a Cabinet with a claim pending and prosecuted before another Department would be dangerous as a precedent, and ought not to be sanctioned."

Mr. Schenck also submitted the following as a substitute for the original resolutions:

That while this House, after "full investigation," does not find cause to impute to the Secretary of War any corrupt "conduct" or fraudulent practice in procuring an allowance and payment of the claim of the representatives of George Galphin, yet it does not approve his "relation" to that claim, in

[1] First session Thirty-first Congress, Journal, pp. 1074, 1075; Globe, p. 1328.

this, that he continued to be interested in the prosecution of it while it was to be examined, adjusted, and paid by one of the Departments of the Government, he himself at the same time holding office as the head of one of those Departments.

Thereupon Mr. Jacob Thompson, of Mississippi, moved to amend the substitute by inserting between the word "approve" and the word "his" the following words:

But decidedly disapproves and dissents from the opinion given by the Attorney-General in favor of an allowance of interest on said claim, and from the action of the Secretary of the Treasury in payment of the same, and it does not approve.

And then, pending the question upon the amendment of Mr. Schenck to the amendment of Mr. Toombs, the House adjourned.[1]

5786. Both an original proposition and a proposed amendment in the nature of a substitute may be perfected by amendments before the vote is taken on the substitute.—On July 27, 1886,[2] the House had before it two propositions relating to the subject of interstate commerce, one a Senate bill and the other an amendment recommended by the Committee on Commerce in form of and as a substitute for the Senate bill.

In response to a parliamentary inquiry in regard to the bill and substitute, made by Mr. Frank Hiscock, of New York, the Speaker[3] said:

Both the Senate bill and the substitute proposed by the Committee on Commerce are before the House; and it is in order to move an amendment to either one before the vote is taken on agreeing to the substitute.

5787. An amendment in the nature of a substitute may be proposed before amendments to the original text have been acted on, but may not be voted on until after such amendments have been disposed of.—On April 17, 1844,[4] the House was considering the amendments reported from Committee of the Whole to the bill (H. R. 126) making appropriations for the improvement of certain harbors and rivers.

Mr. Andrew Kennedy, of Indiana, moved to amend the bill by striking out all after the enacting clause and inserting a new measure, and then moved the previous question.

Mr. George C. Dromgoole, of Virginia, raised the question of order that, according to the parliamentary practice, an amendment was not in order, except to an amendment of the Committee, until the House had first acted upon the amendments

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[1] This was before the adoption of the rule. See section 5753 of this volume.

The form of a substitute for the text of an entire bill (or joint resolution) is, "Strike out all after the enacting (or resolving) clause and insert," etc.

After a substitute has been agreed to, the vote must be again taken on the proposition as thus amended. (See sections 5799, 5800 of this chapter.)

A motion, however, to strike out and insert (as, for example, in the case of a substitute) being carried, precludes a motion to strike out or otherwise amend the matter inserted. Hence, after a substitute has been agreed to, no amendment to the substitute is in order. It is therefore important to perfect the substitute by desired amendments thereto before the question of agreeing to it is voted on.

[2] First session Forty-ninth Congress, Record, p. 7615.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Twenty-eighth Congress, Journal, p. 807; Globe, p. 529.

of the Committee;[1] and that the amendment proposed by Mr. Kennedy was not an amendment to an amendment.

The Speaker pro tempore[2] decided that, as the amendments proposed by the committee were embraced in the part proposed to be stricken out, the question would be first put on the amendments of the Committee, under the usual parliamentary practice of perfecting what is proposed to be stricken out, and therefore the motion of Mr. Kennedy was in the nature of an amendment to an amendment, and in order.[3]

From this decision Mr. Dromgoole appealed. The decision of the Chair was affirmed.

5788. When a bill is considered by sections or paragraphs, an amendment in the nature of a substitute is properly offered after the reading for amendment is concluded.—On July 16, 1894,[4] the House, under a special order and with a special arrangement for debate under the five-minute rule, was considering the bill (H. R. 4609) to establish a uniform system of bankruptcy.

After general debate the amendments recommended by the Committee on the Judiciary were agreed to in gross and, by unanimous consent, were considered subject to amendment in like manner as other parts of the bill.

Mr. George W. Ray, of New York, and Mr. William A. Stone, of Pennsylvania, submitted the question of order: At what period of the consideration would it be in order to move a substitute for the pending bill?

The Speaker pro tempore[5] held that the substitute would be in order after the reading of the bill by sections for amendment should be concluded, and not before.[6]

5789. Under exceptional circumstances a substitute amendment to a bill which was being considered by paragraphs was once voted on before all the paragraphs had been read.—On January 26, 1887,[7] the House was in Committee of the Whole House on the state of the Union considering the river and harbor appropriation bill.

A portion of the bill had been read through for amendment by paragraphs, when Mr. Knute Nelson, of Minnesota, moved to strike out all after the enacting clause, and in lieu thereof insert the following:

> That the sum of $7,500,000 is hereby appropriated, out of any money in the Treasury not otherwise appropriated, which may be expended by a board of engineers, consisting of the Chief of Engineers and the four engineers now senior in service, either for the repair, preservation, construction, or completion of such public improvements of rivers and harbors as shall in their judgment afford practical and important facilities for transportation by water of interstate commerce.

After debate on the amendment, which Mr. Nelson declared that he offered because, after a struggle of two days, there appeared a determined effort to defeat the bill, Mr. William P. Hepburn, of Iowa, made the point of order that a vote

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[1] The amendments proposed by the Committee are first in order for action, according to the practice of the House.

[2] George W. Hopkins, of Virginia, Speaker pro tempore.

[3] Since this decision Rule XIX has been adopted. (See sec. 5753 of this volume.)

[4] Second session Fifty-third Congress, Journal, p. 485; Record, pp. 7547, 7560.

[5] James D. Richardson, of Tennessee, Speaker pro tempore.

[6] In this case the time for reading the bill for amendments was limited to two hours, so there was little chance that the bill would be perfected in this way. The Chair expressed the opinion that the substitute could not be offered unless the bill was perfected within the time. (See Record, p. 7560.)

[7] Second session Forty-ninth Congress, Record, p. 1059; Journal, p. 384.

could not be taken upon the substitute until every part of the bill had been considered. In support of his point Mr. Hepburn quoted Rule XIX.[1]

The Chairman[2] ruled:

The Chair is of opinion that in the state in which the Chair finds the question it is in order to take the vote upon the amendment offered by the gentleman from Minnesota [Mr. Nelson].

The gentleman from Minnesota was permitted to offer his amendment without objection or interposition of point of order. It has been discussed at length, and an amendment has been offered to it which has not only been discussed but been voted upon by the committee; and the proposition of the gentleman from Minnesota has, for an hour or more, been considered in the absence of any proposition to further amend, perfect, or even consider the original text of the bill. During all that time no further amendment to the text of the bill has been proposed; nor is any offered now. There is no other amendment pending than that of the gentleman from Minnesota [Mr. Nelson]; and none other being offered, the Chair thinks it is in order to vote upon it.

Mr. Hepburn having appealed, the decision of the Chair was sustained—ayes 118, noes 46.

5790. To a motion to insert words in a bill a motion to strike out certain words of the bill may not be offered as a substitute.—On May 29, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12704) relating to subsidiary coinage, the pending question being on an amendment proposed by Mr. Galusha A. Grow, of Pennsylvania, to insert a certain provision after the word "coin" in line 9.

Thereupon Mr. Samuel W. T. Lanham, of Texas, proposed as a substitute the following amendment:

Strike out the words "and thereafter as public necessity may demand to recoin silver dollars into subsidiary coin," in lines 7, 8, and 9; strike out the words "and so much of any acts as directs the coinage of any portion of the bullion purchased under the act of July 14, 1890, into standard silver dollars, "in lines 10, 11, 12, and 13.

The Chairman[4] said:

The Chair would state to the gentleman from Texas that the matter he has set out is not a substitute to the amendment offered by the gentleman from Pennsylvania. It is a distinct amendment. * * * As the Chair understands the gentleman's proposition, it involves striking out two lines or three lines of the bill above the point where the amendment offered by the gentleman from Pennsylvania comes in, and therefore embodies more than the amendment of the gentleman from Pennsylvania includes, and it is not a substitute, but is a different amendment. * * * The gentleman's amendment may be in order when the other two are disposed of. The gentleman from Texas offers it as a substitute for the original amendment offered by the gentleman from Pennsylvania, and includes therein the striking out of a considerable portion of the bill which is not in the least affected by the amendment offered by the gentleman from Pennsylvania. * * * The gentleman from Texas proposes, as a substitute for a motion to insert, a provision with a motion to strike out of the bill. The Chair thinks, while the amendment might be in order after the pending amendments are disposed of, it is clear that it is not a substitute to the amendment.

5791. In considering an amendment to a substitute, an amendment in the nature of a substitute for the pending amendment was not admitted,

[1] See section 5753 of this volume.

[2] Benton McMillin, of Tennessee, Chairman.

[3] First session Fifty-seventh Congress, Record, p. 6114.

[4] James A. Tawney, of Minnesota, Chairman.

being in the third degree.—On June 22, 1906,[1] the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated, etc., foods, drugs, medicines and liquors, etc., was under consideration in the Committee of the Whole House on the state of the Union, there being pending a committee amendment in the nature of the substitute.

Mr. James R. Mann, of Illinois, offered the following amendment to the substitute:

On page 22 strike out lines 19 and 20 and insert in lieu thereof the following:

"That for the purpose of carrying out the provisions of this act it shall be the duty of the Secretary of Agriculture, from time to time, to determine and make known standards of the various articles of food in compliance with the definitions and provisions of this act."

Mr. Edgar D. Crumpacker, of Indiana, rising to a parliamentary inquiry, asked if it would be in order to offer a substitute for the amendment proposed by Mr. Mann.

The Chairman[2] replied that it would not be in order.[3]

5792. A motion to strike out a paragraph being pending, and the paragraph then being perfected by an amendment in the nature of a substitute, the motion to strike out necessarily falls.—On January 10, 1905,[4] the Committee of the Whole House on the state of the Union were considering the bill (H. R. 4831) to improve currency conditions, under the five-minute rule, and the following section was read:

SEC. 7. That every national banking association having United States bonds on deposit to secure its circulating notes shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of 1 per cent each half year upon the average amount of its notes in circulation, and such taxes shall be in lieu of all existing taxes on circulating notes of national banking associations.

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[1] First session Fifty-ninth Congress, Record, p. 9001.

[2] Frank D. Currier, of New Hampshire, Chairman.

[3] There has been one ruling based on the opposite view. On June 26, 1902 (first session Fifty-seventh Congress, Record, p. 7446), the Committee of the Whole House on the state of the Union was considering under the five minute rule the bill (S. 2295) temporarily to provide for the affairs of civil government in the Philippine Islands. To this bill the Committee on Insular Affairs had reported an amendment to strike out all after the enacting clause and insert a new text. Mr. William A. Jones, of Virginia, had offered an amendment to this substitute.

Mr. William Sulzer, of New York, moved to strike out the last word.

The Chairman (Frederick H. Gillett, of Massachusetts, Chairman) held that the motion was not in order. Later, when Mr. John W. Gaines, of Tennessee, again raised the question, the Chairman said:

"The Chair stated early in the day, when probably the gentleman from New York and the gentleman from Tennessee were absent, and therefore it may be well to state it again, that under the rules of the House this whole House bill is an amendment, and as parliamentary law allows only one amendment to an amendment, therefore there can be but one amendment pending to the House bill. Hence the proposition which the gentleman from Tennessee just made, and has made before, to amend an amendment to the House bill is clearly out of order."

Mr. Champ Clark, of Missouri, then proposed an amendment in the nature of a substitute for the amendment of Mr. Jones.

The Chairman said: "The gentleman from Missouri offers this as a substitute to the amendment, not as an amendment to the amendment. There is some question whether that is permissible or not, but the Chair is inclined to rule that a substitute is admissible."

[4] Third session Fifty-eighth Congress, Record, p. 662.

The amendment recommended by the Committee on Banking and Currency was read, as follows:

Strike out all of the section.

Mr. Ebenezer J. Hill, of Connecticut, said:

Mr. Chairman, before striking out the section, or acting on the committee amendment, I would like to make a statement. I offer an amendment for the purpose of perfecting the section.

Thereupon Mr. Hill moved to strike out all of section 7 and insert the following:

That every national banking association having 'United States bonds on deposit to secure its circulating notes shall pay to the Treasurer of the 'United States, in the months of January and July, a tax of one-fourth of 1 per cent each half year upon the average amount of its notes in circulation, and such taxes shall be in lieu of all existing taxes on circulating notes of national banking associations: *Provided,* That the provisions of this section shall not apply to circulating notes secured by bonds issued under the following titles, or any reissue of such bonds bearing the same rates of interest:

Loan of 1908–1918, authorized under act approved June 13, 1898, and bearing interest at the rate of 3 per cent per annum.

Refunding certificates, authorized under act approved February 26, 1879, and bearing interest at the rate of 4 per cent per annum.

Loan of 1925, authorized under act approved January 14, 1875, and bearing interest at the rate of 4 per cent per annum.

A question arising as to the parliamentary situation, the Chairman[1] said:

The Chair would like to state the parliamentary situation. The motion of the gentleman from Connecticut [Mr. HILL] proposes to strike out and insert, and in case that motion prevails the committee would not beat liberty thereafter to strike out the section inserted. This is in the nature of a perfecting of this paragraph.

Mr. Hill suggested that his motion would perfect the section, and that, after it should be agreed to, the proper procedure would be to vote down the pending committee amendment to strike out the section.

The Chairman replied that if Mr. Hill's amendment should be agreed to, the Committee of the Whole would not vote on the pending committee (of Banking and Currency) amendment to strike out the section.[2]

The Committee of the Whole then agreed to Mr. Hill's amendment, and the pending committee amendment to strike out was disregarded.

5793. A substitute amendment may be amended by striking out all after its first word and inserting a new text.—On January 6, 1836,[3] Mr. Leonard Jarvis, of Maine, offered this resolution:

Resolved, That, in the opinion of this House, the subject of the abolition of slavery in the District of Columbia ought not to be entertained by Congress: *And be it further resolved,* That, in case any petition praying the abolition of slavery in the District of Columbia be hereafter presented, it is the deliberate opinion of the House that the same ought to be laid upon the table, without being referred or printed.

Mr. Henry A. Wise, of Virginia, moved to strike out all after the word *"Resolved"* and insert the following:

That there is no power of legislation granted by the Constitution to the Congress of the United States to abolish slavery in the District of Columbia, and that any attempt of Congress to legislate upon the subject of slavery will not only be unauthorized but dangerous to the Union of the States.

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] On the theory that words once inserted may not be stricken out.

[3] First session Twenty-fourth Congress, Debates, pp. 2135–2137.

Mr. Thomas Glascock, of Georgia, announced his purpose to offer the following additional resolution:

Resolved, That any attempt to agitate the question of slavery in this House is calculated to disturb the compromises of the Constitution, to endanger the Union, and, if persisted in, to destroy, by a servile war, the peace and prosperity of the country.

The Speaker [1] said that the gentleman must move his proposition as an amendment to the amendment, and that it could be done by moving to strike out from the amendment all after a certain word. It would be competent for the gentleman from Georgia to move to strike out all after the word "That," and insert his amendment. (Of course Mr. Glascock would drop from the portion which he proposed to insert the words "*Resolved*, That.")

5794. On January 17, 1903,[2] the Committee of the Whole House on the state of the Union reported the bill (S. 569) to establish a Department of Commerce and Labor, with an amendment striking out all after the enacting clause and inserting a new text.

Thereupon Mr. William P. Hepburn, of Iowa, proposed an amendment:

Strike out all after the first word, "That," in the substitute amendment proposed by the Committee of the Whole House on the state of the Union and insert in lieu thereof the following: "there shall be at the seat of government an executive department."

Mr. James D. Richardson, of Tennessee, made a point of order, as follows:

The Committee of the Whole House on the state of the Union perfected a substitute, a substitute reported by the chairman of the Committee on Interstate and Foreign Commerce. They reported it as a substitute. Now, Mr. Speaker, that substitute has been perfected, so to speak. It has been considered and amended. Now the gentleman comes and undertakes to offer a substitute for that substitute. I say he can not do it. There can be but one substitute at one time.

The Speaker pro tempore [3] held:

The Committee on Interstate and Foreign Commerce reported to the House a Senate bill with an amendment in the nature of a substitute. The Chairman of the Committee of the Whole House on the state of the Union reported that that committee had had under consideration the amendment in the nature of a substitute and had perfected it, and recommended that the bill as amended do pass. The motion of the gentleman from Iowa now is clearly an amendment to the substitute recommended by the Committee of the Whole House to the House, and is certainly in order. The question of admitting such an amendment to a substitute was settled as long ago as 1836 by Mr. Speaker Polk.

5795. When it is proposed to offer a single substitute for several paragraphs of a bill which is being considered by paragraphs, the substitute may be moved to the first paragraph with notice that if it be agreed to motions will be made to strike out the remaining paragraphs.—On May 6, 1880,[4] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the five-minute rule.

When line 86 of the bill was reached, Mr. Hernando D. Money, of Mississippi, arose and said that he desired to offer as an amendment a substitute for certain paragraphs of the bill.

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[1] James K. Polk, of Tennessee, Speaker.

[2] Second session Fifty-seventh Congress, Journal, pp. 132, 133; Record, p. 926.

[3] John Dalzell, of Pennsylvania, Speaker pro tempore.

[4] Second session Forty-sixth Congress, Record, p. 3093.

The Chairman suggested that he wait until the paragraphs had been read.

The paragraphs having been read for amendment, Mr. Money proposed his substitute, whereupon Mr. Joseph C. S. Blackburn, of Kentucky, objected that a substitute might not be offered for a paragraph that had been passed.

During the debate Mr. James A. Garfield, of Ohio, suggested:

I think it would be a hardship, and perhaps a little sharp practice, to say to a Member offering an amendment, "You can not strike out what we have not yet reached," and he waits until it is read, and then to say, "You can not strike out what we have passed over." In that way he would be ruled out at both ends in his attempt to move an amendment.

The Chairman [1] said:

The point of order and amendment present a singular and unusual question. The gentleman could not have offered his amendment as a substitute for the first clause alone, or for the second, or the third, or the fourth clause alone. * * * The question as to whether or not the gentleman from Mississippi, independently of anything that might have occurred between him and the Chair in the presence of the Committee of the Whole, could have offered a substitute for these four clauses after they had been read and amended in the committee is one which the Chair has very great doubt about; one upon which he prefers not to express an opinion. But the gentleman from Mississippi undoubtedly had the right, when lines 86 and 87 were read, to move his amendment as a substitute for those lines, giving notice he would thereafter move to strike out the other lines. Or he could have moved, as these clauses were successively reached, to strike out each one of them, giving notice that after they were stricken out he would offer a proviso to take the place of the whole of them.

Now, the gentleman from Mississippi stated when the first clause was read that he had an amendment which he desired to offer as a substitute for the four clauses. The Chair said perhaps the gentleman from Mississippi had better wait till the four clauses were read. Then he took his seat. No gentleman on the floor objected. The Chair thinks under those circumstances he ought not to be deprived of the privilege of having a vote on his amendment.

5796. An instance wherein a substitute text for a bill was offered as a substitute for the first section and agreed to, the remaining sections being stricken out afterwards.—On January 22, 1903,[2] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 15520) providing for the Philippine coinage. The first section had been read under the five-minute rule, when Mr. William A. Jones, of Virginia, proposed a motion to strike out all of the bill after the enacting clause and insert a new text.

The Chairman [3] said:

The gentleman from Virginia offers it as a substitute for the entire bill. His offer is submitted to the House and will be pending, but before the Committee will take a vote on it the reading of the bill will be completed.

Later, Mr. Jones modified his proposition, and instead of offering the new text as a substitute for the whole bill, offered it as a substitute for all of the first section after the enacting clause, giving notice that if it should be adopted be would then move to strike out the remaining sections of the bill as they should be reached.

The Chairman entertained the amendment, and after debate it was agreed to.

Thereupon the remainder of the bill was read under the five-minute rule, and each of the sections was on motion made and carried stricken out.

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[1] John G. Carlisle, of Kentucky, Chairman.

[2] Second session Fifty-seventh Congress, Record, pp. 1078, 1081, 1084.

[3] James R. Mann, of Illinois, Chairman.

The Committee having risen, the Chairman[1] reported that the Committee had had under consideration the bill (H. R. 15520) to establish a standard of value and to provide a coinage system in the Philippine Islands, and had directed him to report it back to the House, with sundry amendments, with the recommendation that the bill, as amended, do pass.

The House being about to vote on the amendments, a question arose as to the nature of the first one, whereupon the Speaker[2] said:

The Chair sees no difficulty arising from any statement that has been made. There is only one question now, and that is the demand of the gentleman from Pennsylvania for a separate vote on the amendment offered by the gentleman from Virginia. That is the first amendment; it is not a substitute. It is an amendment by way of substitute to the first section. The only question is on agreeing to the first amendment.

This amendment was agreed to, and then the question was taken on the remaining amendments.

5797. A proposition offered as a substitute amendment and rejected may nevertheless be offered again as an amendment in the nature of a new section.—On June 7, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (S. 3653) for the protection of the President of the United States, and for other purposes, when Mr. Patrick Henry, of Mississippi, offered the following amendment as an additional section:

SEC. 14. On the trial of all cases under the first seven sections of this act, the defendant shall be presumed to be innocent until the contrary is proven to the exclusion of all reasonable doubt.

Mr. George W. Ray, of New York, made the point of order that this was a provision which had already been voted on as an amendment.

The Chairman[4] said:

The gentleman from Mississippi offered the proposition to the thirteenth section of the bill as an amendment in the shape of a substitute. Thereupon he proposed to withdraw it and objection was made and the vote was taken and the Committee voted against permitting that matter to become an amendment to section 13. But the Chair is of opinion that the gentleman has now a right to offer it as an additional section to the bill, and that the former vote did not bar his right. The House might desire to have it in this form and not in the other.

5798. Sometimes by unanimous consent the House allows more than one substitute to be pending at once, in order that a choice may be offered between different propositions.—On January 11, 1897,[5] the first business in order was the consideration of the Pacific Railroad funding bill (H. R. 8189), which came over from the preceding day with the previous question ordered under the terms of a special order.

The condition of the bill was as follows:

There were committee amendments to the bill, which had been agreed to by the Committee of the Whole.

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[1] James A. Tawney, of Minnesota, Chairman.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Fifty-seventh Congress, Record, p. 6473.

[4] Charles H. Grosvenor, of Ohio, Chairman.

[5] Second session Fifty-fourth Congress, Record, pp. 554, 587.

There were also pending two substitutes, which had been offered by unanimous consent, one proposed by Mr. George P. Harrison, of Alabama, as a substitute for the bill, and the other proposed by Mr. Charles K. Bell, of Texas, as a substitute for the substitute offered by Mr. Harrison.

To the substitute offered by Mr. Harrison there was also pending an amendment offered by Mr. Stephen A. Northway, of Ohio.

The question was first taken on the committee amendments to the original bill, and these having been agreed to, the question was next put on Mr. Northway's amendment to Mr. Harrison's substitute. This was rejected.

Then the question was taken on Mr. Bell's substitute, and this being disagreed to, the vote on Mr. Harrison's substitute was next in order.

5799. An amendment in the nature of a substitute having been agreed to, the vote is then taken on the original proposition as amended by the substitute.—On January 13, 1875,[1] the House had voted on and agreed on an amendment in the nature of a substitute.

Thereupon Mr. Charles A. Eldridge, of Wisconsin, made a motion relating to the final disposition of the subject.

The Speaker[2] said:

> That motion at this point is premature. The substitute * * * has been agreed to; but the House has yet to vote to agree to the original proposition as amended by the adoption of the substitute.

5800. On February 20, 1877,[3] Mr. John Randolph Tucker, of Virginia, submitted the following resolution:

> *Resolved by the House of Representatives,* That Daniel L. Crossman was not appointed an elector by the State of Michigan as its legislature directed, and that the vote of said Daniel L. Crossman as an elector of said State be not counted.

Mr. George A. Jenks, of Pennsylvania, submitted the following substitute therefor:

> Whereas the fact being established that it is about twelve years since the alleged ineligible elector exercised any of the functions of a United States commissioner, it is not sufficiently proven that at the time of his appointment he was an officer of the United States: Therefore,
>
> *Resolved,* That the vote objected to be counted.

And the question being put, first, upon the substitute submitted by Mr. Jenks, the same was agreed to.

The question then recurring on the resolution submitted by Mr. Tucker, as amended by the substitute of Mr. Jenks, the same was agreed to.[4]

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[1] Second session Forty-third Congress, Record, p. 516.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Forty-fourth Congress, Journal, pp. 492, 493; Record, pp. 1705–1716.

[4] The Journal makes no mention of separate action on the preamble.

Chapter CXXVI.

THE HOUSE RULE THAT AMENDMENTS MUST BE GERMANE.

1. **The rule. Section 5801.**
2. **Amendments under parliamentary law. Section 5802.**
3. **General principles. Sections 5803–5810.**
4. **Amendment should be germane to the paragraph or section. Sections 5811–5823.**
5. **Decisions as to general amendments. Sections 5824, 5825.**[1]
6. **A bill for a specific object not to be amended by general provisions. Sections 5826–5837.**
7. **A bill for general objects may be amended by specific provision. Sections 5838–5842.**
8. **A private bill may not be made general by amendment. Sections 5843–5851.**
9. **Decisions related to revenue subjects. Sections 5852–5868.**
10. **Decisions related to subject of immigration. Sections 5869–5874.**
11. **Decisions related to general subjects. Sections 5875–5924.**

5801. A rule of the House requires that an amendment must be germane.—Section 7 of Rule XVI[2] provides:

* * * No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

5802. A decision in the Senate that an amendment need not, under the parliamentary law, be germane.[3]**—**On November 22, 1877[4] the Senate were considering the following resolution:

Resolved, That the Committee on Privileges and Elections be discharged from the consideration of the credentials of M. C. Butler, of South Carolina.

Mr. George F. Edmunds, of Vermont, moved to strike out "M. C. Butler" and insert "William P. Kellogg," and to strike out "South Carolina" and insert "Louisiana."

Mr. William A. Wallace, of Pennsylvania, made the point of order that the amendment was not germane.

Mr. Edmunds said that the parliamentary law did not require an amendment to be germane.

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[1] See also section 4375 of Volume IV.

[2] For full form and history of this rule, see sections 5753, 5767 of this volume.

[3] See also section 5825 of this chapter.

[4] First session Forty-fifth Congress, Record, p. 603.

The Vice-President [1] overruled the point of order.[2]

5803. Whether or not an amendment be germane should be judged from the provisions of its text rather than from the purposes which circumstances may suggest.—On January 15, 1901,[3] the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union.

Mr. Frank W. Mondell, of Wyoming, proposed an amendment appropriating a sum of money for the construction of three reservoirs at the headwaters of the Missouri River—

For the purpose of holding back the flood waters of said stream with a view of minimizing the formation of bars and shoals and other flood-formed obstructions to navigation, and to aid in the maintenance of an increased depth and uniform flow of water for navigation during the dry season.

Mr. Theodore E. Burton, of Ohio, made the point of order that the amendment was not germane to the bill, since the means proposed could not affect navigation, but rather related to the improvement of arid lands.

After debate the Chairman [4] said:

The Chair holds that as the amendment is framed it is germane to the subject-matter of the bill and the subject-matter over which the River and Harbor Committee has jurisdiction. Now, whether that correctly presents the facts of the case is to be determined on the merits. But as the amendment is presented and read by the Clerk it appears to the Chair that it is entirely proper and germane to the bill, and therefore the Chair will overrule the point of order.

5804. An amendment which would have changed a resolution of inquiry to one of instruction was held to be not germane.—On February 14, 1882,[5] Mr. Godlove S. Orth, of Indiana, from the Committee on Foreign Affairs, reported adversely this resolution:

Resolved, That the President of the United States, if not incompatible with the public service, be requested to communicate to this House all correspondence with the British Government on file in the State Department with reference to the case of D. H. O'Connor, a citizen of the United States, now imprisoned in Ireland.

Mr. Orth's motion to lay this resolution on the table having been decided in the negative, Mr. S. S. Cox, of New York, submitted the following amendment in the nature of a substitute:

That the President be, and he is hereby, requested to obtain for D. H. O'Connor and other American citizens now imprisoned under a suspension of the habeas corpus by the British Government in Ireland, without trial, conviction, or sentence, a speedy and fair trial or a prompt release.

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[1] William A. Wheeler, of New York, Vice-President.

[2] The Senate formerly had no rule in regard to amendments being germane, and a Senator might offer an amendment on any subject. (See decision of the Presiding Officer, Feb. 24, 1853, second session Thirty-second Congress, Globe, p. 820.) The Senate now has a rule requiring amendments to general appropriation bills to be germane. Section 3 of Rule XVI:

"No amendment which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject-matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate."

[3] Second session Fifty-sixth Congress, Record, pp. 1052–1054.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Forty-seventh Congress, Journal, p. 577; Record, p. 1133.

Mr. Thaddeus C. Pound, of Wisconsin, made the point of order that the amendment was not germane.

After debate the Speaker said:

The Chair[1] is of the opinion that the amendment is one covering a matter which is hardly competent to be introduced as an original House resolution. It is perhaps unnecessary for the Chair to decide whether it is within the power of either House of Congress by resolution to instruct the President as to his duty. The Chair would be inclined to think that would not be within the power of the House.

Mr. Randall having suggested that this would be for the House to determine, not the Chair, the Speaker continued:

The Chair is not called upon to decide that question, and only refers to it incidentally in determining whether this amendment is in order to a resolution of inquiry which has certain privileges under the rules of the House. The amendment proposed is to change the whole character of the pending resolution, which is a simple resolution of inquiry, and make it a resolution of instruction to the President of the United States. The Chair thinks it is not germane and not in order.

5805. An amendment simply striking out words already in a bill may not be held not germane.

Where a paragraph which changes existing law has been by general consent allowed to remain it may be perfected by any germane amendment.

On March 31, 1904,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read this paragraph:

Expenses of judges of the circuit courts of appeals, not to exceed $10 per day; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, $5 per day, not exceeding three days for any one term of court, $165,000.

Mr. Charles E. Littlefield, of Maine, moved to strike out the words "in United States cases."

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment would change law and would not be germane. He stated that the effect of the amendment would be to pay for meals and lodgings of jurors in civil cases.

It appeared from the debate that there was no general law providing for meals and lodgings of jurors in any cases.

The Chairman[3] held:

The Chair would call attention to the fact that on Monday a similar question arose here in which the rules and decisions were referred to. A precedent seems to have been established in the Committee of the Whole that where a paragraph which changes existing law has been by general consent allowed to remain it may be perfected by any germane amendment.

If that rule is to be followed, this amendment is in order, and the Chair overrules the point of order. The Chair also thinks the rule to be that an amendment striking out a portion of a paragraph is not subject to a point of order. Form, and not effect, should be considered. Germaneness refers to words added rather than to those taken away. The Chair would further suggest that this question of whether payment should be made for meals and lodgings for jurors in cases other than United States cases is rather a question for the Committee to decide; a question of policy rather than a question for the Chair to decide on a point of order.

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[1] J. Warren Keifer, of Ohio, Speaker.

[2] Second session Fifty-eighth Congress, Record, pp. 4059, 4060.

[3] Theodore E. Burton, of Ohio, Chairman.

Mr. Hemenway thereupon said:

Mr. Chairman, here is a case where we provide for the payment for meals and lodging of jurors in United States cases where the Government is a party to the case. Now, then, is it germane to say that we shall also pay for meals when the Government is not a party to the case, where it is a question purely between individuals?

The Chairman said:

The Chair would state that that is merely a question for the Committee to consider. It is to be noted that this amendment consists not in adding to the language of the paragraph, but in striking out certain words which constitute a portion of the paragraph.

5806. To a bill amendatory of an existing law as to one specific particular, an amendment relating to the terms of the law rather than to those of the bill was held not to be germane.

The rule that amendments shall be germane applies to amendments reported by committees.

On April 24, 1900,[1] Mr. Henry A. Cooper, of Wisconsin, from the Committee on Insular Affairs, reported a joint resolution (S. R. 116) "to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of civil officers provided for in the act approved April 12, 1900, entitled," etc., with amendments in relation to the granting of franchises proposed by the Committee on Insular Affairs.

Mr. Ebenezer J. Hill, of Connecticut, rising to a point of order, said:

I make the point of order, in the first place, that the amendments are not germane to the resolution; in the second place, that the joint resolution cannot be so amended; in the third place, that if so amended it must be considered in Committee of the Whole, and in the fourth place, that the joint resolution is temporary in its character and that the amendments are permanent.

In the debate it was urged that the amendments relating to franchises were in order because they were germane to the law which it was proposed to amend, if not the particular resolution under consideration.

The Speaker[2] said that he should overrule all the points of order except that relating to germaneness. After citing on this point the decision of February 6, 1891,[3] he said:

The Chair thinks that much of the difficulty in the minds of Members comes from the fact that the joint resolution sent from the Senate and the amendments added by the Committee on Insular Affairs all refer to the same statute, the Porto Rican bill, that became a law some time ago. The question as to whether these sections are germane can not be determined by the title alone, as has been suggested, because an act amending an act will always describe the title amended, although it may only touch one feature or part of the law; but the whole resolution has to be considered and the amendments to the resolution. If this was not clear, possibly the title would be brought into consideration. But there is not a particle of doubt as to the purpose of this resolution or as to the purpose of the amendments.

The resolution is for the sole purpose of extending the time in regard to the putting in operation of the new government of Porto Rico. The amendments are entirely outside of that question and enter upon amendments of the law in respect to matters entirely outside of that question. They have no relation in any shape or form to the proposition of the joint resolution. It will not be contended, if the Committee on Rules brought in a report to amend one rule, that thereby, by an amendment, you would open up for consideration of the House all the rules. A suggestion has been made by one gentleman as to the authority cited, and it is seldom within the power of the Chair to find an authority so completely on all

[1] First session Fifty-sixth Congress, Record, p. 4615; Journal, pp. 500–501.

[2] David B. Henderson, of Iowa, Speaker.

[3] See section 5807 of this chapter.

fours like this. In that case the bill treated on the forefeiture of land grants, and the amendment was a regulation as to the forfeiture of lands, bearing upon the same subject, and that therefore they are not similar.

The case that the Chair has cited shows clearly that it was an amendment on the subject of the time when certain regulations went into operation. This joint resolution is for the same purpose. The amendments here are for wholly another purpose; and every Member of the House must see that no one of these amendments is germane to the original resolution. Suppose the original resolution was before the House for consideration and a Member should move to recommit with instructions to add these amendments. The point of order could be made at once that they were not germane and that the motion to recommit could not be held to be in order when it was asked to do in the House what could not be done in the committee. The case is perfectly parallel with the other. The Chair profoundly regrets that he has to sustain the point of order that it is not germane.[1]

5807. On February 6, 1891,[2] the Speaker laid before the House the bill of the Senate (S. 4814) to amend an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes. The object of this bill was explained by Mr. Lewis E. Payson, chairman of the Committee on the Public Lands:

The general forfeiture bill passed in the last session of Congress provided that as to certain characters of lands, which were in possession of parties claiming under the settlement law, they should have the right to perfect their entry within six months from the date of the passage of the act. That act became a law in September last. In order to effect the operations of the bill, it became necessary to frame a set of instructions in the General Land Office for the guidance of the officers of the local land offices the country over. Owing to the pressure of business in that Department, it was impossible for the Secretary of the Interior to prepare these instructions even down to this time. And the six months within which the settlers were to have the prior right of asserting their claims have now almost expired; and to meet that point, and that point alone, the Senate bill was passed.

To this bill Mr. Thomas H. Carter, of Montana, moved an amendment providing for a method of classification to determine the mineral or nonmineral character of lands selected by railroads.

Mr. Payson made the point of order that the amendment was not germane to the bill, and therefore not in order.

After debate the Speaker[3] sustained the point of order, making the following statement in so doing:

The Chair can only consider in determining the question whether the amendment be germane to the bill before the House and the proposition therein contained. The pending bill relates solely to the time when a period named in the original act shall begin to run. The amendment proposed relates to a reclassification of lands, a subject so remote from that of the bill that it can be justified only by a claim that any amendment germane to this act proposed to be altered would be germane to this bill. But the very claim is its own answer. The test must be the bill before the House, for that is the bill which is to be amended.

5808. On April 23, 1902,[4] the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other imitation dairy products were under consideration in Committee of the Whole House on the state of the Union, when Mr. James R.

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[1] The point of order was overruled, however, on other grounds. On January 10, 1884 (first session Forty-eighth Congress, Record, pp. 347, 348), Mr. Speaker Carlisle held that an amendment reported by a committee and not germane was not in order. (See also sec. 5906.)

[2] Second session Fifty-first Congress, Journal, p. 219; Record, pp. 2254, 2255.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-seventh Congress, Record, p. 4597.

Mann, of Illinois, proposed a further amendment to a law, of which a Senate amendment proposed to amend a certain portion.

Mr. James A. Tawney, of Minnesota, having made a point of order, the Chairman [1] held:

Senate amendment No. 5 reads thus:

"Section 3 of said act is hereby amended by adding thereto the following:"

And then follows a certain proviso. The amendment offered by the gentleman from Illinois is to add at the end of that proviso these words:

"*And provided further*, That the artificial coloration provided for in the preceding paragraph shall not include colored butter."

The "preceding paragraph" referred to, as the Chair understands, is section 3 of a former act of Congress, which is not now before the Committee of the Whole.

On page 323 of the Manual the Chair finds this language:

"To a bill amending a general law on a specific point an amendment relating to the terms of the law rather than to those of the bill was offered and ruled not to be germane."

That ruling was made by Speaker Reed. The Chair thinks that it covers this case. The amendment of the gentleman from Illinois, while it may be germane to the preceding paragraph of section 3 of the earlier act of Congress to which it refers, is not germane to the proviso which constitutes the Senate amendment, and therefore the Chair sustains the point of order.

5809. It is not in order to amend a pending privileged proposition by adding a matter not privileged and not germane to the original proposition.—On January 22, 1884,[2] Mr. Casey Young, of Tennessee, as a privileged question, from the Committee on Public Buildings and Grounds, under instructions of the House, submitted a report accompanied by a resolution requesting the Secretary of War to provide some suitable place for the public records in the large room in the basement of the Capitol, and that the said room be given to the Committee on Rivers and Harbors.

After debate Mr. Albert S. Willis, of Kentucky, submitted an amendment in the nature of a substitute, to the effect that the enrolling room of the House be set apart for the said committee.

Pending this Mr. William W. Rice, of Massachusetts, moved to amend the amendment by adding thereto the following words:

And that the Committee on Public Buildings and Grounds be instructed to inquire if other and additional accommodations can not be procured for the Library of Congress, by which the space in the Capitol now used for the Library can be used for committee rooms, and report the same.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that the amendment was not in order, not being germane to the pending amendment.

The Speaker [3] sustained the point of order on the ground that it was not competent when a privileged matter was under consideration to amend the pending proposition by adding instructions to a committee in relation to a matter not privileged and not germane to the original resolution.

5810. On February 13, 1885,[4] Mr. Barclay Henley, of California, as a privileged matter,[5] reported, from the Committee on the Public Lands, a preamble and resolution reciting that the California and Oregon Railroad Company had failed to

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] First session Forty-eighth Congress, Journal, p. 389.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Forty-eighth Congress, Record, p. 1637; Journal, p. 546.

[5] Resolutions of inquiry are privileged by the rule.

earn its land grant; that a bill forfeiting that grant had passed the House and was in the Senate; that the President, knowing these facts and against protests, had appointed commissioners to examine the railroad and report, and requesting the President to inform the House of his reasons for the appointment of the commission.

Mr. William C. Oates, of Alabama, offered the following amendment:

Resolved, That the President of the United States is hereby respectfully requested not to confirm any favorable report which may be made by the commissioners recently appointed by him to inspect a section or sections lately completed of the California and Oregon Railroad, nor order patents to issue, until the Senate of the United States acts upon H. R. 5897, being a bill to forfeit certain lands granted to aid in the construction of said railroad, and which passed this House June 6, 1884, or until after the adjournment of the present Congress.

Mr. J. Warren Keifer, of Ohio, made the point of order that the amendment was not in order, for the reason that it was not a resolution of inquiry or germane to such a resolution nor within the terms of Clause I of Rule XXIV.[1]

The Speaker pro tempore[2] sustained the point of order on the ground that a privileged question on motion could not be amended by adding thereto matter not privileged or germane to the original resolution.

The Speaker pro tempore said:

The Chair does not think that it is competent by way of amendment to submit to the House for its action that which is not privileged in its character in lieu of that which has the right of privilege, and which besides is not germane to the matter which is submitted as a privileged report. The Chair sustains the point of order of the gentleman from Ohio and holds that it is not competent to bring in, in the nature of an amendment to the resolution of inquiry, which is privileged under the rule, a resolution such as that suggested by the gentleman from Alabama. * * * This is not a resolution of inquiry as submitted by the gentleman from Alabama and would not have been in order as a privileged matter unless it had been a resolution of inquiry reported back, as the resolution comes from the gentleman from California.

5811. Under the later decisions the principle has been established that an amendment should be germane to the particular paragraph or section to which it is offered.—On June 5, 1878,[3] the House was considering the bill (H. R. 4414) to amend the laws relating to internal revenue, and had reached the paragraph which defined a manufacturer of tobacco and established the requirement that he should pay a special tax.

To this paragraph Mr. James W. Covert, of New York, proposed an amendment, placing a certain internal-revenue tax on snuff, cigars, and smoking and chewing tobacco.

Mr. Omar D. Conger, of Michigan, made the point of order that the amendment was not in order, not being germane to the pending paragraph.

The Speaker pro tempore[4] overruled the point of order on the ground that it was not necessary that it should be germane to the pending paragraph, but to the general provisions of the bill.

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[1] This was the old numbering of the rule relating to resolutions of inquiry. It is now section 5 of Rule XXII.

[2] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

[3] Second session Forty-fifth Congress, Journal, p. 1230; Record, pp. 4161, 4162.

[4] John G. Carlisle, of Kentucky. Speaker pro tempore.

The record of debate shows that Mr. Conger, who made the point of order, said:

I make the point of order because, if there be a place in this bill where the amendment would be germane, it would be better to have the amendment come in its proper place, and not mix up one branch of the subject with another which is evidently not germane to it. My point of order is, that under the rules of the House this amendment can not come in at this place. If there be a place where the Chair shall hold that it would be germane, then it can be offered at that place.

The Speaker pro tempore said:

The Chair believes it has always been held that in determining whether or not an amendment is germane the Presiding Officer must look to the general subject to which the bill relates, and not merely to the particular provisions of the bill. Now the general subject to which this bill relates is the internal revenue system of the country. It contains a provision which is intended to increase the tax on spirituous liquors in one respect, by imposing that tax upon the fractional gallon. It also contains another provision, if the Chair remembers correctly, which is intended to diminish the tax on spirituous liquors in one respect, by exempting from a certain part of the tax distilleries which distill not exceeding a certain quantity in a certain time. It relates generally in all its provisions to the internal-revenue system; and the Chair is therefore of opinion that any amendment relating alone to that system is in order, while an amendment relating to that system and also to something else would not be in order.

5812. On March 26, 1897,[1] the tariff bill was under consideration in the Committee of the Whole House on the state of the Union, and the Clerk had read the first paragraph, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the 1st day of May, 1897, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries or withdrawn for consumption, and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely:

To this Mr. Alexander M. Dockery, of Missouri, proposed this amendment:

Provided, That when it is shown to the satisfaction of the Secretary of the Treasury that such articles are manufactured, controlled, or produced in the United States by a trust or trusts, the importation of such articles from foreign countries shall be free of duty until such manufacture, control, or production shall have ceased, in the opinion of the Secretary of the Treasury.

Mr. Nelson Dingley, of Maine, made a point of order against the amendment, saying:

An amendment placing on the free list, under certain conditions, articles that are now on the dutiable list is not germane to that portion of the bill which provides for the imposition of duties. Now, Mr. Chairman, it has been suggested that there has been a ruling in a former House, and attention has been called to it, to the effect that it does not necessarily follow—and please bear in mind the effect of that language that it does not necessarily follow—that an amendment proposed must be germane to the particular paragraph provided that it is germane to another part of the bill. But under what conditions was that ruling made? It was on an internal-revenue bill, a bill which provided for the imposition of duties on tobacco and certain other products of the country. It was entirely devoted to that particular subject. It was an internal tax, every section of which dealt with that particular subject and that only, and the one subject running through it all—that of the imposition of the tax. It did not necessarily follow that the amendment, therefore, should apply to any particular paragraph more than to another. It was applicable to any portion of the bill. But we have a different condition presented now. When a bill is before the House containing two or three very distinct subjects, one imposing a duty, the other placing certain articles upon the free list, and another imposing certain conditions, then, for the orderly pro

[1] First session Fifty-fifth Congress, Record, p, 353.

cedure of the business of the House and the orderly transaction of its business, it is incumbent upon the Chair to hold that each amendment shall be germane to that particular part of the bill to which it is proposed to apply it.

The Chairman[1] ruled as follows:

The pending bill is a bill to provide revenue for the Government and to encourage the industries of the United States.

Section 2 of the bill, on page 123, provides that after the 1st day of May the articles thereafter enumerated, when imported, shall be exempt from duty.

To the first paragraph the gentleman from Missouri [Mr. Dockery] offers an amendment providing that under certain conditions all articles upon the dutiable list shall be transferred to the free list. To that amendment the gentleman from Maine [Mr. Dingley] raises the point of order that it is not in order at that point in the bill. The gentleman from Texas [Mr. Bailey] cites a decision of the then Speaker in the Forty-fifth Congress, referred to upon page 271 of the Digest. That was a decision rendered by the distinguished gentleman from Kentucky, Mr. Carlisle, acting as Speaker pro tempore. The decision, as shown by the Congressional Record, does not carry out the statement upon page 271 of the Digest. That decision held that any amendment must be germane to the general provision of a bill. It did not hold that being germane to the provisions of a bill it was permissible at any point. It did hold that the amendment then presented to the bill at the point was admissible.

The question before the Chair here and now is not whether the committee is liable to reach page 123 of the bill. The Chair can not take into consideration that probability, as suggested by the gentleman from Missouri [Mr. Dockery], but must rule upon the question as it is now presented, to wit, Is the amendment presented germane to this provision? The Chair holds that the amendment is not germane, and therefore sustains the point of order.

Mr. Dockery having appealed from the decision, the committee sustained the Chair by a vote of 158 ayes to 104 noes.

5813. On March 30, 1897[2] while the tariff bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Sereno E. Payne, of New York, offered to the appropriate paragraph an amendment relating to aniline and certain derivatives used in the making of coal-tar colors.

To this amendment Mr. Richard P. Bland, of Missouri, offered an amendment, as follows:

It shall be lawful to import into this country free of all duty foreign commodities that may be purchased or paid for by the avails of agricultural products of the United States exported and sold in foreign countries.

That the Secretary of the Treasury is hereby authorized and required to make such rules and regulations as may be necessary to carry this provision into effect.

Mr. Payne made the point of order that the amendment was not germane.

The Chair[1] sustained the point of order.

5814. On March 31, 1897,[1] the tariff bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Charles H. Grosvenor, of Ohio, presented an amendment providing that in certain cases the duties named in the bill should be retroactive.

To this amendment Mr. Alexander M. Dockery, of Missouri, offered as an amendment a provision that articles manufactured, produced, or controlled by trusts should be admitted free of duty.

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-fifth Congress, Record, p. 474.

[3] First session Fifty-fifth Congress, Record, p. 529.

Mr. Dingley made the point of order that the amendment to the amendment was not germane.

The Chairman [1] sustained the point of order.

5815. On April 1, 1898,[2] the naval appropriation bill was under consideration by paragraphs in the Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph:

For the installation of electric plants in gunboats numbered 10, 11, 12, and 13, $40,000.

To this Mr. Levin I. Handy, of Delaware, offered this amendment:

No money appropriated in this act shall, after the next vacancy occurs on the active list in his grade, be paid any officer on the retired list under the regular retiring age and not having the legal forty years' service, whom the Navy Department may deem able physically, mentally, and morally to resume on the active list the duties of his existing commission, and may order back to duty in the said active-list vacancy.

Mr. Charles A. Boutelle, of Maine, made a point of order against the amendment.

The Chairman [1] sustained the point of order on the ground that the amendment was not germane to the section.

5816. On April 29, 1898,[3] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 10100) to provide ways and means to meet war expenditures.

The Clerk read section 27 of the bill, which gave authority to the Secretary of the Treasury to borrow $500,000,000, issuing therefor certain described bonds, under certain conditions.

To this section Mr. James Hamilton Lewis, of Washington, proposed an amendment levying a tax upon the franchises of all corporations.

Mr. Nelson Dingley, of Maine, made the point of order that the amendment was not germane to the section.

The Chairman [1] sustained the point of order.

5817. On December 5, 1900 [4] the bill (S. 4300) "An act increasing the efficiency of the military establishment of the United States" was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph fixing the size and form of organization of the Army.

Mr. William P. Hepburn, of Iowa, proposed an amendment providing for filling vacancies in certain departments by appointments from civil life.

Mr. John A. T. Hull, of Iowa, made the point of order that the amendment was not germane to this paragraph, but would be in order in another portion of the bill.

The Chairman [5] sustained the point of order.

5818. On March 10, 1902,[6] while the Committee of the Whole House on the state of the Union was considering the bill (H. R. 11728) relating to the rural free-

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[1] James S. Sherman, of New York, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 3483.

[3] Second session Fifty-fifth Congress, Record, p. 4449.

[4] Second session Fifty-sixth Congress, Record, pp. 82, 83.

[5] John Dalzell, of Pennsylvania, Chairman

[6] First session Fifty-seventh Congress, Record, p. 2580.

delivery service in the Post-Office Department, Mr. George W. Smith, of Illinois, offered an amendment to a certain paragraph of the bill.

Mr. Claude A. Swanson, of Virginia, made the point of order that the amendment was not germane to this portion of the bill, but would be germane to the fourth paragraph.

The Chairman [1] said:

The Chair is clearly of the opinion that inasmuch as the bill is now being considered by paragraphs, and inasmuch as the amendment offered by the gentleman is expressly covered by paragraph 4, toward the close of the bill, this amendment is germane to that paragraph and not to the paragraph now under consideration. * * * It seems to the Chair that the admission which the gentleman has made would indicate quite clearly that this amendment is in order, not to the pending paragraph, but to paragraph 4, because the gentleman says that paragraph would have to be stricken out if this were adopted. The Chair rules that it is not now in order, but that it would be in order when paragraph 4 is reached.

5819. On May 26, 1902,[2] the House was considering the bill (S. 493) to amend an act entitled "An act to establish a code of law for the District of Columbia," when the following paragraph was read:

Amend section 3 by adding at the end of said section the words: "No justice of the peace during his term of office shall engage in the practice of the law, subject to the penalty of removal from his office."

Thereupon Mr. Joseph G. Cannon, of Illinois, proposed an amendment to another portion of the section of the code so as to change the number of the justices.

The Speaker [3] said:

If the Chair can have the attention of the gentleman from Illinois a moment, the Chair sees what the gentleman from Illinois is seeking to accomplish. There have been a number of decisions bearing upon this question, some by the Chair in the last Congress, and others before that. It seems to the Chair that the gentleman can reach the matter that he seeks to reach by an amendment to this bill in section 3, where the justices of the peace are treated of, by a proviso that there shall not be more than eight, or whatever number he wishes, so long as the amendment is aimed at the pending bill. Of course, the House can revise the code if it wants to; but it has here simply the amendments of the Senate. Those amendments are the subject-matter now before the House.

5820. On March 25,1904, [4] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Marlin E. Olmsted, of Pennsylvania, proposed an amendment relating to the duties of carriers in the rural free-delivery service.

Mr. Jesse Overstreet made the point of order that the amendment was not germane.

The Chairman [5] held:

The Chair thinks that on the question of germaneness the question of comparison as arising in the arrangement of a bill comes in; that if an amendment is more appropriate to one paragraph than to another it is not to be considered germane to t1re paragraph to which it is less appropriate. Section 3 relates to securing revenue from the rural delivery service. The amendment offered by the gentleman from Pennsylvania [Mr. Olmsted] refers to soliciting which may be done by the carrier. The Chair feels quite clear that this amendment would more properly come in as an amendment to the paragraph relating to the privileges of free-delivery carriers. Therefore the point of order is sustained.

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[1] Frederick H. Gillett, of Massachusetts, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 5938, 5939.

[3] David B. Henderson, of Iowa, Speaker.

[4] Second session Fifty-eighth Congress, Record, pp. 3710, 3711.

[5] H. S. Boutell, of Illinois, Chairman.

5821. A bill being considered under exceptional circumstances, an amendment germane to the bill, but not strictly germane to the section, was admitted.

Forms of special orders.

On June 25, 1906,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to by the House, ayes 151, noes 59.

Resolved, That immediately upon the adoption of this order the House shall resolve-itself into Committee of the Whole House on the state of the Union for consideration of the bill (S. 4403) "To amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March 3, 1903," and in the Committee of the Whole the amendment in the nature of a substitute reported by the Committee on Immigration and Naturalization shall be read through, after which section I of the said amendment shall be considered for not longer than one hour under the five minute rule for amendments; and at the end of the consideration of section I section 38 shall in the same way be considered for not longer than two hours, with the provision that amendments pending at the end of the two hours shall be voted on by the committee; and immediately after the vote on the said specified amendments to section 38 the Committee of the Whole shall rise and the Chairman shall report the bill and substitute amendment, whereupon a vote shall be taken on the substitute and bill to the final passage, without intervening motion or repeal. General leave is given to print, to be confined to a discussion of the bill, within five legislative days from to-day.

During the consideration of the said section 38, which provided for an educational test in the admission of immigrants, Mr. Charles H. Grosvenor, of Ohio, proposed an amendment to strike out the section and insert a new section providing that there be created a commission to study the whole subject of immigration.

Mr. Augustus P. Gardner, of Massachusetts, made the point of order that the amendment was not germane to the section.

The Chairman[2] held:

The Chair will state that, in the opinion of the present occupant of the chair, the amendment is in order. There is not a uniformity of decisions on this question. In times past it has been held that an amendment of this character must be germane to the section and at other times it has been held that it is in order if it be germane to any portion of the bill. Under the circumstances which exist, because of the adoption of the rule by the House under which this bill is being considered in the Committee of the Whole and by reason of the fact that the amendment offered by the gentleman from New York [Mr. Littauer] was not strictly in order, for, at least, it was a question whether or not it was in order, and the committee did not see fit to make a point of order, and itself fixed the rule in this instance, the Chair believes that the amendment is in order, and therefore overrules the point of order made by the gentleman from Massachusetts. The Chair will further state that this being in the nature of a substitute, it is not in order until the section shall have been perfected by amendment, and not in order for voting, and therefore will not rise until the expiration of the two hours given for the consideration of this section.

5822. An amendment inserting an additional section should be germane to the portion of the bill where it is offered.—On August 11, 1852,[3] during consideration of the civil and diplomatic appropriation bill in Committee of the Whole House on the state of the Union, Mr. Edward Stanly offered as an additional section a provision for the completion of the hospital at Cleveland, Ohio.

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[1] First session Fifty-ninth Congress, Record, pp. 9152–9166.

[2] James E. Watson, of Indiana, Chairman.

[3] First session Thirty-second Congress, Globe, p. 2191.

Mr. George S. Houston, of Alabama, made the point of order that the amendment was not in order at this portion of the bill.

The Chairman[1] said:

The Chair decides that we have passed the point in the bill at which it might have been offered. We shall never finish the bill unless some rule of this kind be observed. There is a provision in the bill for the completion of marine hospitals, and after that clause of the bill was passed, the Chair ruled that amendments properly applicable to that clause of the bill at the time it was under consideration could not be received or entertained by the committee afterwards. The Chair so ruled upon an amendment which was offered, proposing to amend the first clause of this bill, in relation to appropriations for the pay of the legislative department of the Government, but that amendment was received by universal consent.

5823. An amendment germane to a bill as a whole but hardly germane to any one section may be offered at an appropriate place with notice of motions to strike out following sections which it would supersede.—On January 26, 1901,[2] the bill (H. R. 13423) for the codification of the postal laws, was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the section authorizing positions and salaries for a Superintendent of the railway mail service, a chief clerk, and certain division superintendents and assistant division superintendents in the same service.

To this Mr. James A. Tawney, of Minnesota, offered an amendment, striking out the section as read and inserting a comprehensive scheme of classification for the railway mail service, dealing not only with the superintendent and his assistants, but with all the personnel of the service.

Mr. Eugene F. Loud, of California, made the point of order that the amendment was not germane to the section under consideration, although he admitted that it was germane to the bill.

The Chairman[3] said:

This is one of the embarrassments in the consideration of a codification bill. It covers very much territory. If it is germane to the bill and in some degree germane to the section also, as well as to other sections of the bill, the gentleman offering the amendment, the Chair thinks, would have the privilege of attaching it to any one of the particular sections to which it is in part germane and would then have an opportunity, or should have an opportunity, of moving to strike out the other sections which the amendment supplants. * * * The Chair overrules the point of order.

5824. To a bill amending a general law in several particulars an amendment providing for the repeal of the whole law was held to be germane.—On June 17, 1902,[4] the House was considering the bill (H. R. 13679) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, when Mr. David A. De Armond, of Missouri, offered the following amendment:

Amend by striking out all after the enacting clause and insert the following in lieu thereof:

"That the act approved July 1, 1898, entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' be, and the same is hereby, repealed: *Provided,* That nothing herein shall in any way affect proceedings under said act begun prior to the taking effect of this act, and this act shall take effect ninety days after the approval thereof."

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[1] John S. Phelps, of Missouri, Chairman.

[2] Second session Fifty-sixth Congress, Record, pp. 1532, 1533.

[3] John F. Lacey, of Iowa, Chairman.

[4] First session Fifty-seventh Congress, Journal, pp. 818, 819; Record, pp. 6948–6952.

Mr. George W. Ray, of New York, made the point of order that the amendment was not germane.

After debate the Speaker pro tempore [1] ruled:

The bill before the House is a bill "to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898." To that bill the gentleman from Missouri offers an amendment * * *. To this proposed amendment the point is made that it is not germane.

It is apparent from even a casual examination of the bill that it is a general amendatory bill. Section 1 relates to clause 15 of section 1 of the existing bankruptcy law; section 2 relates to clause 5 of section 2 of the existing bankruptcy law; section 3 relates to clause 4 of subdivision A of section 3 of the bankruptcy law; section 6 relates to section 17, and section 10 relates to section 40, and so on, skipping from section to section throughout the entire law, without regard to the particular relation of these sections to each other. In other words, 16 sections in all of the 70 sections of the bankruptcy law are here sought to be amended, or more than one-fourth of the entire law.

While the Chair has been unable to find any precedents on this question, it has deduced some general principles from former decisions that throw some light upon it. In the Fifty-first Congress it was held that to a bill amending a general law on a specific point an amendment relating to the terms of the law rather than to those of the bill was not germane.[2] The bill in question was an amendment to a general land-forfeiture bill fixing the time when the original act should take effect, and the amendment offered was an amendment providing for the method of classification of the lands described in the original act, so as to determine the character of the land selected by the railroad. The decision, which was made by Speaker Reed, was upon the ground that the bill related only to one certain specific point and did not involve the general features of the bill sought to be amended.

Substantially the same principle was recognized by Speaker Henderson in a case [3] where amendments were offered of a general character to the Senate joint resolution providing for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the act approved April 24, 1900. The same distinction was there drawn between the germaneness of an amendment which was offered to a bill having a single purpose and an amendment to a bill covering several purposes or one general subject. On the other hand, but illustrating the same general principle, recently in the discussion on the omnibus statehood bill it was held by the gentleman from Indiana [Mr. Hemenway], the chairman of the Committee of the Whole, that an amendment offered to include the Indian Territory was germane, because the pending bill related not to one particular Territory but was a general statehood bill, including Oklahoma, New Mexico, and Arizona.[4]

Had the bill been to admit a State the amendment would not have been in order, but it being a bill to admit States the subject of admission generally made the amendment competent. In the light of the principles thus announced, the Chair is inclined to think that any amendment that would be germane to the law sought to be amended would be germane to the pending bill.

It needs no argument to show that it would be competent to amend the pending bill, disposing of it section by section. For example, section 1 may be amended by striking out the words "amended so as to read as follows" and by substituting the word "repealed;" so that the section would read: "That clause 15 of section 1 of an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, be, and the same is hereby, repealed."

The same method may be followed in the case of each and all of the sections of the bill in their order. And this process, in the opinion of the Chair, may be made to reach to other paragraphs of the bankruptcy law than those specifically referred to in the pending amendatory bill, because all the sections of the bankruptcy law are germane to each other.

For example, it would be in order to amend the bill by adding additional sections amendatory of sections of the bankruptcy law not referred to in the bill.

If this be so, then it would be equally in order to amend the bill by adding additional sections repealing sections of the bankruptcy law not referred to in this bill. If this process of reasoning be correct,

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] See section 5807 of this chapter.

[3] See section 5806 of this chapter.

[4] See section 5838 of this chapter.

then it is clear that by resort to the methods suggested the entire bankruptcy law may be repealed by indirection. As it is, one of the purposes of parliamentary rules is to provide for the most direct method of disposing of legislation, and as by the process described the effect intended by this amendment can be reached, the Chair is of the opinion that the amendment must be germane, and therefore overrules the point of order.

5825. To a bill making deficiency appropriations for the Government Printing Office, among which was none relating to the salary of the Public Printer, an amendment legislating in relation to the selection of that official was held not to be germane.

While a committee may report a bill embracing different subjects, it is not in order during consideration in the House to introduce a new subject by way of amendment.

Review of the history of the rule requiring amendments to be germane.

Under the common parliamentary law amendments need not be germane.[1]

On March 17, 1880,[2] the House was considering "a bill making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes," when Mr. Otho R. Singleton, of Mississippi, offered an amendment for the purpose of repealing the law making the Public Printer an officer appointed by the President; making the Public Printer an elective officer of the House of Representatives, etc.

Mr. John A. McMahon, of Ohio, made a point of order against the amendment.

After debate the Chairman[3] ruled.

The amendment submitted by the gentleman from Mississippi [Mr. Singleton], under instructions from the Committee on Printing, is objected to upon two grounds: First, that it is not germane to the subject-matter of the bill under consideration; and, secondly, that it is in substance the same as a bill heretofore reported by the Committee on Printing and now pending before the House.

Notice of this amendment was given several days since, and during the general debate in the Committee of the Whole the Chair was advised that a point of order would be raised against it; so that a reasonable opportunity has been afforded to examine the subject, and the Chair will now state the conclusions at which he has arrived.

In the absence of an express rule, the amendment would not be liable to a point of order upon the ground that it was inconsistent with or not germane to the subject under consideration, for, according to the common parliamentary law of this country and of England, a legislative assembly might by an amendment, in the ordinary form or in the form of a substitute, change the entire character of any bill or other proposition pending. It might entirely displace the original subject under consideration, and in its stead adopt one wholly foreign to it, both in form and in substance.

But ever since the 4th of March, 1789, this House has had a rule which changed the common parliamentary law in this respect, at least as to substitutes, and ever since 1822 as to amendments in any form. The Congress of the Confederation, in 1781, adopted a rule in the following words:

"No new motion or proposition shall be admitted under color of amendment as a substitute for a question or proposition under debate until it is postponed or disagreed to."

The House of Representatives of the First Congress, on the 4th of March, 1789, adopted the following rule upon this subject:

"No new motion or proposition shall be admitted under color of amendment as a substitute for the motion or proposition under debate."

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[1] See also section 5802 of this chapter.

[2] Second session Forty-sixth Congress, Record, p. 1651.

[3] John G. Carlisle, of Kentucky, Chairman.

It will be observed that each of these rules admitted amendments introducing new motions or propositions, if they were not offered as substitutes for the motion or proposition under debate. But in March, 1822, the House changed the rule of 1789 so as to make it read as follows:

"No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

And in this form the rule has stood ever since, and now constitutes a part of the seventh clause of Rule XVI in the recent revision. The rule does not prohibit a committee reporting a bill from embracing in it as many different subjects as it may choose; but after the bill has been reported to the House no different subject can be introduced into it by amendment, whether as a substitute or otherwise.

When, therefore, it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is simply that it (the proposed amendment) is a motion or proposition on a subject different from that under consideration. This is the test of admissibility prescribed by the express language of the rule; and if the Chair, upon an examination of the bill under consideration and the proposed amendment, shall be of the opinion that they do not relate to the same subject, he is bound to sustain the objection and exclude the amendment, subject, of course, to the revisory power of the Committee of the Whole on appeal.

It is not always easy to determine whether or not a proposed amendment relates to a subject different from that under consideration, within the meaning of the rule; and it is especially difficult to do so when, as in the present instance, the amendment may, by reason of the terms it employs, appear to have a remote relation to, the original subject.

The subject to which the bill now under consideration relates is very clearly set forth in its title. It is "a bill making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes." The appropriations "for other purposes" contained in the bill do not relate at all to any of the subjects embraced in the amendment, and therefore need not be noticed. The words "for other purposes" are used here, as they usually are, to embrace subjects outside of the main subjects to which the bill relates, and which are reported by the committee itself.

The bill relates to no other subjects than appropriations of money for the purpose stated, "to supply deficiencies in the appropriations for the service of the Government." One of the deficiencies which the bill provides for is the Government Printing Office. But the bill carefully enumerates the items for which the appropriation is to be made, and the salary of the Public Printer is not among them.

The proposed amendment has no relation to the appropriation of money for any purpose. It neither increases nor diminishes the amount proposed to be appropriated by the bill; nor does it in any manner affect the expenditure of the money proposed to be appropriated by the bill. The salary of the Public Printer for the current fiscal year has already been provided for in full, and it does not appear that there is any deficiency on that account.

The amendment relates solely to the method of choosing a Public Printer; to the nature of the duties to be performed by him, and to the amount of his salary. As already stated, the original bill embraces none of these matters; and consequently none of these subjects are now under consideration. It seems quite clear, therefore, that the proposed amendment, if admitted, would introduce for consideration one or more new subjects, and is for that reason prohibited by the express language of the rule.

Under the rule as it stood prior to 1822 the amendment, although on a subject different from that under consideration, would be in order, for it is not offered as a substitute for the bill or for the clause under consideration. But as already noticed, the prohibition applies now as well to ordinary amendments as to substitutes.

Since the adoption of the rule in its present form there have been several decisions under it; and so far as the Chair has been able to discover, in every instance where an amendment proposed to introduce an entirely new subject it has been excluded. The Chair refers to the Journal of the House, Twenty-seventh Congress, first session, page 223, for a decision by Mr. Speaker White; Journal of the House, Thirtieth Congress, first session, page 737, a decision by Mr. Speaker Winthrop; Journal of the House, Thirtieth Congress, second session, page 645 (Speaker Winthrop overruled); Journal of the House, Thirty-first Congress, first session, pages 1509 and 1510, a decision by Mr. Speaker Cobb.

Having disposed of the point of order upon the first ground presented it is unnecessary to express an opinion upon the second ground, and the Chair prefers not to do so.

The fourth clause of Rule XXI provides that "no bill or resolution shall at any time be amended by annexing thereto or incorporating therewith the substance of any other bill or resolution pending before the House."[1] Where a proposed amendment differs in any respect from a bill or resolution pending before the House, it will always be more or less difficult to determine whether or not they are substantially the same; and the Chair thinks he ought not to attempt to decide such a question unless it be absolutely necessary to do so.

The point of order is sustained, and the amendment is excluded.

5826. To a bill for the relief of one individual an amendment providing a similar relief for another individual is not germane.—On February 18, 1886,[2] the previous question had been ordered on the passage of the bill for the relief of Fitz-John Porter by appointing him to a certain rank in the Army and placing him on the retired list, when Mr. William Warner, of Missouri, moved to recommit the bill to the Committee on Military Affairs with instruction to add a second section, authorizing the President to appoint Andrew J. Smith a brigadier-general in the Army of the United States and place him upon the retired list.

Mr. Bragg, of Wisconsin, made the point of order that this proposition was not germane to the subject of the bill.

After debate the Speaker[3] ruled:

The bill under consideration is a private bill, the title of which is "An act for the relief of Fitz-John Porter." So far as the Chair knows, it has always been held in the House that a bill for the benefit of one private individual could not be amended so as to extend its provisions to another by an amendment offered upon the floor, and the present occupant of the chair has had occasion to decide very frequently that it is not competent to do indirectly, by recommitting a bill with instructions, that which could not be done directly by an amendment.

5827. On March 3, 1853,[4] Mr. Albert G. Brown, of Mississippi, submitted by unanimous consent this resolution:

Resolved, That the Clerk of the House, in executing so much of the resolution passed this day as relates to John Lewis Hickman, shall only compute the number of days that said Hickman has been actually employed during the sittings of Congress.

Thereupon Mr. Thomas Y. Walsh, of Maryland, moved to amend the same by adding thereto a provision for the increase of the compensation paid to Francis Reilly for his services as a laborer in the Clerk's office.

Mr. James L. Orr, of South Carolina, made the point of order that the amendment was not germane and consequently not in order.

The Speaker pro tempore[5] sustained the point of order and decided the amendment to be out of order.

On an appeal the Chair was sustained.

5828. On April 17, 1896,[6] Mr. Andrew R. Kiefer, of Minnesota, by unanimous consent, presented the following bill:

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[1] This is no longer a rule of the House.

[2] First session Forty-ninth Congress, Record, pp. 1619, 1620; Journal, pp. 702, 703.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Thirty-second Congress, Journal, p. 414.

[5] Isham G. Harris, of Tennessee, Speaker pro tempore.

[6] First session Fifty-fourth Congress, Record, p. 4096.

Be it enacted, etc., That the Secretary of the Navy be, and he is hereby, authorized and directed to donate one condemned cannon and four pyramids of condemned cannon balls to the cemetery association in the city of St. Paul, Minn., for the purpose of placing the same at or near the monument erected to the memory of Union soldiers who are buried in the said cemetery.

To this Mr. William A. Stone, of Pennsylvania, proposed the following amendment:

And also three condemned cannon for the Grand Army of the Republic Post, No. 121 (Col. John M. Patterson Post), for the purpose of decorating the soldiers' plat in the South Side Cemetery, Pittsburg, Pa.

Mr. James D. Richardson, of Tennessee, made a point of order against this amendment.

The Speaker [1] sustained the point of order.

5829. On July 27, 1894,[2] by unanimous consent, on motion of Mr. William J. Bryan, of Nebraska, the Committee of the Whole House was discharged from the consideration of the bill (S. 463) to reimburse the State of Nebraska the expenses incurred by that State in repelling a threatened invasion and raid by the Sioux in 1890 and 1891, and the same was considered and was read twice.

Mr. John A. Pickler, of South Dakota, submitted the following amendment:

Add to the bill the following: "And also audit and report as to like expenditures for the same time incurred by the State of South Dakota."

Mr. Joseph D. Sayers, of Texas, made the point that the amendment was not germane to the bill.

The Speaker [3] sustained the point of order, holding that it was not in order to ingraft upon a bill for the relief of one individual or State a provision for the relief of another.

5830. To a provision for an additional judge in one Territory an amendment providing for an additional judge in another Territory was held not to be germane.—On April 22, 1897,[4] the House was considering, in Committee of the Whole House on the state of the Union, the Senate amendments to the Indian appropriation bill, the particular amendment before the Committee being one to provide for the appointment of two additional judges for Indian Territory.

Mr. H. B. Fergusson, of New Mexico, moved to concur in this amendment, with an amendment providing for an additional judge for the Territory of New Mexico.

Mr. Nelson Dingley made the point of order that the amendment was not germane.

The Chairman [5] held:

The amendment of the Senate provides for additional judges for the Indian Territory. The amendment of the gentleman from New Mexico proposes, as the Chair understands, to authorize a new judge for the Territory of New Mexico. That would not be germane to the amendment of the Senate. The Chair therefore sustains the point of order.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 514, 515; Record, pp. 7940, 7941.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-fifth Congress, Record, p. 814.

[5] Sereno E. Payne, of New York, Chairman.

5831. For a time a different principle prevailed in rulings of this class.—On March 4, 1852,[1] the House was considering a bill (H. R. 214) granting land to the State of Wisconsin to aid in the construction of a railroad and granting a right of way.

Mr. Ben Edwards Grey, of Kentucky, moved to amend the same by adding thereto a provision for a grant of lands to Kentucky in aid of certain railroads.

Mr. George W. Jones, of Tennessee, made the point of order that the amendment was not germane to the bill under consideration.

The Speaker[2] stated that, inasmuch as the bill provided for a donation of lands to a State for railroads therein, it was competent to amend it by a provision for a donation to other States for similar purposes. He therefore overruled the point of order.

Mr. Cyrus L. Dunham, of Indiana, having appealed, the appeal was laid on the table.

Again, on July 29, 1852,[3] Mr. Speaker Boyd, in a case involving the same conditions, reaffirmed the principles of this ruling.

On March 2, 1857, Mr. Speaker Banks decided that, to a bill granting land to Minnesota for railroad purposes, an amendment granting land to Alabama was germane.[4]

5832. To a bill providing for extermination of the cotton boll weevil an amendment including the gypsy moth was held not to be germane.— On January 8, 1904,[5] the House was considering a proposition to make available for combating the ravages of the boll weevil and other insects destructive to the cotton plant an appropriation hitherto made for combating the foot-and-mouth disease among cattle.

Mr. Frederick H. Gillett, of Massachusetts, proposed an amendment authorizing the use of a further sum for combating the gypsy moth.

Mr. James W. Wadsworth, of New York, made the point of order that the proposed amendment was not germane.

After debate the Speaker[6] said:

The effect of this bill is to make an appropriation which was made by the act of March 3, 1903, to stamp out the foot-and-mouth disease, also available to stamp out the boll weevil, and for that purpose only—a single purpose. Now, the point of order is made that this proposed amendment to the bill, to add the gypsy moth, is not germane.

The Chair is not without precedents touching this point of order. On page 324 of the Manual the following decisions are found:

"To a bill providing for the admission of one Territory an amendment providing also for the admission of several other Territories was offered, and held not to be in order.[7]

"To a bill admitting one Territory into the Union an amendment relating to the statehood of another Territory is not germane.

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[1] First session Thirty-second Congress, Journal, p. 427; Globe, p. 673.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Thirty-second Congress, Journal, p. 967.

[4] Third session Thirty-fourth Congress, Journal, p. 621.

[5] Second session Fifty-eighth Congress, Record, p. 575; Journal, p. 118.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] See section 5837 of this chapter.

"It is not in order to ingraft upon a bill for the relief of one State a provision for the relief of another." [1]

And various others along the same line. It has frequently been held that a bill to pension A is not amendable by a provision to pension B. Now, when you apply the former practice of the House and the decisions made by the Chair and concurred in by the House, it is evident that this amendment is not germane under the precedents; and the Chair sustains the point of order.

5833. To a paragraph appropriating for a clerk to one committee an amendment providing for a clerk to another committee was held not to be germane.—On April 16, 1904,[2] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For clerk to the Committee on Industrial Arts and Expositions during the fiscal year 1905, $2,000.

Mr. George W. Smith proposed to amend the paragraph by adding a provision so that it would read as follows:

For clerk to the Committee on Industrial Arts and Expositions and for clerk to the Committee on Private Land Claims during the fiscal year 1905, $2,000 each, in all, $4,000.

Mr. James A. Hemenway, of Indiana, having made a point of order, the Chairman [3] held:

The Chair is of opinion that the point of order must be sustained. The amendment has no kind of relation to the paragraph, although it is the same kind of a proposition. If a bill were pending before the committee providing for the payment of a private pension to one individual, an amendment providing for a pension for another individual also would not be germane, although it would be of the same class of legislation. So here we have a proposition to pay a clerk for one designated committee, and an amendment to include another committee is not germane. The rule may be otherwise if the paragraph sought to be amended embraced a number of committees.

5834. A resolution from the Committee on Rules providing for the consideration of a bill relating to a certain subject may not be amended by a proposition providing for the consideration of another and not germane subject.

It is not in order to do indirectly by a motion to recommit with instructions what may not be done directly by way of amendment.

On May 6, 1897,[4] the House was considering a resolution reported from the Committee on Rules providing that "from and after this day the House shall meet only on Monday and Thursday of each week until the further order of the House."

Mr. Joseph W. Bailey, of Texas, moved to recommit the resolution, with instruction to report as a substitute a resolution providing a time for the consideration of the bankruptcy bill (S. 1035).

Mr. John Dalzell, of Pennsylvania, made a point of order against this motion.

The Speaker [5] ruled:

The point of order being raised, the Chair thinks the amendment is not germane. * * * Here is a proposition that the House shall meet on Mondays and Thursdays. Here is an amendment requesting that a particular bill shall be considered under certain conditions and formalities. Now,

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[1] See section 5829 of this chapter.

[2] Second session Fifty-eighth Congress, Record, p 4951.

[3] Edgar D. Crumpacker, of Indiana, Chairman.

[4] First session Fifty-fifth Congress, Record, p. 939.

[5] Thomas B. Reed, of Maine, Speaker.

if that is germane to the other, it would be difficult to limit the range of germaneness anywhere on earth, it seems to the Chair. It has been decided by one of the predecessors of the present Speaker that this motion was not in order at all; but the present Speaker has decided otherwise, and, he believes, with the approval of the House, giving the House more complete control over such matters; but it has been decided by all his predecessors that no proposition can be offered as an instruction to a committee that would not have been admissible as an amendment if it had been offered at the proper time. Now, will any gentleman of the House say that this would be a proper amendment to the original resolution? The Chair thinks that it could not be.

5835. On January 21, 1891,[1] Mr. Joseph G. Cannon, of Illinois, from the Committee on Rules, reported a resolution providing for the immediate consideration of the District of Columbia appropriation bill.

Mr. Richard P. Bland, of Missouri, moved that the resolution be recommitted to the Committee on Rules with instructions to report back a resolution providing for the consideration of the bill (S. 4675) to provide a unit of value and for the coinage of gold and silver, etc.

Mr. Cannon made the point of order that the proposed instructions, not being germane to the resolution, were not now in order.

The Speaker[2] sustained the point of order, holding that the instructions were not germane to the subject-matter of the resolution.

Mr. Bland appealed from the decision of the Chair. Mr. Cannon moved to lay the appeal on the table, and the question being put, it was decided in the affirmative, yeas 146, nays 122.

5836. On February 24, 1891,[3] Mr. William McKinley, jr., of Ohio, from the Committee on Rules, reported a resolution providing for the consideration of the bill (S. 172) to credit and pay to the several States and Territories and District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August 5, 1861.

Mr. Nelson Dingley, jr., of Maine, offered an amendment to provide that immediately after the consideration of that bill the House should resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 3738) "to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations."

Mr. James H. Blount, of Georgia, made the point of order that the amendment was not germane to the subject-matter of the resolution.

The Speaker[2] sustained the point of order.

5837. To a bill for the admission of one Territory an amendment providing also for the admission of several other Territories was held not to be germane.—On January 17, 1889,[4] the House was considering a bill of the Senate providing for the admission of the Territory of Dakota into the Union. The consideration of the bill was governed by a special order, which specified that the bill of the House (H. R. 8466) might be offered as a substitute. Instead of this bill, however, there was offered by Mr. William M. Springer, of Illinois, a substitute

[1] Second session Fifty-first Congress, Journal, p. 165; Record, p. 1638.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 295; Record, p. 3215.

[4] Second session Fiftieth Congress, Journal, pp. 270, 293; Record, pp. 905, 907.

different in form and containing, with a provision relating to Dakota, other provisions providing for the admission of Montana, Washington, and New Mexico.

Mr. Julius C. Burrows, of Michigan, made the point of order that the proposed amendment was not germane.[1]

After debate the Speaker[2] held:

When the gentleman from Michigan made the point of order, the Chair supposed that the gentleman from Illinois had offered as a substitute the bill H. R. 8466, which is the bill mentioned in the order made by the House. Of course, if the gentleman has not offered that bill, the question which the Chair proposed to submit to the House has not yet arisen. The Chair supposes that a mere technical difference between the two bills would not be material—for instance, a correction of a mere clerical error, or something of that sort. But it seems that the proposed substitute now offered by the gentleman from Illinois contains provisions of a substantial character and not contained in the original House bill. The Chair thinks, therefore, that the order does not apply to it, and believes that in accordance with the practice of the House and its rules, ever since the House overruled its own decision in the case of California,[3] that this substitute is not in order under the rules. The Chair holds, therefore, that the substitute sent to the desk by the gentleman from Illinois does not come within the terms of the order made by the House, and hence is not in order under the rules and practice of the House.

5838. To a bill admitting several Territories into the Union an amendment adding another Territory is germane.—On May 8, 1902,[4] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12543) providing for the admission into the Union of the Territories of Oklahoma, Arizona, and New Mexico.

Mr. Thomas C. McRae, of Arkansas, proposed an amendment providing for the addition of the Indian Territory to Oklahoma.

Mr. James T. Lloyd, of Missouri, raised the question of order that the proposed amendment was not germane.

After debate the Chairman[5] held:

The Chair is ready to rule. If this were a bill for the admission of Oklahoma Territory alone as a State, there would be no doubt as to the position taken by the gentleman from Missouri being correct. An amendment to admit some other Territory as a State would not be in order. But this is a general bill covering three different Territories, and an amendment as suggested by the gentleman from Alabama [Mr. Underwood] to admit Alaska as a State would be in order on this bill.

For instance, a private claim bill for the allowance of a single claim would not be subject to an amendment allowing some other claim, but a general claims bill, such as often comes before this House, can be amended by adding another claim. So with public building bills. A bill to erect a public building at Birmingham, Ala., could not be amended by a proposition to erect a public building at Indianapolis, Ind.; but a bill providing for a number of public buildings could be amended by adding another public building. One is a general bill, the other is a bill for a single object: and as the Chair said, if this were a bill to admit Oklahoma alone as a State, this amendment would not be in order. On the other hand, it is a general bill proposing to admit three Territories as States.

In the Thirty-fourth Congress a decision was made by the Speaker that covers this point clearly.[6] On July 17, 1856, Mr. Elihu B. Washburne, of Illinois, reported from the Committee on Commerce a

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[1] Mr. Burrows gave an interesting citation of early precedents. (Second session Fiftieth Congress, Record, p. 906.)

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Thirty-first Congress, Journal, pp. 1415, 1417; Speaker Cobb overruled. (See footnote of sec. 5859 of this chapter.)

[4] First session Fifty-seventh Congress, Record, pp. 5187–5189.

[5] James A. Hemenway, of Indiana, Chairman.

[6] See section 5840 of this chapter.

resolution of the Senate for enlarging the custom-house and post-office and court-house at Milwaukee, Wis., and at Detroit, Mich., and for the construction of a public building for the same purpose at Dubuque, Iowa, with an amendment providing for some public buildings at Toledo, Ohio, Ogdensburg, N. Y., Ellsworth, Me., Chicago, Ill., Nashville, Tenn., and other points.

Mr. James L. Orr, of South Carolina, made the point of order that the amendment was not germane to the original resolution, inasmuch as it provided for the construction and enlargement of public buildings in different cities and States from those mentioned in the resolution to which the amendment was offered. The Speaker overruled the point of order. There was the exact question. There was a public-building bill providing for two or more buildings. An amendment was offered to add another building in another State.

The point of order was made, and the Speaker of the House, Nathaniel P. Banks, jr., of Massachusetts, overruled the point of order. There is no doubt, in the opinion of the Chair, that the amendment offered by the gentleman from Arkansas [Mr. McRae] is in order on this bill, this being a general bill for the admission of Territories. The Chair therefore overrules the point of order.

5839. To a resolution embodying two distinct phases of international relationship an amendment embodying a third was held to be germane.— On January 27, 1896,[1] the House was considering a concurrent resolution of the Senate, which, after a recital in the preamble, was as follows:

Resolved by the Senate of the United States (the House of Representatives concurring), That it is an imperative duty, in the interest of humanity, to express the earnest hope that the European concert brought about by the treaty referred to may speedily be given its just effect in such decisive measures as shall stay the hand of fanaticism and lawless violence, and as shall secure to the unoffending Christians of the Turkish Empire all the rights belonging to them, both as men and Christians and as beneficiaries of the explicit provisions of the treaty above recited.

Resolved, That the President be requested to communicate these resolutions to the Governments of Great Britain, Germany, Austria, France, Italy, and Russia.

Resolved further, That the Senate of the United States, the House of Representatives concurring, will support the President in the most vigorous action he may take for the protection and security of American citizens in Turkey, and to obtain redress for injuries committed upon the persons or property of such citizens.

To this Mr. William P. Hepburn, of Iowa, offered the following amendment:

That for the purpose of emphasizing our protest against the murders and outrages above recited the President is directed to furnish the Turkish minister his dismissal as a representative of the Sultan at this capital, and to at once terminate all diplomatic relations with the Government of Turkey.

Mr. James B. McCreary, of Kentucky, made the point of order that the amendment was not germane.

The Speaker[2] said:

While the matter is not free from doubt, the Chair overrules the point of order.

5840. To a bill providing for the construction of a building in each of two cities an amendment providing for similar buildings in several other cities was held to be germane.—On July 7, 1856,[3] Mr. Elihu B. Washburne, of Illinois, reported from the Committee on Commerce the resolution of the Senate (S. R. 17) "for enlarging the custom-house, post-office, and court-house at Milwaukee, Wis., and at Detroit, Mich., and for the construction of a building for the same purposes at Dubuque, Iowa," with an amendment providing for similar public

[1] First session Fifty-fourth Congress, Record, pp. 1000, 1008, 1009.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Thirty-fourth Congress, Journal, pp. 1168, 1169, 1171, 1173; Globe, pp. 1555, 1557.

buildings at Toledo, Ohio, Ogdensburg, N. Y., Galena, Ill., Ellsworth, Me., Chicago, Ill., Nashville, Tenn., and Perth Amboy, N.J.

Mr. James L. Orr, of South Carolina, made the point of order that the amendment was not germane to the original resolution, inasmuch as it provided for the construction and enlargement of public buildings in different cities and States from those in the resolution to which it was an amendment.

The Speaker [1] overruled the point of order.

Mr. Orr having appealed, on the succeeding day the appeal was laid on the table, yeas 136, nays 49.

5841. To a bill relating to commerce between the States an amendment relating to commerce within the several States was offered and held not to be germane.—On September 13, 1888,[2] the House was considering the bill (S. 2851) to amend an act entitled "An act to regulate commerce" approved February 4, 1887, and Mr. Knute Nelson, of Minnesota, offered this amendment:

Provided further, That any railroad company or other common carrier heretofore or hereafter created or incorporated under the laws of the United States shall, as to the transportation of passengers or property from one place or station to another place or station in the same State, over a route wholly in that State, be subject and amenable to the laws of such State relating to the transportation of passengers and property, the same as though it were a railroad company or common carrier created or incorporated under the laws of that State.

Mr. Charles F. Crisp, of Georgia, made the point of order that the amendment was not germane to the bill.

The Speaker [3] sustained the point of order upon the grounds that the bill under consideration was one relating solely to commerce between the States, while the proposed amendment related solely to commerce within the States severally, and was, therefore, not germane to the bill.

5842. To a bill relating to corporations engaged in interstate commerce an amendment relating to all corporations was held not to be germane.— On February 7, 1903,[4] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 17) requiring all corporations engaged in interstate commerce to file returns with the Secretary of the Treasury, disclosing their true financial condition, and of their capital stock, and imposing a tax upon such as have outstanding capital stock unpaid in whole or in part.

Mr. Henry D. Clayton, of Alabama, offered an amendment:

SEC.—There is hereby levied and shall be assessed and collected annually the following taxes on all corporations, whether domestic or foreign, doing business in the United States for profit or gain and having a capital stock of $200,000 or more, at the rate of 10 per cent on its capital stock. The amount of the capital stock of any taxable corporation for the purposes of taxation shall be estimated according to its par value fixed by the charter, or by resolution of its board of stockholders or directors, and shall include all assets owned by such corporation which are reserved or funded or set aside for the benefit of its stockholders.

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[1] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

[2] First session Fiftieth Congress, Journal, p. 2772; Record, p. 8584.

[3] The Journal indicates that this ruling was made by Mr. Speaker Carlisle. The Record indicates that it was by Speaker pro tempore James B. McCreary, of Kentucky.

[4] Second session Fifty-seventh Congress, Record, p. 1913.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that the amendment was not germane, saying:

The original bill proposes a tax upon corporations engaged in interstate commerce having unpaid capital stock outstanding. This bill relates entirely to corporations engaged in interstate commerce, and prohibits them from making unlawful discriminations or entering into unlawful or injurious combinations to control prices, etc. That is all right. It is also proper to control such corporations or trusts by way of taxation. But the gentleman from Alabama introduces an entirely new subject. This proposed amendment imposes a tax of 10 per cent on the entire capital stock of every corporation, big and little, in the United States, whether engaged in interstate commerce or not.

The Chairman [1] sustained the point of order.

5843. To a bill for the benefit of a single individual or corporation, an amendment embodying general provisions applicable to the class represented by the individual is not germane.—On March 7, 1884,[2] the previous question had been demanded on a bill to appoint and retire Alfred Pleasanton as a major-general. Pending this demand, Mr. George W. Steele, of Indiana, moved to recommit the bill to the Committee on Military Affairs with instructions to report a bill to place upon the retired list of the Army all officers and soldiers who served in the late civil war and were honorably discharged, who are suffering from total disabilities from wounds received in the line of duty with the rank of colonel, together with the bill restoring Alfred Pleasanton as colonel on the retired list of the Army.

On which motion Mr. Martin Maginnis, of Montana, made the point of order that the same was not in order, for the reason that it converted a private into a public bill.

The Speaker [3] sustained the point of order on the ground that the motion of Mr. Steele could not have been in order as an amendment to the bill, and also on the ground that it was not in order to convert a private into a public bill.[4]

5844. On April 23, 1894,[5] the House was considering the bill (H. R. 6171) to authorize the Metropolitan Railroad Company to change its motive power for the propulsion of cars.

The bill was ordered to be engrossed and was read a third time.

Mr. John S. Williams, of Mississippi, moved to recommit the bill to the Committee on the District of Columbia with instructions to report a general bill applicable to all street-railway corporations seeking franchises, renewal of franchises, extension of franchises, increase of franchises, or amendment of charters, providing for the sale at public auction, for terms of years to the highest bidders, after due advertisement, of all such street-railway franchises to be hereafter exercised within the District, subject to provisions for existing equities.

Mr. James D. Richardson, of Tennessee, made the point of order that the instruction proposed by Mr. Williams, of Mississippi, was not in order.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] First session Forty-eighth Congress, Journal, p. 761.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] So also in a case where it was proposed to recommit a private pension bill with instructions to inquire whether a general pension bill should be reported. (Second session Forty-eighth Congress, Journal, p. 621.)

[5] Second session Fifty-third Congress, Journal, pp. 350, 351 Record, p. 4011.

The Speaker pro tempore[1] sustained the point of order, for the reason that it was not in order to amend a bill for the benefit of an individual by inserting therein general provisions of law.

5845. On April 12, 1850,[2] the bill from the Senate (No. 128) for the relief of Margaret L. Worth, widow of the late General Worth, of the Army of the United States, having been read a first and second time, Mr. George W. Jones, of Tennessee, moved to amend the same by adding thereto the following:

Be it further enacted, That all pensions which have been granted, or which shall hereafter be granted, to the widow of any officer, noncommissioned officer, musician, or private, in consequence of the death of the husband of such widow while in the military service of the United States, or in consequence of the death of the husband of any such widow in consequence of wounds received or of disease contracted while in the military service of the United States, shall be for and during the natural life of the widow to whom granted, to commence on the day of the death of the husband.

Be it further enacted, That the widow of every officer, noncommississioned officer, musician, or private, whose husband has heretofore or shall hereafter die while in the military service of the United States, shall be entitled to a pension of half the monthly pay to which her husband was entitled at the time of his death, for and during her natural life, from the date of the death of her husband.

The Speaker[3] decided that the amendment was out of order, on the ground that the bill provided for the relief of a single individual, and the amendment sought to establish a general provision of law.

From this decision of the Chair Mr. Jones appealed; and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

5846. On February 23, 1894,[4] the pending question was the motion of Mr. Thomas B. Reed, of Maine, to discharge Mr. Robert Adams, jr., of Pennsylvania, from custody.

Mr. Richard P. Bland, of Missouri, offered the following substitute for the motion of Mr. Reed:

That all Members who have been arrested by the Sergeant-at-Arms by authority of the resolution of the House adopted on the 19th instant be, and they are hereby, discharged from arrest.

Mr. Reed made the point of order that it was not in order to move as a substitute for a proposition excusing one Member a proposition to excuse several Members.

The Speaker pro tempore[5] expressed the opinion that the point was well taken; whereupon Mr. Bland withdrew the amendment.

5847. To a bill establishing a standard of time for the District of Columbia an amendment for distributing the benefits to the nation at large was held to be not germane.—On March 10, 1884,[6] the House was considering the bill (S. 616) to establish a standard of time in the District of Columbia.

Mr. John D. White, of Kentucky, proposed an amendment appropriating a sum of money for transmitting standard time from Washington to various portions of the country.

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[1] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[2] First session Thirty-first Congress, Journal, p. 784; Globe, p. 714.

[3] Howell Cobb, of Georgia, Speaker.

[4] Second session Fifty-third Congress, Journal, p. 194; Record, p. 2377.

[5] James D. Richardson, of Tennessee, Speaker pro tempore.

[6] First session Forty-eighth Congress, Journal, p. 793; Record, p. 1763.

Mr. William. M. Springer, of Illinois, made the point of order that the amendment changed the character of the bill, making a general one out of a local one intended for the District of Columbia.

The Speaker[1] sustained the point of order on the ground that the pending bill was simply to establish a standard of time for this District, while the amendment proposed would make it a general law and would appropriate $25,000 for the purpose; which amendment under the rule would send the bill to the Committee of the Whole House on the state of the Union.

5848. To a resolution authorizing a class of employees in the service of the House an amendment providing for the employment of a specified individual was held not to be germane.—On March 1, 1890,[2] Mr. Henry J. Spooner, of Rhode Island, reported this resolution from the Committee on Accounts:

Resolved, That the Doorkeeper of the House be, and he is hereby, authorized to employ ten additional laborers in the folding room of the House for the purpose of folding public documents, at a compensation at the rate of $60 each per month, to be paid out of the contingent fund of the House: *Provided*, That all such employees shall be dropped from the rolls of the Doorkeeper at a period not later than one month from the expiration of the present session of Congress.

Mr. John M. Brower, of North Carolina, moved to amend the resolution by adding thereto the following:

That Henry G. Williams be appointed second assistant superintendent of the House document room, and shall receive the same salary as the assistant superintendent of said room.

Mr. Spooner made the point of order that the amendment was not germane to the resolution; which point of order was sustained by the Speaker.[3]

5849. On January 7, 1896,[4] Mr. J. Frank Aldrich, of Illinois, from the Committee on Accounts, submitted this resolution:

Resolved, That the Chairmen of Committees on Military Affairs, Naval Affairs, and Interstate and Foreign Commerce be, and they are hereby, authorized to each appoint an assistant clerk for their respective committees.

Mr. James A. Tawney, of Minnesota, offered this amendment:

Resolved, That the Doorkeeper of the House be, and he is hereby, authorized and directed to appoint Lauritz Olson a messenger to the House gallery, at a salary of $1,200 per annum.

Mr. Aldrich made the point of order that the amendment was not germane.

The Speaker[3] sustained the point of order.

5850. To a bill authorizing the Court of Claims to adjudicate a claim an amendment providing for paying the claim outright was held not to be germane.—On January 14, 1898,[5] the House was in Committee of the Whole House, considering the bill (S. 629) to confer jurisdiction on the Court of Claims in the case of The Book Agents of the Methodist Episcopal Church South against the United States. This bill directed that the claim with the accompanying petitions and papers should be referred to the Court of Claims; that the court should render

[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-first Congress, Journal, p. 293.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 513.

[5] Second session Fifty-fifth Congress, Record, pp. 627, 638, 842.

judgment against the United States and in favor of said corporation for whatever sum might be found due; that in the trial the affidavits on file before Congress should be admitted as competent evidence, etc.

To this bill Mr. S. B. Cooper, of Texas, proposed as an amendment in the nature of a substitute a bill authorizing and requiring the Secretary of the Treasury to pay the sum of $288,000 in full satisfaction of the claim.

Mr. John Dalzell, of Pennsylvania, made the point of order that this amendment was not germane.

On January 21, after debate, the Chairman [1] decided:

Prior to the adoption of any rules upon the subject it was in order to offer any amendment to the bill, whether it was germane or not, by way of substituting another bill or by way of an amendment. In March, 1789, the House made a rule which changed general parliamentary law upon the subject, and that rule was in these words:

"No new motion or proposition shall be admitted under color of amendment as a substitute for the question or proposition under debate until it has been postponed or disagreed to."

That simply went to the substitute, and not to the amendment of the proposition; and I suppose that under that, until the adoption of a new rule by the House of Representatives, an amendment which was not in the nature of a substitute would have been in order. In 1822 the House adopted this rule:

"No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

And that rule has been the rule of the House of Representatives from that day to this, and is now clause 7 of Rule XVI, under which this point of order is raised.

The bill before the House is an act to confer jurisdiction on the Court of Claims in the case of The Book Agents of the Methodist Episcopal Church South against The United States; and the act provides not only to confer jurisdiction, but gives the court authority to render judgment for any amount, and further provides that either party may appeal from the judgment that is so rendered. That is the whole scope of the bill which is now before the Committee. The substitute offered is, briefly, an appropriation of some $288,000—the Chair does not recollect the precise amount—to be paid to The Book Agents of the Methodist Episcopal Church South. That is the whole scope of the substitute that is offered as an amendment. The question is whether, under the language of the rule, this is a proposition on a subject different from that under consideration. If it is, it can not be admitted as an amendment. If it is not, of course it would be in order as an amendment. * * * There is one precedent [2] that seems to bear almost exactly upon the ease before the Committee, and that was the precedent cited the other day by the gentleman from Maine [Mr. Dingley] in the Forty-eighth Congress. A bill was before the House restoring General Pleasonton to the Army and putting him on the retired list, in order that he might draw the pay of a retired officer. It might have been a bill entitled "For the relief of General Pleasonton," but it was entitled a bill to restore him to the Army and place his name on the retired list.

When that bill was before the Committee of the Whole House, the gentleman from New York, the late Mr. Cox, an able parliamentarian, was in the chair. During the progress of the bill the gentleman from Indiana, the late Mr. Browne, offered an amendment striking out all after the enacting clause and authorizing the Secretary of the Interior to place his name on the pension list and pay him a pension at the rate of $100 a month. That question was debat*COM008*ed somewhat in Committee of the Whole, and the Chairman of the Committee [Mr. Cox], the point of order having been raised by the late Mr. Bayne, of Pennsylvania—and the House will observe the controversy was between two Republicans, Mr. Browne and Mr. Bayne, while the Chairman was of opposite politics, so that it would seem that no politics could enter into that question at that time—the Chair stated that he felt compelled to sustain the point of order, as it changed the whole character of the bill.

That, of course, defeated the amendment in Committee of the Whole. The bill was finally reported to the House, and the gentleman from Indiana again obtained the floor and moved to recommit the bill

[1] Sereno E. Payne, of New York, Chairman.

[2] See section 5843 of this chapter.

with directions to report back the bill with the same amendments that he had submitted. It was again debated in the House, and Mr. Carlisle in the chair held that it was obnoxious to clause 7 of Rule XVI and not germane to the original bill, and he sustained the point of order.

Now, what is the proposition before the Committee? The title to the bill is to give the Court of Claims jurisdiction for the trial of this claim, with the further provision that an appeal may be taken by either party to the Supreme Court. The offer is to substitute for this a bill appropriating money to the Methodist Book Concern. It changes the whole character of the bill, and, as was well said by Mr. Cox of the bill before the Committee at that time, it is an entirely different bill, and to hold that it was germane and could be offered as an amendment to this bill, in the opinion of the Chair, would almost, if not entirely, abrogate clause 7 of Rule XVI. Therefore the Chair sustains the point of order.

5851. To a proposition to pay a claim an amendment proposing to send the claim to the Court of Claims was held not to be germane.—On March 8, 1904,[1] the Committee of the Whole House were considering this bill:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, directed to pay to N. F. Palmer, jr., & Co., the sum of $63,620.59, out of any money in the Treasury not otherwise appropriated, in full of their claim for damages and losses incurred in the construction of the armored cruiser *Maine*, that being the amount recommended to be paid by the Secretary of the Navy.

Mr. Sereno E. Payne, of New York, proposed this amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

"That the bill (S. 334) entitled 'A bill for the relief of N. F. Palmer, jr., & Co.,' together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled 'An act to provide for the bringing of suits against the Government of the United States,' approved March 3, 1887; and the said court shall proceed with the same in accordance with the provisions of such act, and report to the House of Representatives in accordance therewith."

Mr. Jack Beall, of Texas, made a point of order against the amendment.

The Chairman[2] held:

The amendment proposed by the gentleman from New York provides for sending the whole matter to the Court of Claims for adjudication. The Chair is of the opinion that the point of order against the amendment is well taken. The Chair bases his judgment upon a decision[3] made by the gentleman from New York [Mr. Payne] in the second session of the Fifty-fifth Congress, where a bill was pending referring a claim to the Court of Claims and an amendment was offered providing for the payment of the claim outright, and the gentleman from New York, as Chairman of the Committee of the Whole, held that the amendment was not germane and sustained the point of order. Upon that precedent the Chair sustains the point of order.

5852. A revenue amendment is not germane to an appropriation bill.— On January 28, 1851,[4] the House was in Committee of the Whole House on, the state of the Union considering the deficiency appropriation bill, when the Chairman[5] rendered the following decision on a point of order which had been raised when the committee was last in session:

When the committee last rose the gentleman from Pennsylvania [Mr. William Strong], had moved an amendment as a separate clause—to modify the existing tariff law—to come in at the end of the bill, and on that amendment the gentleman from Tennessee [Mr. George W. Jones], had raised a point

[1] Second session Fifty-eighth Congress, Record, p. 3007.

[2] Edgar D. Crumpacker, of Indiana, Chairman.

[3] See section 5850 of this chapter.

[4] Second session Thirty-first Congress, Globe, p. 366.

[5] Richard K. Meade, of Virginia, Chairman.

of order. The Chair decides that the amendment offered by the gentleman from Pennsylvania is out of order. The amendment is in violation of the common law of Parliament. * * * The bill that was referred to the Committee of the Whole had for its object the appropriation of money to supply deficiencies. That was the subject referred to the Committee of the Whole. The amendment offered by the gentleman from Pennsylvania has not only a different object but quite an opposite one; it being in part to levy a tax, and in part to take off a tax. Hence, the Chair is of the opinion that it is entirely irrelevant, and can not be entertained by this committee. The Fifty-fifth rule [1] of the House reads thus: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." The Chair can not conceive a proposition more irrelevant or more opposite to the one under consideration than that in the amendment of the gentleman from Pennsylvania to the bill pending before the committee.

The Constitution of the United States is very careful in throwing guards around the tax-imposing power; and hence it requires that all bills imposing taxes shall originate in the House of Representatives. The one hundred and thirty-second rule [2] of the House, in pursuance of this jealous policy of the Constitution, declares, that "no increase of tax shall be voted by the House until it has been discussed and voted in Committee of the Whole on the state of the Union;" the object being to secure full discussion upon every question involving the taxing power. The Chair, therefore, is of opinion that the amendment offered by the gentleman from Pennsylvania is contrary to the parliamentary law, irrelevant to the question under consideration, and opposed to the general policy of the Constitution, and the rules made in pursuance of it, and must be ruled to be out of order.

Mr. Strong having appealed, the decision of the Chair was sustained, yeas 102, nays 87.

5853. To a proposition giving a committee power to investigate tariff subjects an amendment commending tariff revision was held not to be germane.—On December 31, 1827,[3] Mr. Rollin C. Mallary, of Vermont, presented this resolution from the Committee on Manufactures:

Resolved, That the Committee on Manufactures be vested with the power to send for persons and papers.

It was explained that the committee wished this power in order to acquire information to be used in framing a tariff bill.

Mr. Andrew Stewart, of Pennsylvania, proposed an amendment to strike out all after the word "Resolved" and insert, "That it is expedient to amend the present existing tariff by increasing the duties on the following importations, raw wool and woolens, bar iron, etc."

Mr. John Floyd, of Virginia, made a point of order against the amendment.

The Speaker [4] decided that the amendment was not in order, inasmuch as the proposition was on a subject different from that under consideration, and consequently inadmissible, under color of amendment, by the rules and practice of the House.

5854. To a bill relating to the classification for customs purposes of worsted goods as woolens, an amendment relating to duties on wools and woolens and worsted cloths was held not to be germane.—On April 29, 1890,[5] the House being in Committee of the Whole House on the state of the Union

[1] See section 5767 of this volume for this rule.

[2] See section 4792 of Vol. IV for changes in this rule.

[3] First session Twentieth Congress, Journal, p. 1037; Debates, p. 865.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] First session Fifty-first Congress, Record, pp. 3996, 3997.

considering a bill (H. R. 9548) relating to the classification of worsted goods as woolens,

Mr. W. C. P. Breckinridge, of Kentucky, offered an amendment providing:

That all wools, hair of the alpaca, goat, and other like animals, wool on the skin, woolen rags, mungo, waste, and flax shall be admitted, when imported, free of duty. That on and after the 1st day of October, 1890, in lieu of the duties now imposed on the articles hereinafter mentioned, there shall be levied, collected, and paid on woolen and worsted cloths and all manufactures of wool of every description made wholly or in part of wool 35 per cent ad valorem.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the amendment related to a subject different from that with which the bill dealt.

The Chairman [1] ruled as follows:

The latter part of clause 7 of Rule XVI, provides:

"And no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

The subject under consideration in this bill is the classification of worsted cloths as woolen cloths. That is the subject. The proposition of the gentleman from Kentucky is to put wool on the free list as an amendment. It seems to the Chair that that is a different subject. The Chair remembers, in the last Congress, when a proposition was made on a bill for the admission of Dakota to amend it by adding the Territory of New Mexico, and the point was made that that was on a subject different from the one under consideration, the then Speaker of the House (Mr. Carlisle), decided [2] that it was a different subject, although relating to the same general subject. The Chair therefore sustains the point of order and rules the amendment out of order.

On a vote by tellers an appeal having been taken this decision was sustained–74 ayes to 36 noes.

5855. On the question being submitted the House admitted a provision relating to duties as an amendment to an internal-revenue bill although the point of order that it was not germane had been made.

Instance wherein the Speaker submitted a question of order to the decision of the House.

On June 3, 1870,[3] the House resumed the consideration of the bill of the House (H.R. 2045) to reduce internal taxes, and for other purposes, the pending question being on the forty-fifth section of the same.

Mr. James Brooks, of New York, proposed to submit the following amendment:

Add to the section the following proviso:

"*Provided further,* That on and after the first day of January next the duties levied upon the articles hereafter named, imported from foreign countries, shall be reduced as follows:

"On sirup of cane juice, or melado, or molasses from sugar-cane, and on all sugars, and on salt, thirty-three and a third per cent.

"On coffee and on tea, twenty percent; and on pig and scrap iron, twenty-two and a half percent.

"And all imported goods, wares, and merchandise here described, which may be in the public stores or bonded warehouses on the day of the year this act shall take effect, shall be subjected to no other duty upon the entry thereof for consumption than if the same were imported, respectively, after that date .[3]

The same having been read,

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[1] Julius C. Burrows, of Michigan, Chairman.

[2] See section 5837 of this chapter.

[3] Second session Forty-first Congress, Journal, p. 907; Globe, pp. 4072, 4073.

Mr. Charles A. Eldredge, of Wisconsin, made the point of order that the amendment was not in order, because it was an independent and new proposition for a tax upon the people, and must be first discussed in Committee of the Whole, and also because the amendment was not germane to the bill.

The Speaker[1] stated that the House had given unanimous consent for the consideration of this bill in the House, that would cover all amendments considered germane, and hence that the only question at issue is, whether the amendment be germane. In his judgment the amendment was germane, from the very necessities of the case; for it might be of the utmost importance, in determining the internal revenue to be derived from any article, to determine also what the external revenue shall be from the same article. He would, however, submit to the House the question, "Will the House entertain an amendment of the kind proposed as germane to the bill under consideration?"

And the question being put, it was decided in the affirmative.

5856. To a bill relating to reciprocal trade relations between the United States and Cuba, the Committee of the Whole, overruling the Chair, added an amendment relating to the duties on sugar generally; but sustained the Chair in holding not germane amendments relating to the general duties on hides and iron manufactures.—On April 18, 1902,[2] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12765) "to provide for reciprocal trade relations with Cuba," when Mr. Page Morris, of Minnesota, offered the following amendment:

Insert after "countries," line 22, page 2, the following:

"And upon the making of the said agreement, and the issuance of said proclamation, and while said agreement shall remain in force, there shall be levied, collected, and paid, in lieu of the duties thereon now provided by law on all sugars above No. 16 Dutch standard in color, and on all sugar which has gone through a process of refining, imported into the United States, 1 cent and eight hundred and twenty-five one-thousandths of 1 cent per pound."

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not germane to the bill.

The point of order was debated at length, especial stress being laid on the intimation of Mr. Speaker Blaine, on June 3, 1870, on the bill to reduce the internal taxes.[3] Mr. Charles E. Little-field, of Maine, further argued that the customs regulations concerning sugar were peculiar, and because of this peculiarity the ordinary principles of germaneness would in this case be modified. He said:

Any legislation that tends to disturb the tariff equilibrium in connection with this sugar schedule by disturbing the differential or otherwise, destroys the equilibrium and makes the consideration of the other branch of the proposition absolutely necessary in order to preserve and maintain the equilibrium. Unrefined sugar has one tariff, refined sugar another, to-day. If you shorten or diminish the unrefined-sugar tariff, you shorten one of the legs upon which the proposition stands; and if you increase it, you lengthen the leg upon which the proposition stands, and either process destroys alike the legislative equilibrium which ought to and economically must exist between the two tariffs.

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[1] James G. Blaine, of Maine, Speaker.

[2] First session Fifty-seventh Congress, Record, pp. 4405–4414, 4415, 4416.

[3] See section 5855.

At the close of the debate the Chairman [1] ruled:

The closing portion of section 7 of Rule XVI, which has been already read in the debate in the committee, reads:

"No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

The bill now before us is entitled "A bill to provide for reciprocal trade relations with Cuba." It authorizes the President to enter into negotiations with the government of Cuba when established for the purpose of securing reciprocal trade relations with Cuba, and when an agreement is made that, in his judgment, is reciprocal and equivalent, to proclaim the fact, "and thereafter until December 1, 1903, the imposition of the duties now imposed by law on all articles imported from Cuba, the products thereof, shall be suspended, and in lieu thereof 80 per cent of the duty imposed upon such articles coming from other countries shall be collected."

Clearly this is simply and solely a bill to provide for reciprocal relations with Cuba, and Cuba only. An amendment can then be in order only if it relates to trade between Cuba and the United States. In other words, it must be germane. A long line of decisions, covering a period of three-quarters of a century—because the present rule is worded precisely as it was adopted in 1822—made by distinguished Speakers of the House, from various sections of this country, have all emphasized the real intent and meaning of the rule above quoted.

These decisions have been based upon its literal construction. Except a decision of Speaker Cobb, in the Thirty-first Congress, later in the same Congress reversed by the House,[2] seemingly by the Speaker's acquiescence, these decisions are all in one direction. Speaker Blaine made no decision upon this question. He did emphatically express his judgment upon a like proposition, and after expressing his judgment, he referred the matter to the committee for decision. So that he made no decision overruling the long line preceding.

Mr. Blackburn, presiding in Committee of the Whole, or Speaker pro tempore, I think, did not make the ruling that the gentleman from Tennessee says that he made. The gentleman is mistaken in the statement. He decided that the point of order was raised too late for consideration. Here is the exact wording of Speaker Blackburn's ruling:

"The Chair will state to the gentleman from Michigan that he is not prepared to say that he would not have sustained his point of order and ruled the amendment of the gentleman from Tennessee out of order as not being germane to the subject-matter of the bill, if it had been made in time."

Speaker Blackburn held that the point of order was not raised in time. He expressly states that he does not hold that he would not have excluded it as not germane had it been raised in time.

If the Chair might be permitted to make a brief citation of very many decisions made by former Speakers—and the Chair will refer in the main to the decisions made by Speakers, and not by chairmen of the Committee of the Whole—Ithink the committee will see that practically an unbroken line of precedents is in favor of the literal construction of the rule of germaneness.

In the Thirtieth Congress, the resolution providing for an investigation to obtain information upon which to frame a tariff bill, an amendment was offered striking out all after the resolving clause and inserting "that it is expedient to amend the present existing tariff by increasing the duties" on certain commodities. Speaker Stevenson, of Virginia, held the amendment to be inadmissible because on a subject different from that under consideration.[3]

In the Twenty-seventh Congress to a bill under consideration authorizing the issue of Treasury notes, an amendment was offered providing that so much of the act of September 4, 1841, as provided for the distribution of the proceeds of the sale of public land among States and Territories be suspended, and the said fund be applied to the payment of outstanding Treasury notes, outstanding as well as those issued under the act, Mr. Hopkins, of Virginia, decidedly a clear and strong parliamentarian, held that the amendment was not germane.[4]

In the Thirtieth Congress, during the pendency of a bill locating military land warrants in Virginia, it was proposed to amend by providing that these land warrants might be located on any public land subject to entry. Speaker Winthrop, of Massachusetts, held this amendment not to be germane.

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[1] James S. Sherman, of New York, Chairman.

[2] See footnote to section 5859.

[3] See section 5853 of this volume.

[4] See section 5883 of this volume.

And in the same Congress the same Speaker held an amendment to a resolution to ascertain and equalize the salaries of United States district judges so as to include marshals and district attorneys not in order, and upon an appeal the Chair was sustained.

In the Thirty-fifth Congress, while a bill was pending granting preemption to settlers upon public lands, an amendment was offered donating 160 acres free, upon certain conditions as to occupancy and cultivation. Speaker Orr, from South Carolina, held the amendment not to be germane.[1]

In the Fiftieth Congress, to the bill for the admission of Dakota as a State, an amendment was offered to include New Mexico, Montana, and Washington. The question was discussed at considerable length. The gentleman from Michigan, Mr. Burrows, now a Senator from that State, a gentleman justly famed as a parliamentarian, in arguing in support of the point of order that the amendment was not germane, fully reviewed the history of the rule and its application. Speaker Carlisle, an able parliamentarian, to whose great ability and fairness I gladly testify, held the amendment not to be germane and sustained the point of order.[2]

On the 7th of this month, only the other day, while we were considering the Chinese-exclusion bill in the Committee of the Whole, the gentleman from Massachusetts [Mr. Moody] in the chair, an amendment prohibiting the employment of Chinese labor on American ships was held not to be germane to a bill regulating the admission of Chinese into this country.[3]

These are but a few of the decisions which all are on one side, all covering a period of more than seventy-five years.

It has been said that the Speaker, on the day this bill was taken up for consideration, held that this was a revenue bill. The Speaker did not so hold. The Speaker did, in reply to a parliamentary inquiry, say that this was a bill affecting the revenue, and stated that it has been the custom of this House to consider bills affecting the revenue as privileged matters, and this holding of the Speaker is sustained by a direct holding upon that very proposition by Speaker Reed in the Fifty-first Congress, and by many other decisions made at prior dates.

The argument of the gentleman from Maine that we must maintain the "equilibrium," and that to maintain the "equilibrium" this amendment is in order, is not, as it seems to the Chair, tenable. As well might he say that when a bill to appropriate $50,000,000 for rivers and harbors is under consideration we must, in order to maintain the "equilibrium," attach to it a provision to raise revenue, to bring money into the Treasury, to provide for that which is going out; and that proposition has been distinctly held in this House in the Thirty-first Congress not to be in order.

The argument of the gentleman from Maine might and probably would and probably does affect the judgment of members of the committee, so far as the merits of the proposition are concerned, but with the merits of any proposition the Chair has not to do in applying the rules to a question of order which is raised for him to dispose of.

Applying the rule, applying the precedents, applying to it the construction it has received for more than seventy-five years, it seems to the Chair just as clear as the hands of the clock before him are distinct, that this amendment, which relates to the duties upon sugar from the entire world, is not germane to a bill providing for reciprocal trade relations with Cuba, and is not in order as an amendment to the bill, and therefore the Chair sustains the point of order.

Mr. James A. Tawney, of Minnesota, having appealed, the Chairman put the question, "Shall the decision of the Chair stand as the judgment of the committee?"

And there appeared on a vote by tellers, ayes 130, noes 171. So the decision of the Chair was overruled.

Very soon thereafter Mr. Earnest W. Roberts, of Massachusetts, offered the following amendment:

Add a new section, as follows:

"SEC. 2. On and after the passage of this act the raw or uncured hides of cattle, whether the same be dry, salted, or pickled, shall, when imported, be exempt from duty.

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[1] See section 5877 of this chapter.

[2] See section 5837 of this chapter.

[3] See section 5874 of this chapter.

"Paragraph 437, Schedule N, of the act entitled 'An act to provide revenue for the Government and to encourage the industries of the United States,' approved July 24, 1897, is hereby repealed."

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not gername.

The Chairman said:

The Chair desires to say that under the ruling of the committee overruling the Chair a few moments ago quite likely that would be in order; but the Chair's views have not been modified by the action of the committee, and the Chair holds the amendment not germane and out of order.

Mr. Roberts having appealed, the decision of the Chair was sustained, yeas 183, nays 70.

Soon thereafter Mr. James D. Richardson, of Tennessee, offered an amendment proposing a general reduction of duties on manufactures of iron.

Mr. William H. Graham, of Pennsylvania, made the point of order that the amendment was not germane.

The Chairman said:

The Chair thinks the point of order is well taken. Enough has been read to convince the Chair that, in line with his first ruling of to-day, the amendment is not in order, as not being germane to the bill.

Mr. Richardson announced that he would not appeal.

5857. To a bill relating to the tariff between the United States and the Philippine Islands an amendment relating to the tariff between the United States and all other countries was held not to be germane.—On January 16, 1906,[1] the Philippine Tariff bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Champ Clark, of Missouri, proposed an amendment as follows:

Amend by inserting in line 6, page 2, after the word "aforesaid," the following: "Except on Philippine sugar there shall, after the approval of this bill by the President of the United States, be levied, collected, and paid in lieu of the duties now provided by law on all sugar above No. 16 Dutch standard and on all sugar which has gone through a process of refining, imported into the United States 1 cent and eight hundred and twenty-five one-thousandths of 1 cent per pound."

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not germane.

After debate at length, the Chairman[2] ruled:

A rule of this House provides that "no motion or proposition on a subject different from that under consideration shall be admitted under color of an amendment." The question for the Chair to decide in the first instance, and possibly afterwards the committee, is not as to the wisdom of that rule nor whether it shall be changed, but whether this amendment is obnoxious to that rule. The Chair first will call attention to the antiquity of the rule, which has existed in its present form under every Administration in power since 1822, and will take occasion to refer very briefly to a few decisions showing the strictness with which it has been interpreted. The Chair will not refer to decisions by Chairmen of the Committee of the Whole, but to Speakers of this House. In the Fifty-first Congress there was a bill before the House called a "pure-food bill," regulating lard and its products or compound lard. An amendment was offered relating to all food products, just as this bill relates to certain products and the amendment seeks to extend it over a general class, and yet the Speaker, Thomas B. Reed, ruled that the amendment was not germane.[3] In the Fifty-third Congress a proposition was made to discharge a Member of the House from

[1] First session Fifty-ninth Congress, Record, pp. 1156–1161.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] See section 5866 of this chapter.

the custody of the Sergeant-at-Arms. An amendment was offered discharging another Member or other Members. It was ruled not to be germane.[1] That ruling, it is true, was by the Chairman of the Committee of the Whole, but a most distinguished parliamentarian, Mr. Richardson, of Tennessee, who subsequently received the vote of his party for the office of Speaker.

Again, Speaker Reed ruled that to a paragraph providing for annual clerks to Senators an amendment providing clerks for Members was not in order.[2] And it has been held that to a bill relating to one Territory an amendment relating to another Territory was not germane. That was ruled, not by a Chairman of the Committee of the Whole, but by no less a distinguished parliamentarian than Speaker Carlisle. And, again, it was ruled in the Fifty-third Congress that to a bill admitting one Territory into the Union an amendment relating to the admission of another Territory was not germane. That was not ruled by a Chairman of the Committee of the Whole, but by the last Speaker who came from the minority side of the House, Mr. Crisp. He made two rulings upon that subject in the same session. Mr. William Jennings Bryan having offered a bill for the relief of the State of Nebraska to reimburse it for expenditures incurred in repelling an invasion of the Sioux Indians, an amendment was offered extending the provisions to the State of South Dakota, which had suffered in precisely the same way and from the same cause. Mr. Bryan argued that it would be as well to put all the bills on the Calendar into one bill as to accept that amendment as germane. His point of order was sustained by Speaker Crisp.[3] It was held by Speaker Reed that, to a bill to protect trade and commerce against trusts, an amendment authorizing the suspension of duties upon articles handled by trusts was not germane.

For instance, Speaker Reed also ruled that to a provision excluding all immigrants who could not read and write an amendment excluding all foreign-born laborers was not germane.[4] And so the Chair might go through a long list of similar rulings. But it is said that in the Fifty-seventh Congress a ruling was made, and upon appeal overruled,5 and that the action of the House in the Committee of the Whole on that occasion ought to be binding upon the present occupant of the chair.

It is true that when there was pending a bill providing for reciprocal duties with Cuba, not only upon sugar, but also upon hides, and, indeed, including all products of that island, an amendment was offered touching the duties upon sugar from all the countries of the world. And it is true that that amendment having been held not germane by the very distinguished parliamentarian who then occupied the chair, Mr. Sherman of New York, his ruling was upon appeal reversed by the committee. But the Chair finds that immediately afterwards an amendment touching hides was offered, whereupon the same point of order was again made, when the same Chairman said:

"The Chair desires to say that under the ruling of the committee overruling the Chair a few moments ago quite likely that would be in order, but the Chair's views have not been modified by the action of the committee, and the Chair holds the amendment not germane and out of order."

Thereupon, an appeal having been taken, the committee sustained the Chair by a vote of 183 to 70, or more than 2 to 1, distinctly overruling its previous action.

Then, again, this very morning, upon the appeal of the gentleman from Massachusetts, this committee sustained the Chair in a ruling entirely in line with the ruling then sustained as to the duty on hides. So that if the present occupant of the chair felt bound by rulings of the committee he would feel bound by the last two, rather than by the one which the committee itself seems to have reversed. But the Chair desires to call attention distinctly to the fact that the amendment now pending, offered by the gentleman from Missouri, is by no means on a par with the amendment concerning which the reversal occurred in the previous Congress. That, as the Chair has stated, was a bill providing for reciprocal duties with Cuba. It provided for a certain proclamation to be made by the President, and the amendment was ingeniously worded so as to provide that "upon the making of said agreement and the issuance of said proclamation, and while said agreement shall remain in force, there shall be levied, collected, and paid, in lieu of the duties on sugar," certain other duties.

It was ingeniously interwoven and connected with, had relation to, and included some matters in the original bill to which it was offered as an amendment.

But the amendment offered by the gentleman from Missouri [Mr. Clark] and now pending is surely upon a different subject-matter from the bill, because it by exception clearly excludes everything that is touched by the bill. The Chair will call attention to the wording of the amendment:

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[1] See section 5846 of this chapter.

[2] See section 5900 of this chapter.

[3] See section 5829 of this chapter.

[4] See section 5870 of this chapter.

[5] See section 5856 of this chapter.

"Amend by inserting the following: 'Except on Philippine sugar there shall, after the approval of this bill by the President of the United States, be levied, collected, and paid"

Certain duties on all sugars.

It does not even touch sugar coming from the Philippines or any of the products of the Philippines, which are the only subjects of the bill to which it is offered as an amendment. This amendment relates only to sugar which does not come from the Philippine Islands. Clearly it is a different subject-matter from that in the bill, which relates only to sugar and other products coming from the Philippine Islands.

Mr. Clark having appealed, the decision of the Chair was sustained, ayes 220, noes 120.

5858. On January 16,1906,[1] the Philippine tariff bill (H. R. 3) was und4r consideration in Committee of the Whole House on the state of the Union, when Mr. Edward W. Pou, of North Carolina, proposed an amendment as follows:

Amend by adding to end of section 1: "*And provided further,* That whenever the President of the United States shall ascertain to his satisfaction that any article manufactured in the United States and enumerated in the act of July 24, 1897, being chapter 11, Acts of the Fifty-fifth Congress, first session, and acts amendatory thereto, is sold in any foreign country at a price less than the same article is sold within the United States, the President, in such event, is hereby authorized and empowered to order a reduction of the import duty now collected upon similar articles brought into the United States from abroad, equal, as nearly as possible, to the difference in price ascertained by the President to exist between the aforesaid article sold abroad and the same article sold within the United States."

Mr. Sereno, E. Payne, of New York, made the point of order that the amendment was not germane.

The Chairman[2] held:

The Chair would not feel like violating the rules even to serve the most worthy purpose. The bill before the House is confined in its provisions strictly to the tariff relations between the Philippines and the United States. The amendment offered by the gentleman from North Carolina relates to the tariff laws generally between the United States and all countries. It introduces a very different and much broader proposition. The Chair thinks it necessary to refer to but one ruling in the Fifty-eighth Congress, where an amendment limiting immigration generally was held not to be germane to a proposition to prevent the immigration of Chinese alone.[3] Here is a bill relating to the Philippines and an amendment relating to the tariff generally. The ruling to which the Chair refers was made by the present Attorney General of the United States. The Chair sustains the point of order.

5859. To a proposition relating to the sale of internal-revenue stamps in Porto Rico a proposition relating to posting lists of persons paying special taxes in the United States was held not germane.—On April 23, 1906,[4] the House was considering the following bill:

A bill (H. R. 15071) to provide means for the sale of internal-revenue stamps in the island of Porto Rico.

Be it enacted, etc., That all United States internal-revenue taxes now imposed by law on articles of Porto Rican manufacture coming into the United States for consumption or sale may hereafter be paid by affixing to such articles before shipment thereof a proper United States internal-revenue stamp denoting such payment, and for the purpose of carrying into effect the provisions of this act the Secretary of the Treasury is authorized to grant to such collector of internal revenue as may be recommended by the Commissioner of Internal Revenue, and approved by the Secretary, an allowance for the salary

[1] First session Fifty-ninth Congress, Record, p. 1151.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] See section 5869 of this chapter.

[4] First session Fifty-ninth Congress, Record, pp. 5743, 5744.

and expenses of a deputy collector of internal revenue, to be stationed at San Juan, P. R., and the appointment of this deputy to be approved by the Secretary.

The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Porto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Porto Rico. All such stamps so issued or transferred to said deputy collector shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps.

The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns as the Commissioner of Internal Revenue may, by regulations approved by the Secretary of the Treasury, direct, and all provisions of existing law relative to the appointment, duties, and compensation of deputy collectors of internal revenue, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy collector of internal revenue assigned to duty under the provisions of this act.

SEC. 2. That before entering upon the duties of his office such deputy collector shall execute a bond, payable to the collector of internal revenue appointing him, in such amount and with such securities as he may determine.

When Mr. Benjamin G. Humphreys, of Mississippi, proposed this amendment:

Insert as section 3:

"Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and shall make and preserve a duplicate of the tax receipt or receipts issued to any person, company, or corporation, and upon application of any person he shall furnish a certified copy thereof, as of a public record, for which a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged."

Mr. Ebenezer J. Hill, of Connecticut, made the point of order that the amendment was not germane.

After debate the Chairman [1] sustained the point of order.[2]

5860. To a bill relating to the tariff between the United States and the Philippine Islands an amendment declaratory as to the future sovereignty over those islands was held not germane.—On January 16, 1906,[3] the Philippine tariff bill (H. R. 3) was under consideration in Committee of the Whole

[1] Charles E. Littlefield, of Maine, Chairman.

[2] As an instance of the latitude permitted occasionally by Speakers in construction of the rule requiring amendments to be germane, reference may be made to a precedent of August 28, 1850, when the House was considering the Senate bill providing for the adjustment of the northern and northwestern boundaries of Texas, and the relinquishment by Texas of territory exterior to those boundaries, and of claims against the United States. To this bill, which was short and confined simply to these adjustments, an amendment was offered in the form of a long bill providing systems of territorial governments for the Territories of New Mexico and Utah. This amendment Mr. Speaker Cobb held to be in order on the ground that the bill brought before the House the question of the territory acquired from Mexico, and that propositions affecting that Territory were germane to the bill, New Mexico and Utah being in that territory. On appeal this decision was sustained, yeas 122, nays 84. (First session Thirty First Congress, Journal, p. 1333; Globe, pp. 1682–1686.)

But on September 7, 1850, when Mr. Speaker Cobb, for the same reason, ruled an amendment providing a territorial government for Utah in order on a bill for the admission of California to the Union, the House overruled the Speaker, yeas 87, nays 115. The Speaker based his ruling on the fact that both bill and proposed amendment disposed of territory acquired from Mexico. (Journal, p. 1415; Globe, p. 1769.)

[3] First session Fifty-ninth Congress, Record, pp. 1144, 1145, 1146, 1150.

House on the state of the Union, when Mr. Samuel W. McCall, of Massachusetts, proposed the following amendment:

Amend by adding at the end of line 23, page 4, the following:

"And provided further, That nothing herein contained shall be construed to mean that it is the purpose of the Congress that the United States should permanently retain sovereignty over the Philippine Islands, but it is hereby solemnly declared to be the settled purpose of the Congress to fit the people of the said islands for self-government at the earliest practicable moment, and, when that result shall have been accomplished, to leave the government and control of the said islands to the people thereof, to the end that they shall be recognized by the United States as a free and independent nation, as was done in the case of Cuba.

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not germane.

After debate the Chairman [1] ruled:

The requirement that an amendment must be germane to the bill or proposition to which it is offered has obtained since the beginning of the American Congress. It was adopted in the very first set of rules of this House, in 1789, and even before that had an important place among the rules governing the Continental Congress. In 1822 it was slightly modified in form and adopted in the following language:

"No motion or proposition upon a subject different from that under consideration shall be admitted under color of amendment."

In that precise form it has been firmly embedded in our rules from that time down to the present moment and exists to-day in the last clause of section 7 of Rule XVI.

It is a great safeguard against hasty and ill-considered action. It prevents unexpected and diverse objects from being suddenly thrust forward for the instant consideration of the House without the benefit and assistance of previous consideration and report by the appropriate committee; protects the minority from the sudden springing and enactment by the majority of new propositions of which the minority has had no notice and no opportunity to prepare for discussion, and protects the majority from having to accept the responsibility of immediate action upon matters unexpectedly brought forward without previous committee consideration or report or opportunity for full information. It is for many reasons highly essential to the orderly and rational transaction of the business of this House. Without this rule as to germaneness new propositions of the utmost magnitude, deserving many days of discussion, as this bill has had, might, after the closing of general debate, be brought forward, as now, under color of amendment and debate thereon limited to five minutes on either side.

The five-minute rule itself, under which we are now proceeding, would hardly exist to-day except upon the assumption that the earlier rule as to germaneness will be strictly construed and faithfully adhered to.

The Speakers and Presiding Officers in Committee of the Whole House have almost uniformly interpreted and enforced it with great strictness. Perhaps the only exception was in the Thirty-fifth Congress, when Speaker Howell Cobb relaxed it somewhat, but soon thereafter, with his own tacit consent, it has been suggested, the House overruled him.[2]

Speaker Reed, in the Fifty-first Congress, in a very elaborate discussion of it, said:

"It is very desirable that this rule should be preserved in its entirety, and whatever might be the wish of the Chair on this question now before him for decision, he must decide with reference to all like matters and with reference to the general preservation of good order in the business of the House of Representatives." [3]

And Mr. Carlisle, Chairman of the Committee of the Whole in the Forty-sixth Congress, and afterwards Speaker, said:

"After a bill has been reported to the House, no different subject can be introduced into it by amendment, whether as a substitute or otherwise. When, therefore, it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is merely that it (the proposed amendment) is a motion or proposition on a subject different from that under consider-

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] See footnote of section 5859 of this chapter.

[3] See section 5866 of this chapter.

ation. This is the test of admissibility prescribed by the express language of the rule, and if the Chair upon an examination of the bill under consideration and the proposed amendment shall be of the opinion that they do not relate to the same subject, he is bound to sustain the objection and exclude the amendment." [1]

Now, applying the test suggested by Speaker Carlisle, and, indeed, by the rule itself, the question is, Does this amendment contain a subject different from the subject-matter of the bill? The object of the bill as expressed in its title is, "To amend an act entitled 'An act temporarily to provide revenue for the Philippine Islands, and for other purposes,' approved March 8, 1902."

Nowhere in the bill is there reference to or any attempt to legislate upon anything except the tariff upon articles coming from the Philippine Islands into the United States or going from the United States into the Philippine Islands.

Now, this proposed amendment declares that "it is the settled purpose of this Congress to fit the people of these islands for self-government at the earliest practicable moment."

That seems to the Chair to be a different proposition from the question of tariff upon articles coming from the Philippines.

The amendment further proposes, "when that result (their education) shall have been accomplished, to leave the government and control of said islands to the people thereof."

The people of the Philippines are at present governed, in part at least, by or subject to laws enacted by the Congress of the United States. There is nothing in the pending bill in any way touching the subject of their control, certainly not looking to any change therein. That seems to the Chair to be a different subject, introduced by the amendment. Then the amendment proceeds:

"To the end that they shall be recognized by the United States as a free and independent nation, as was done in the case of Cuba."

The pending bill deals with them entirely as belonging to the United States. The amendment, on the other hand, proposes to give them independence. It seems to the Chair to be as plain as plain can be that there are at least two subjects in the amendment which are entirely different from anything in the bill itself.

Now, the Chair will call attention to one or two rulings which seem in point. In the first session of the Fifty-seventh Congress there was before the House in Committee of the Whole House on the state of the Union a bill to provide for reciprocal trade relations with Cuba. An amendment was offered to form a new section, providing for extending to the people of Cuba, through their duly authorized Government, an invitation to apply for annexation of that island to the United States. Mr. Payne, of New York, made the point of order that it was not germane, and after argument it was sustained by so distinguished a parliamentarian as the gentleman from New York [Mr. Sherman]. That seems to be almost directly in point.[2]

In the second session of the Fifty-first Congress the House was considering a bill appropriating $50,000 out of any money in the Treasury for the relief of destitute persons in the island of Cuba. Mr. Bailey, of Texas, moved to recommit the bill, with instructions to amend thus:

"That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America shall maintain a strict neutrality between the contending powers, according to each all the rights of belligerents."

After argument Speaker Reed declared that amendment to be not germane,[3] and upon an appeal from his ruling it was sustained by the House by a vote of 114 to 83. That seems to the Chair to be directly in point.

In the succeeding year a bill was before the House making appropriations for the diplomatic and consular service, and Mr. Bailey again offered practically the same amendment, which the Speaker again ruled to be not germane.

There are two instances in which Speaker Reed ruled that an amendment according belligerent rights to the Cubans was not germane to other measures pending for their relief or in some way concerning them. Now, the only difference between that amendment which Speaker Reed ruled out and this proposed amendment to this bill is that this amendment proposes to go further and give them absolute

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[1] See section 5825 of this chapter.

[2] See section 5867 of this chapter.

[3] See section 5897 of this chapter.

independence. The Chair is clearly of opinion that the amendment is not germane, and therefore sustains the point of order.

Mr. McCall having appealed, the decision of the Chair was sustained, yeas 198, nays 123.

On the same day, and very soon thereafter, Mr. James L. Slayden, of Texas, proposed this amendment:

Nothing herein contained shall be held to mean that the United States intends to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to retain permanently said islands as an integral part of the United States; but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants thereof to prepare them for independence, and thereafter to collect on the products of the Philippine Islands the same customs dues collected on the products of other foreign countries when imported into the United States.

Mr. Sereno E. Payne, of New York, having made the point of order that the amendment was not germane, the Chairman held:

The gentleman from New York makes the point of order that the amendment offered by the gentleman from Texas is not germane. The pending bill relates entirely to the tariff upon articles coming from the Philippine Islands into the United States or going from the United States to the Philippine Islands, while the amendment relates to the permanent retention of those islands by the United States, and provides also for the establishment of a certain form of government on the islands, matters entirely different from those contained in the bill. The Chair thinks the amendment is not germane and sustains the point of order.

5861. To a bill for the regulation of corporations engaged in interstate commerce an amendment relating to tariff duties was held not to be germane.—On February 7, 1903,[1] the House in Committee of the Whole House on the state of the Union was considering the bill (H.R. 17) requiring all corporations engaged in interstate commerce to file returns with the Secretary of the Treasury disclosing their true financial condition and of their capital stock and imposing a tax upon such as have outstanding capital stock unpaid in whole or in part, when Mr. Robert L. Henry, of Texas, proposed the following amendment:

SEC. —. That hereafter the following articles may be imported into the United States free of all duty:

"1. Steel rails, structural steel, tin plate, iron pipe, and other metal tubular goods; wire nails, cut nails, horseshoe nails, barb wire, and all other wire; cotton ties; plows, and all other agricultural tools and implements.

"2. Borax, borate of lime, and boracic acid.

"3. Paris green.

"4. Paper and pulp for the manufacture of paper.

"5. Salt.

"6. Plate glass and window glass."

Mr. Charles E. Littlefield, of Maine, raised the point of order that the amendment was not germane.

The Chairman[2] after debate held:

The Chair will first rule upon the point of order raised by the gentleman from Maine to the new section offered by the gentleman from Texas [Mr. Henry]. The gentleman from Maine [Mr. Littlefield] makes the point of order that the section is not germane. The test which we must apply to determine

[1] Second session Fifty-seventh Congress, Record, pp. 1905–1910.

[2] Henry S. Boutell, of Illinois, Chairman.

whether this section is or is not germane is to be found in the second paragraph of section 7 of Rule XVI of the House:

"And no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

Now, as the time is short, the Chair will endeavor to give the reasons for his ruling very briefly.

The Chair understands that the two principal reasons for this rule are, first, to secure an orderly, logical, and serious consideration of measures pending before the committee. Second—and of still greater importance is this reason-the mover or author of the bill is entitled to have the subject presented in his bill considered in its logical entirety. Without this rule, wholly irrelevant matter could be added to a bill by way of amendment, for it would oftentimes happen that an irrelevant amendment would be considered by members of the committee as of even greater importance than the subject matter of the bill itself. This rule, as the Chair understands it, was adopted originally by parliamentary bodies especially to secure to the author or mover of a bill the logical consideration of the one subject, and the one subject alone, which he presents.

Now, the scope of the bill before the House is very plain and is set forth in the title to the original bill, which is as follows:

"Requiring all corporations engaged in interstate commerce to file returns with the Secretary of the Treasury, disclosing their true financial condition, and of their capital stock, and imposing a tax upon such as have outstanding capital stock unpaid in whole or in part."

A simple reading of the original bill and the substitute discloses that the bill and the substitute alike deal exclusively with the regulation of corporations engaged in interstate commerce. The amendment offered by the gentleman from Texas is a plain, clear amendment of our revenue laws, having for its object the removal of the present duties on imports.

Now, it is not for the Chair to consider reasons which are solely argumentative in coming to a conclusion upon a question of this kind. It is not for the Chair to determine what would or what would not be the ultimate effect of this measure or of an amendment proposed to this measure. It is for the Chair simply to determine whether this amendment, repealing a portion of our revenue laws, is, under the language of the rule, a subject differing from that under consideration. Let us consider for a moment what would be the effect of holding in principle that this amendment is germane. If this amendment were germane, then any amendment adding to the import duty on any article would be germane. An amendment placing a tax on an article now on the free list would be germane; and in the same way the repeal of any portion of the internal-revenue taxes would be germane. The inclusion of other articles in the internal-revenue tax would be germane. So if we should open up this measure, which is a measure to regulate corporations engaged in interstate commerce, to an amendment of this nature, there would be no end to the variety of subjects which could be included in this bill.

The Chair is therefore of the opinion, from the general principles applicable to the question, that this amendment is not germane. If the Chair, however, had any doubt upon the subject, which it has not, that doubt would be removed by a decision upon a similar question,[1] decided in the Fifty-first Congress by the late Speaker Reed. On May 1, 1890, Mr. David B. Culberson, of Texas, from the Committee on the Judiciary, called up and the House proceeded to the consideration of the Senate bill (S. 1) to protect trade and commerce against unlawful restraints and monopolies. The House having proceeded to its consideration, Mr. Joseph D. Sayers, of Texas, moved to amend the bill by adding as section 9 the following, which the Clerk will read.

The Clerk read as follows:

"SEC. 9. That whenever the President of the United States shall be advised that a trust has been or is about to be organized for either of the purposes named in the first section of this act, and that a like product or commodity covered or proposed to be covered or handled by such trust, when produced out of the United States, is liable to an import duty when imported into the United States, he shall be, and is hereby, authorized and directed to suspend the operation of so much of the laws as impose a duty upon such product, commodity, or merchandise for such time as he may deem proper."

It will be observed that this was an amendment giving to the President of the United States power to suspend the import duties on certain articles of merchandise. It will be further observed that this

[1] See section 5868 of this chapter.

was an amendment to the Sherman antitrust law, so called. Mr. Ezra B. Taylor, of Ohio, made the point of order that the amendment was not germane to the bill, relating, as it did, to the subject of revenue. Speaker Reed sustained the point of order, and the amendment was not received.

In accordance with these principles, which the Chair understands to be the fundamental principles underlying section 7 of Rule XVI, and in accordance with this decision of the late Speaker Reed, the Chair sustains the point of order.

5862. An amendment to repeal the duty on coal was held not to be germane to a proposition to pay for the investigation of a strike among coal miners.—On December 3, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 15372) to provide for the payment of the expenses and compensation of the Anthracite Coal Strike Commission, appointed by the President of the United States at the request of certain coal operators and miners, when Mr. John W. Gaines, of Tennessee, offered the following amendment:

Be it further resolved, That all import duties on anthracite coal containing less than 90 per cent of fixed carbon be, and the same are hereby, abolished, and on and after the passage of this resolution all such anthracite coal imported into the United States shall be admitted free of all duty or tax.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment was not germane.

After debate the Chairman[2] ruled:

The bill under consideration provides a simple appropriation of $50,000 to pay, under the direction of the President, the expenses of a certain commission heretofore appointed by him to "inquire into, consider, and pass upon the questions in controversy in connection with the strike in the anthracite coal region, and the causes out of which the controversy arose."

The gentleman from Tennessee [Mr. Gaines] moves to amend the bill by adding a clause repealing the duty upon anthracite coal. The Chair takes it for granted that if there were here a proposition to investigate, through the Medical Department of the Army, the cause of a contagious disease it would hardly be claimed to be germane to appropriate, in connection with that provision, money to build ships and quarantine stations and light-houses and to regulate and control the coming into the country of persons afflicted with contagious diseases.

One is a question of inquiry as to the cause of a difficulty; the other is the matter of providing a remedy for a trouble which is understood to exist, and upon which it is expected that this commission will at some time report. The House is asked to assume that the commission will report that the tax on anthracite coal is one of the causes of the strike.

In the opinion of the Chair, it would be quite as germane to provide a great many other remedies for the causes that may be reported to exist as for the House to assume what the report of that commission will be, and thereupon to proceed by appropriation of money, or by repeal of some existing statutes, or by the enacting of some other statute to provide against the contingencies that may be reported in that measure. The proposition is distinct in every particular from the bill here pending.

The Chair will cite to the House two decisions which have been made upon questions, in the opinion of the Chair, analogous in principle to that under consideration. The first will be found[3] by reference to page 1097 of the book on parliamentary procedure, by Mr. Hinds. The gentleman from Georgia [Mr. Lester], now a Member of this House, made the following ruling as Chairman of the Committee of the Whole:

"The paragraph to which this amendment is offered proposes to appropriate money for the building of a mint in the city of Philadelphia. The amendment deals with the general question of the coinage of money. It occurs to the Chair that the amendment is obnoxious to paragraph 7, Rule XVI, because it is not germane to the subject under consideration."

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[1] Second session Fifty-seventh Congress, Record, pp. 32–41.

[2] Charles H. Grosvenor, of Ohio, Chairman.

[3] See section 5884 of this chapter.

And the amendment was ruled out on a point of order.

There was a proposition to build a mint, and the amendment proposed was to supply some business for the mint after it should be erected. Later on Speaker Crisp, in the Fifty-second Congress, made the following rule:

"To a proposition for the coinage of the silver bullion in the Treasury an amendment providing, among other things, for the deposit of silver bullion in the Treasury in exchange for certificates was offered and held not to be germane." [1]

The policy has been under all circumstances to distinguish and keep separate the provisions of a bill which by no means depend upon each other or which relate to the same subject-matter. In this case the Chair is of opinion that the proposition to repeal a clause in the existing tariff law is wholly an independent question, a question that may arise with equal propriety upon any economic question which may be presented in the House and any question of national policy relating to taxation or anything else. But the policy of the House having been to separate and keep distinct the several matters of legislation, the Chair is compelled to sustain the point of order.

5863. To a bill granting land to a railroad, an amendment allowing the importation of railroad iron free of duty is not germane.—On March 9, 1852,[2] the House was considering the bill (H. R. 72) "granting to the State of Alabama the right of way and a donation of public lands for making a railroad," etc.

Mr. Thomas L. Clingman, of North Carolina, moved to amend the same by a provision that the iron for this and other railroads might be imported free of duty.

The Speaker [3] decided that this amendment was out of order, not being relevant. The bill proposed a grant of land for railroad purposes, and the amendment proposed to abolish the duty on iron for railroad purposes.

Mr. James L. Orr, of South Carolina, having appealed, the appeal was laid on the table.

5864. To a provision extending the customs and internal revenue laws of the United States over the Hawaiian Islands an amendment for effecting the extension of all the laws of the United States over those islands was offered and held not to be germane.—On December 16, 1898,[4] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 1119 1) to extend the laws relating to customs and internal revenue over the Hawaiian Islands. The first section of the bill having been read—

Be it enacted, etc., That the laws of the United States relating to customs and internal revenue, including those relating to the punishment of crimes in connection with the enforcement of said laws, are hereby extended to and over the island of Hawaii and all adjacent islands and waters of the islands,

Mr. Thomas C. McRae, of Arkansas, offered this amendment:

Strike out after the words "United States [4] the following: "Relating to customs and internal revenue."

Mr. Nelson Dingley, of Maine, made the point of order that the amendment was not germane.

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[1] See section 5886 of this chapter.

[2] First session Thirty-second Congress, Journal, pp. 450, 451; Globe, pp. 704, 705.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Third session Fifty-fifth Congress, Record, p. 267.

After debate the Chairman [1] held:

The Chair thinks that the point of order is well taken. This bill is to extend the laws relating to customs and internal revenue, and the amendment seeks to open up the question of land titles and other laws in the Territories, thus enlarging the scope and bringing in matters not germane to the bill.

5865. To a provision relating to the duties on certain articles used in the cotton industry an amendment providing for the free coinage of silver was held not to be germane.—On April 8, 1892 [2] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 6006) to admit free of duty bagging for cotton, machinery for manufacturing bagging, cotton ties, and cotton gins.

To this bill, as an amendment, Mr. Benjamin H. Clover, of Kansas, offered a section providing for the free coinage of silver, repealing provisions of the act of July 14, 1890, relating to the purchase of bullion, and the issue of Treasury notes thereon, providing for a change of the ratio between gold and silver coin under certain contingencies, etc.

Mr. Henry G. Turner, of Georgia, made the point of order that the amendment was not germane to the bill.

The Chairman [3] sustained the point of order.

Mr. Clover having appealed, the Committee sustained the ruling, 87 ayes to 2 noes.

5866. To a revenue bill with incidental purposes to prevent adulteration of a certain food product, an amendment relating to interstate commerce in adulterated food products and drugs generally was decided not to be germane.

Reason for the rule requiring that amendments be germane.

On August 23, 1890,[4] the House was considering the bill of the House (H. R. 11568) defining "lard;" also imposing a tax upon and regulating the manufacture and sale, importation, and exportation of compound lard.

Mr. Walter I. Hayes, of Iowa, moved to amend the bill by striking out all after section 1 and inserting a series of sections providing for the organization of a food division in the Department of Agriculture for the purpose of protecting the commerce in food products and drugs between the several States and Territories and foreign countries, establishing a system of inspection, penalties, etc.

Mr. Marriott Brosius, of Pennsylvania, made the point of order that the amendment was not germane to the bill.

After debate the Speaker [5] ruled:

The Chair desires to call the attention of the House to the importance of the preservation of the rule which is expressed in the following language:

"And no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

Originally the very greatest latitude was allowed, so that objects the most diverse were suddenly thrust upon the assembly. It was in order to correct that that there was established under general

[1] John F. Lacey, of Iowa, Chairman.

[2] First session Fifty-second Congress, Record, p. 3116.

[3] James H. Blount, of Georgia, Chairman.

[4] First session Fifty-first Congress, Journal, pp. 980, 981; Record, pp. 9097–9101.

[5] Thomas B. Reed, of Maine, Speaker.

parliamentary law the doctrine that an amendment must be germane to the original or pending bill. The rules of the House of Representatives have embraced it in the form which the Chair has read. It is very desirable that this rule should be preserved in its entirety, and whatever might be the wish of the Chair on this question now before him for decision he must decide with reference to all like matters and with reference to the general preservation of good order in the business of the House of Representatives.

The fact that the bill which it is proposed to offer as an amendment has been pending under a point of order does not in any way alter the situation, because the decision must be governed by general principles or not be governed at all. It does not make any difference, either, whether these various bills were correctly or incorrectly referred. If a mistake was made at the time of reference, that can not in any way interfere with the right of a Member to make this point now. The Chair does not personally recollect the circumstances under which the original bill relating to this subject was referred to the committee, but it is his impression that it was done in open House upon indication by the Speaker, and that indication was given from a recollection of many votes on the part of Members in the preceding House, which, although not strictly governing the action of the Speaker of the present House, yet at that time might very probably have impressed him as being a decision on the question. Subsequent references naturally followed. The fact that both bills were referred to the same committee, gentlemen will see, does not touch upon the question as to whether they related to different subjects within the meaning of the rule.

An examination of the bills, it seems to the Chair, will show that the subjects of them are different. In the first place, one is a revenue bill in its form; as the gentleman from Mississippi has said, a bill of double aspect, perhaps, relating directly to revenue; incidentally to results which might follow. The other bill is one that in form and declaration relates to commerce between the States. There seems to be this palpable difference between the two bills as to the subject. The one bill relates to the sale of lard and of compound lard, the latter being in strictness an adulteration of the former, not an injurious one within the purview of the provisions of this bill, and providing for the manufacture and sale of both, The other relates to commerce between the States in regard to all manner of food, adulterated, salable, and not salable. It seems to the Chair, therefore, that these subjects are plainly different and separate from each other, and that the only resemblance between the two bills would be in the remote result which some Members may think would follow them. Upon this view of the question it seems clear to the Chair that the point of order is well taken.

Mr. William E. Mason, of Illinois, having appealed, the decision of the Chair was sustained.

5867. A proposition for the annexation of Cuba was held not to be germane to a bill providing for reciprocal trade relations with that country.— On April 18, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12765) "to provide for reciprocal trade relations with Cuba," when Mr. Francis G. Newlands, of Nevada, offered the following amendment:

Amend by adding a new section, as follows:

"SEC. 2. At the time of making the order reducing the duties on Cuban products as authorized by section 1, the President shall extend to the people of Cuba, through their duly organized government, an invitation to apply for the annexation of the island to the United States as a constitutional part thereof, the said island at first to have the status of an organized Territory, and thereafter full statehood at such time as shall seem proper to the Congress of the United States, and after such annexation is completed the imposition of duties upon the products of Cuba entering the United States and upon the products of the United States entering Cuba shall cease and determine."

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not germane.

[1] First session Fifty-seventh Congress, Record, p. 4417.

The Chairman[1] held:

The bill under consideration provides for reciprocal relations with Cuba. The amendment relates to the annexation of Cuba. The amendment is not in order, and the Chair sustains the point of order.

5868. To a bill to protect trade and commerce against trusts an amendment relating to duties on articles handled by trusts was held not to be germane.—On May 1, 1890,[2] Mr. David B. Culberson, of Texas, from the Committee on the Judiciary, called up and the House proceeded to the consideration of the bill of the Senate (S. 1) to protect trade and commerce against unlawful restraints and monopolies.

The House having proceeded to its consideration,

Mr. Joseph D. Sayers, of Texas, moved to amend the bill by adding as section 9 the following:

SEC. 9. That whenever the President of the United States shall be advised that a trust has been or is about to be organized for either of the purposes named in the first section of this act, and that a like product or commodity covered or proposed to be covered or handled by such trust, when produced out of the United States, is liable to an import duty when imported into the United States, he shall be, and is hereby, authorized and directed to suspend the operation of so much of the laws as impose a duty upon such product, commodity, or merchandise for such time as he may deem proper.

Mr. Ezra B. Taylor, of Ohio, made the point of order that the amendment was not germane to the bill, relating, as it did, to the subject of revenue.

The Speaker[3] sustained the point of order, and the amendment was not received.

5869. An amendment limiting immigration generally was held not to be germane to a proposition to prevent the immigration of Chinese.—On April 18, 1904,[4] the Committee of the Whole House on the state of the Union was considering a proposition to enact legislation to prevent the coming of Chinese persons to the United States.

To this Mr. Oscar W. Underwood, of Alabama, offered an amendment providing for limiting immigration generally.

Mr. Robert R. Hitt, of Illinois, made a point of order against the amendment.

The Chairman[5] held:

On page 325 of the Digest and Manual, the clause reads:

"An amendment prohibiting aliens from coming temporarily into the United States to work was held not to be germane to a bill to regulate the immigration of aliens."

And—

"A proposition to prohibit the employment of Chinese on American vessels was held not to be germane to a bill to prevent their coming into the United States."

The amendment proposed by the gentleman from Illinois [Mr. Hitt] relates solely to the exclusion of Chinese, and an amendment relating to the general policy of immigration is therefore not germane to that amendment and the Chair sustains the point of order.

5870. To a provision excluding immigrants unable to read and write and requiring a certificate with each immigrant admitted, an amendment to exclude all foreign-born laborers was held not to be germane.—On

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-first Congress, Journal, p. 556; Record, p. 4098.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-eighth Congress, Record, p. 5037.

[5] Edgar D. Crumpacker, of Indiana, Chairman.

May 19, 1896,[1] Mr. Richard Bartholdt, of Missouri, presented a bill (H. R. 7864) to amend the immigration laws of the United States by adding to the classes of aliens excluded from admission to the United States the following:

All male persons between 16 and 60 years of age who can not both read and write the English language or some other language.

To this Mr. John B. Corliss, of Michigan, offered an amendment excluding aliens living in another country and, while so living there, entering the United States to engage in labor within its borders.

To Mr. Corliss's amendment Mr. Rowland B. Mahany, of New York, offered as an amendment provisions for a general contract-labor law.

Mr. Bartholdt having reserved a point of order against this amendment, the Speaker[2] sustained the point of order.

Mr. William A. Stone, of Pennsylvania, offered as a substitute a bill providing for the reading and writing test, for consular certificates as to the immigrant's fitness, and for exclusion of residents of other countries who might seek to enter to engage in employment while maintaining their residence without the United States.

Mr. Grove L. Johnson, of California, offered an amendment providing that it should be unlawful for any foreign-born laborer to enter the United States.

Mr. Bartholdt made the point of order that this amendment was not germane either to the original bill or the substitute.

The Speaker said:

The Chair thinks that an amendment providing that nobody shall come into the United State can hardly be germane as an addition to a bill which provides that only those who can read and write shall come in, and provides for consular certificates as to those who may come in.

5871. An amendment prohibiting aliens from coming temporarily into the United States to work was held not to be germane to a bill to regulate the immigration of aliens.—On May 22, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration of aliens into the United States, when Mr. John B. Corliss, of Michigan, offered as an amendment a proposition to prohibit male aliens from being employed on the public works of the United States or from coming regularly into the United States for engaging in any trade or manual labor, returning from time to time to a foreign country.

Mr. William B. Shattuc made a point of order against the amendment.

After debate the Chairman[4] said:

The Chair will first dispose of the point of order made upon these two amendments. The bill before the House is a bill regulating the immigration of aliens into the United States. The scope of the measure is exceedingly broad, and any amendment relating directly to the general scope and intent of the bill would be germane.

These amendments bring in an entirely new subject not alluded to in the bill, but relating to contract labor and contract-labor laws. If the Chair did not feel convinced in his own mind on this point of order, he would feel inclined to follow the decision made by Mr. Speaker Reed in the Fifty-

[1] First session Fifty-fourth Congress, Record, pp. 5417, 5421.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-seventh Congress, Record, pp. 5834, 5835.

[4] Henry S. Boutell, of Illinois, Chairman.

fourth Congress, which the gentleman from Michigan [Mr. Corliss] will undoubtedly recall.[1] On an immigration bill similar to the pending bill amendments similar to the pending amendments were offered, and points of order were made against them. The points of order were sustained by Mr. Reed on the ground that the amendments relating to contract labor were not germane to an immigration bill. In view of the precedent established by Mr. Speaker Reed, and in accordance with what seems to the Chair to be correct parliamentary practice, the point of order is sustained on the ground that the amendments are not germane to the subject-matter of the bill.

5872. On May 27, 1902,[2] the Committee of the Whole House on the state of the Union was continuing the consideration of the bill (H. R. 12199) to regulate the immigration of aliens into the United States, when Mr. De Alva S. Alexander, of New York, offered the following amendment:

Amend by adding as new sections, to be known as sections 30 and 31:

"SEC. 30. That it shall hereafter be unlawful for any male alien who has not in good faith made his declaration before the proper court of his intention to become a citizen of the United States to be employed on any public works of the United States, or to come regularly or habitually into the United States by land or water for the purpose of engaging in any mechanical trade or manual labor, for wages or salary, returning from time to time to a foreign country.

"SEC. 31. That it shall be unlawful for any person, partnership, company, or corporation knowingly to employ any alien coming into the United States in violation of the next preceding section of this act: *Provided,* That the provisions of this act shall not apply to the employment of sailors, deck hands, or other employees of vessels, or railroad train hands, such as conductors, engineers, brakemen, firemen, or baggagemen, whose duties require them to pass over the frontier to reach the termini of their runs, or to boatmen or guides on the lakes and rivers on the northern border of the United States."

Mr. W. B. Shattuc, of Ohio, made the point of order that the amendment was not germane.

After debate the Chairman[3] held:

The amendment of the gentleman from New York, with a slight variation which does not change the effect of the amendment, is the same as the amendment offered by the gentleman from Michigan [Mr. Corliss] last week, and to which the point of order was sustained. The same question was raised in the Fifty-fourth Congress by a similar amendment to an immigration bill; and, as the Chair stated in passing upon it last week, Mr. Speaker Reed sustained the point of order on the ground, among other things, that the amendment related to contract labor, on a subject not included within the general scope of an immigration bill. One of the tests of the germaneness of an amendment would be whether if introduced originally it would go to the committee having in charge the bill before the House. Now, it seems to the Chair that the provisions contained in the amendment offered by the gentleman from New York, if submitted as an original amendment, would, under our rules, go to the Committee on Labor. * * * As the Chair stated, this is the same amendment that the Chair ruled upon last week, and although the word "contract" does not appear, the reading of the amendment discloses this fact, referring to those who come regularly and habitually into the United States by land or water for the purpose of engaging in any mechanical trade or manual labor, the amendment is one which relates to the occupation or the employment of the immigrant after his arrival. So that under the circumstances, and the Chair having ruled upon it last week, the point of order will be sustained.

5873. An amendment providing for an educational test for immigrants was held to be germane to a bill to regulate the immigration of aliens into the United States.—On May 22, 1902,[4] the Committee of the Whole House on the state of the Union was considering- the bill (H. R. 12199) to regulate

[1] See section 5870 of this chapter.

[2] First session Fifty-seventh Congress, Record, p. 6005.

[3] Henry S. Boutell, of Illinois, Chairman.

[4] First session Fifty-seventh Congress, Record, p. 5822.

the immigration of aliens into the United States, when Mr. Oscar W. Underwood, of Alabama, proposed an amendment providing an educational qualification, there being no such qualification in the bill.

Mr. William B. Shattuc, of Ohio, made the point of order that the amendment was not germane.

After debate the Chairman [1] said:

The Chair would point out in passing on this question that an examination of this bill shows that it is a general immigration measure, the title being "to regulate the immigration of aliens into the United States." Section 35 repeals all other laws inconsistent with this law. Any amendment to this bill, in the opinion of the Chair, which is clearly and distinctly connected logically with the general scope and intent of the bill would be germane.

Section 2 provides restrictions upon which aliens shall enter this country; it limits the number of aliens by classes who may enter this country. This amendment provides for a new section, adds a new restriction, an additional restriction, to the class of persons who may enter under our immigration laws.

It is not the province of the Chair to pass on the merits or demerits of any amendment, or its wisdom or justice. It appears to the Chair that this amendment is clearly, distinctly, and logically connected with the general scope of a bill regulating the immigration of aliens into the United States, and under these circumstances the Chair feels constrained to overrule the point of order and hold that the amendment is germane to the bill.

5874. A proposition to prohibit the employment of Chinese on American vessels was held not to be germane to a bill to prevent their coming into the United States.—On April 7, 1902,[2] the Committee of the Whole House on the state of the Union, was considering the bill (H. R. 1303) to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

During consideration of the bill for amendments Mr. Champ Clark, of Missouri, offered an amendment prohibiting the employment of any Chinese person not entitled to admission to the United States on any vessel holding an American register.

Mr. James B. Perkins, of New York, raised the question of order that the amendment was not germane.

After debate the Chairman [3] held:

The Chair is ready to rule with considerable hesitation upon this question. There is no question as to the rule which governs the point now raised by the gentleman from New York. The statement of Rule XVI is in these words:

"No motion or proposition on a subject different from that under consideration shall be admitted under cover of an amendment."

However simple the rule may be, its application to the varying states of fact which are brought before this body is not easy, because it is not always easy to decide what is the subject under consideration. In this case it is by the title of the-bill said to be a proposition "to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under their jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

The title of the bill is unimportant, except so for as it correctly describes the bill itself. The Chair has examined this bill with a good deal of care, and has caused it to be examined by another

[1] Henry S. Boutell, of Illinois, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 3801–3803.

[3] William H. Moody, of Massachusetts, Chairman.

person with a good deal of care. In point of fact, there is no provision in the bill except a provision looking to the exclusion of Chinese from our territory. There is no provision regulating the employment of Chinese within our territory, as the gentleman from Pennsylvania [Mr. Grow] has just now so forcibly pointed out. Whatever the motive may be behind the bill, whatever the reason for its enactment may be, the actual subject under consideration is the exclusion of Chinese from American territory.

It is said that the deck of an American ship is American territory. So it is, while that ship is upon the high seas. When it is in the port of a foreign country it is not American territory unless the ship be a public ship of war. Such, if the Chair understands correctly, is the rule of international law.

But the amendment offered by the gentleman from Missouri is not to prohibit Chinese from coming upon the ships sailing under the American flag, but is to prohibit their employment under the American flag, a subject entirely different from that under consideration by the Committee. Could it be in order, for instance, upon an immigration bill excluding certain classes of people from coming to these shores, to provide that our ambassadors abroad should not employ persons of that same descript1on? It would hardly be contended that that would be in order.

The attention of the Chair has been called to a ruling made by Mr. Speaker Reed[1] on the 19th of May, 1896, where a bill to amend the immigration laws of the United States was before the House, and it was proposed by that bill to exclude all male persons between 16 and 60 years of age "who can not both read and write the English language or some other language." Mr. Corliss, of Michigan, offered an amendment excluding aliens living in another country and while so living there entering into the United States to engage in labor within its borders—what the Chair remembers the gentleman from Michigan termed "birds of passage."

A point of order was made against the amendment, and Mr. Speaker Reed sustained the point of order upon the ground that the amendment was not germane, although both the bill and the amendment had in view the protection of American labor. The Chair will say that if this amendment had proposed to prohibit the presence as employees of Chinese persons upon American ships touching American ports, where there would be an opportunity for escape from the ship from time to time, the Chair would have ruled that to be germane to the general purpose of the bill, which is to prohibit the entering of Chinese persons into American territory; but for the reasons that were so well stated by the gentleman from Pennsylvania [Mr. Grow], that this bill is not engaged in the regulating of the employment of labor, but in excluding persons of Chinese blood and descent from our territories, the Chair sustains the point of order.

Thereupon Mr. Julius Kahn, of California, offered the amendment modified to read as follows:

And it shall be unlawful for any vessel holding an American register on a voyage terminating at an American port to have or to employ, etc.

Mr. Perkins having raised a question of order, the Chairman said:

As the Chair has stated, this bill is to prohibit the entrance of Chinese laborers into the United States. Seamen are laborers within the distinctions made in this bill, and the amendment now before the Committee proposes to prohibit the coming of such laborers into an American port. It is based upon the theory that great safeguards are needed to carry out the purpose of the law. The bill is full of provisions which are intended to guard against evasions of the law. For instance, upon page 10 of the bill it is provided that even the Chinese who are entitled under this bill to enter our ports can only come in at certain named ports of entry. In other words, the regulation of American ships or foreign ships bearing Chinese to our shores is prescribed by this bill. The Chair thinks, therefore, that, with the modifications which have been made in the amendment, it is clearly in order and overrules the point of order. The question is upon agreeing to the amendment,

5875. To a resolution requesting information as to the amount of money in the Treasury of the United States an amendment calling for information as to the number of distilleries in the United States was

[1] See section 5870 of this chapter.

held not to be germane.—On February 27, 1884,[1] Mr. William R. Morrison, of Illinois, from the Committee on Ways and Means, reported a resolution requesting the Secretary of the Treasury to inform the House how much money was now in the Treasury of the United States, under what provisions of law it was retained, and how much, in view of current receipts, etc., could be applied to the liquidation of the public debt without embarrassing the Department.

Mr. John D. White, of Kentucky, moved to amend the same by adding a request for information as to the number of distilleries in the United States, the number of gallons produced from fruit, etc., and other facts relating to distilled spirits.

Mr. William S. Holman, of Indiana, made the point of order that the amendment was not germane, and the Speaker[2] sustained it.

5876. An amendment in the nature of a substitute providing simply for the establishment of land offices was held not to be germane to a bill providing for the organization of a Territorial government.—On May 10, 1860,[3] pending consideration of the bill (H. R. 707) to provide a temporary government for the Territory of Idaho, Mr. Eli Thayer, of Massachusetts, proposed an amendment in the nature of a substitute for the bill.

Mr. Galusha A. Grow, of Pennsylvania, made the point of order that, inasmuch as the bill provided for the organization of a Territorial government and the amendment simply provided for the establishment of land offices, the amendment was not in order.

The Speaker[4] sustained the point of order.

In the discussion the precedent of the preceding Congress, when the homestead bill was offered as a substitute for the bill relating to redemption of the public lands, was cited.

Mr. Thayer having appealed, the appeal was laid on the table, yeas 84, nays 77.

5877. To a bill relating to the sale of the public lands an amendment proposing to give them to settlers was held not to be germane.—On January 20, 1859,[5] the House was considering the bill (H. R. 807) to amend the acts granting rights of preemption to settlers on the public lands of the United States, when Mr. Francis P. Blair, jr., of Missouri, proposed to submit an amendment in the nature of a substitute for the said bill, the general object of said amendment being "to donate a homestead of one hundred and sixty acres of public land, upon condition of occupancy and cultivation, to every citizen of the United States who is the head of a family."

Mr. Williamson R. W. Cobb, of Alabama, made the point of order that the amendment, not being germane to the bill, was out of order.

The Speaker[6] said:

The title of the bill reported from the Committee on the Public Lands describes its character; it is a bill to amend the acts granting rights of preemption to settlers on the public lands of the United States.

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[1] First session Forty-eighth Congress, Journal, p. 683.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Thirty-sixth Congress, Journal, pp. 817, 818; Globe, pp. 2047, 2048.

[4] William Pennington, of New Jersey, Speaker.

[5] Second session Thirty-fifth Congress, Journal, p. 223; Globe, p. 492.

[6] James L. Orr, of South Carolina, Speaker.

The amendment of the gentleman from Missouri is the homestead bill, and proposes to give every man who is the head of a family a quarter section of land. The Chair does not perceive the slightest similarity between the regular sale of the public lands and the giving them away as a gratuity. The policy is a very different one where the sale is regulated by law from that where the lands are given away. It would be as competent for the gentleman to amend the original bill reported from the Committee on the Public Lands by proposing to give all the public lands for school purposes in the several States, or to make any other like disposition of them which the fancy or caprice of any Member may dictate. It is on that ground that the Chair rules the amendment out of order.

5878. To a bill relating to the sale of the public lands an amendment limiting alien ownership of land other than the public lands was held not to be germane.—On June 26, 1888,[1] the House was considering a bill relating to the disposal of the public lands of the United States, when Mr. William C. Oates, of Alabama, proposed this amendment:

That no alien or person who is not a citizen of the United States shall, after the approval of this act, acquire title to or own a greater interest than a leasehold for five years in any lands anywhere within the United States of America and their jurisdiction; and deeds or other conveyances of land acquired after the approval of this act by any alien or unnaturalized foreigner, or by any company, firm, or corporation composed of such, shall be void: *Provided,* That foreign governments and their representatives may acquire and own lands or lots sufficient in quantity for ministerial and legation purposes, to be approved by the Secretary of State: *Provided further,* That any alien may for valuable consideration take hold, and assign, foreclose and sell under any mortgage or deed of trust any land within the United States and their jurisdiction.

Mr. William S. Holman, of Indiana, made the point of order that the amendment was not germane to the bill.

The Speaker pro tempore[2] held:

The Chair thinks that the amendment of the gentleman from Alabama, in so far as it seeks to control the future disposition of lands not now the property of the Government, and not the subject of legislation in this bill, is not germane. To that extent, therefore, the Chair sustains the point of order. The gentleman from Alabama having, in framing his amendment, gone beyond the public lands, the Chair is compelled to hold that the amendment is not in order. It would be competent, in the opinion of the Chair, to adopt a proviso of the kind suggested, applicable only to the public lands and their disposition; but waiving altogether the question of the power of Congress—a matter with which the Chair would have nothing to do—the Chair thinks it is not germane in a bill of this kind, dealing only with the public domain, to attempt to incorporate any provision not bearing distinctly upon the public lands and their disposition.

5879. To a bill to enlarge the size of homesteads in a certain State, an amendment changing the commutation law as to homesteads generally, was offered and held not to be germane.—On February 28, 1905,[3] the House was considering the bill (H. R. 18464) to amend the homestead laws as to certain unappropriated and unreserved lands in South Dakota, when Mr. Oscar W. Underwood, of Alabama, offered an-amendment repealing Section 2301 of the Revised Statutes, which authorizes the commutation of homesteads on the public lands generally.

Mr. Eben W. Martin, of South Dakota, made the point of order that the amendment was not germane.

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[1] First session Fiftieth Congress, Record, pp. 5600, 5604; Journal, p. 2222.

[2] Benton McMillin, of Tennessee, Speaker pro tempore.

[3] Third session Fifty-eighth Congress, Record, pp. 3683, 3684.

The Speaker[1] held, after debate:

The Chair finds on examination that this bill affects lands in the State of South Dakota. The Chair also finds upon examination that as to those lands in South Dakota it repeals the commutation homestead clause. The amendment which the gentleman from Alabama offers applies to all the public lands in the United States subject to homestead entry. * * * But this bill affects land alone in the State of South Dakota. The gentleman's amendment would affect land everywhere outside of the State of South Dakota.

Even without any precedents the Chair would be clear that the amendment would not be germane upon this bill. The Chair, however, has a precedent in principle:

"In a provision extending the customs and internal-revenue clause of the United States over the Hawaiian Islands, an amendment for effecting the extension of all the laws of the United States over those islands was offered and held not to be germane."[2]

It is perfectly clear, in the opinion of the Chair, that under the rules the amendment is subject to the point of order.

5880. To a bill transferring the care of forest reserves to the Department of Agriculture, an amendment modifying the civil service rules as to officials in those reserves was held not germane.—On December 12, 1904,[3] the House was considering this bill:

A bill (H. R. 8460) providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture.

Be it enacted, etc., That the Secretary of the Department of Agriculture shall, from and after the passage of this act, supervise the execution of all laws and regulations affecting public lands heretofore or hereafter reserved under the provisions of section 24 of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

To this bill Mr. Eben W. Martin, of South Dakota, proposed to add this as an amendment:

Provided, however, That forest superintendents, supervisors, and rangers shall be selected, when practical, from qualified citizens of the State or Territory in which said reserves, respectively, are situated.

Mr. Sereno E. Payne, of New York, made the point of order that the amendment was not germane.

The Speaker[1] held:

The bill provides for the transfer of the forest reserves from the Department of the Interior to the Department of Agriculture. The amendment seeks to deal with the civil service of the Government, amendatory of existing law touching the civil service. It seems to the Chair that it is not germane, and therefore the Chair sustains the point of order.

5881. The distribution of seed grain to a class of destitute farmers was held not to be germane to the regular Congressional seed distribution for the improvement of agriculture.—On February 25, 1891,[4] the House was in Committee of the Whole House on the state of the Union considering the agcultural appropriation bill, and the paragraph appropriating for the annual

[1] Joseph G. Cannon, of Illinois, Speaker.

[2] See section 5864 of this chapter.

[3] Third session Fifty-eighth Congress, Record, p. 167.

[4] Second session Fifty-first Congress, Record, p. 3268.

distribution of seeds, trees, shrubs, vines, etc., among the constituents of Members of Congress had been reached.

Mr. Edward P. Allen, of Michigan, offered an amendment providing for the distribution of seed grain to such farmers in the States of North Dakota, South Dakota, and Nebraska, and the Territory of Oklahoma as had had their crops destroyed by the elements in the year 1890, and who should be found to be too impoverished and destitute to supply themselves with seed grain for use in the year 1891.

Mr. Judson C. Clements, of Georgia, made a point of order against the paragraph.

The Chairman [1] sustained the point of order.

5882. To a proposition relating to the terms of service of Representatives and Senators, an amendment proposing election of Senators by the people was held not to be germane.—On January 10, 1893,[2] the House proceeded to the consideration of the joint resolution (H. J. Res. 98) proposing amendments to the Constitution substituting the 31st day of December for the 4th day of March as the commencement and termination of the official terms of Members of the House of Representatives and of United States Senators, and providing that Congress shall hold its annual meeting on the second Monday in January and substituting the 30th of April for the 4th of March as the date for the commencement and limitation of the terms of President and Vice-President.

After debate, Mr. William S. Holman, of Indiana, submitted this amendment:

> That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; and each Senator shall have one vote.

Mr. Nelson Dingley, Jr., of Maine, made the point of order that the amendment proposed by Mr. Holman was not germane to the pending joint resolution.

The Speaker [3] sustained the point or order.

5883. To a bill providing for an issue of Treasury notes, an amendment providing for the redemption of such notes by suspending the distribution of the proceeds of public land sales was held not to be germane.— On January 10, 1842, [4] the House was considering in Committee of the Whole House on the state of the Union a bill authorizing the issue of Treasury notes.

To this bill Mr. John B. Weller, of Ohio, offered an amendment in the form of a new section, to provide that so much of the act of September 4, 1841, as provided for the distribution of the proceeds of the public lands among the States and Territories be suspended, and that the said fund should be applied to the payment of the outstanding Treasury notes, as well as those authorized to be issued under this act.

Mr. Millard Fillmore, of New York, made the point of order that the proposed amendment was not relevant to the subject-matter of the bill.

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[1] Nelson Dingley, jr., of Maine, Chairman.

[2] Second session Fifty-second Congress, Journal, p. 39; Record, pp. 483, 497, 498.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Twenty-seventh Congress, Globe, p. 112.

The Chairman[1] said:

The amendment proposed is objected to as not in order, and the fiftieth rule of the House is relied upon to sustain the objection. That rule prescribes that "no motion, or proposition, on a, subject different from that under consideration shall be admitted under color of amendment." The question, therefore, of order in this case resolves itself into one of fact. Is the amendment now proposed "on a subject different from that under consideration?" If it is, then it is clear that the amendment is not in order. The subject under consideration is a bill for the issue of Treasury notes. The amendment, whilst it may be regarded as a proposition to set apart the proceeds of the sales of the public lands as a fund either to supersede, to some extent, the issue of Treasury notes, or for the redemption of such as may be issued, and to that extent unquestionably of a kindred character to the bill under consideration, still the fact can not but strike every gentleman that the amendment aims at the repeal of an existing law, and the mere statement of the proposition can not fail to inspire us all with the wide difference between a bill to issue Treasury notes and a bill to repeal the distribution act. It may be admitted that either proposition would attain the same end—that of furnishing supplies for the use of the Government-still the Chair, regarding the repeal of the law referred to in the amendment as wholly different from the bill under consideration, inclines to the opinion that the amendment is not in order.

Mr. John McKeon, of New York, having appealed, the decision of the Chair was sustained by the committee, yeas 92, nays 79.

5884. To a provision for the erection of a building for a mint, an amendment to change the coinage laws was held not to be germane.—On May 11, 1892,[2] the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill. The Clerk having read the section of the bill providing for the purchase of a site and the commencement of the building of an addition to the mint at Philadelphia, Mr. Richard P. Bland, of Missouri, offered the following amendment:

Provided, That all silver bullion now in the Treasury the property of the Government, or hereafter purchased by or becoming the property of the Government, shall be immediately coined into standard silver dollars, and the seigniorage or gain arising therefrom covered into the Treasury and paid out to meet the appropriations herein provided for.

Mr. Charles Tracey, of New York, made a point of order against this amendment.

The Chairman[3] ruled:

The paragraph to which this amendment is offered proposes to appropriate money for the building of a mint in the city of Philadelphia. The amendment deals with the general question of the coinage of money. It occurs to the Chair that the amendment is obnoxious to paragraph 7, Rule XVI,[4] because it is not germane to the subject under consideration.[5]

The Chair further held the amendment out of order under section 2, Rule XXI, as proposing a change of existing law.

5885. To a bill regulating the sale and speculation in certain farm products, an amendment providing for the free coinage of silver at a fixed ratio was held not to be germane.

Under the rule for the previous question only one motion to recommit is in order.

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[1] George W. Hopkins, of Virginia, Chairman.

[2] First session Fifty-second Congress, Record, pp. 4174, 4181.

[3] Rufus E. Lester, of Georgia, Chairman.

[4] See section 5767 of this volume.

[5] Similar amendments to a bill relating to the national banks were held not to be germane. (First session Forty-seventh Congress, Journal, pp. 1284–1293.)

On June 22, 1894,[1] the House had ordered to be engrossed and read a third time the bill (H. R. 7007) regulating the sale of certain agricultural products, defining options, etc., and the question recurred on its passage.

Mr. Charles S. Hartman, of Montana, moved to recommit the bill to the Committee on Agriculture with instruction to report the same to the House with an amendment providing for the free coinage of gold and silver at a ratio of 16 to 1.

Mr. Charles Tracey, of New York, made the point that the amendment proposed in the motion was not in order.

The Speaker pro tempore[2] sustained the point of order.

Mr. Charles J. Boatner, of Louisiana, moved that the bill be recommitted to the Committee on Agriculture with instruction to report a similar bill limiting its provisions to transactions between citizens of different States.

Mr. William H. Hatch, of Missouri, made the point of order that the proposed instruction was not in order.

The Speaker pro tempore overruled the point of order.

On motion of Mr. Boatner, the previous question was ordered on agreeing to the motion to recommit. And being put, the motion to recommit was disagreed to.

Mr. Benjamin F. Funk, of Illinois, submitted a motion to recommit the bill with instruction to report the same, with an amendment adding sugar, refined and unrefined, to the articles enumerated therein.

The Speaker pro tempore[2] held that, in accordance with the usage of the House only one motion to recommit was in order after the previous question is ordered on the passage of a bill; and that one motion having been entertained and disposed of, the motion submitted by Mr. Funk was not in order.

5886. To a bill relating to the coinage of silver in the Treasury and its use in redemption of notes issued against it, amendments authorizing the issue of bonds and also authorizing the giving of notes for deposits of silver, were held not to be germane.—On March 1, 1894,[3] the House proceeded to the consideration of the bill (H. R. 4956) directing the coinage of the silver bullion in the Treasury, and for other purposes. This bill provided for the coinage of the seigniorage arising from the act of July 14, 1890, and the use of it for expenses of the Government through the medium of certificates issued against it; and also the bill provided for the coinage of the other silver purchased under the terms of the act of 1890, and its use in the redemption and cancellation of the Treasury notes which had been issued against it.

Mr. Martin N. Johnson, of North Dakota, offered this amendment to the bill:

> The Secretary of the Treasury shall afford to holders of standard silver dollars the same rights and facilities as to redemption and exchange as now accorded to the holders of silver dimes, quarter dollars, and half dollars.

Mr. Richard P. Bland, of Missouri, made the point of order that the amendment was not germane to the bill.

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[1] Second session Fifty-third Congress, Journal, p. 446; Record, p. 6739.

[2] Joseph W. Bailey, of Texas, Speaker pro tempore.

[3] Second session Fifty-third Congress, Journal, pp. 216, 217; Record, pp. 2511, 2513, 2514.

The Speaker[1] entertained the amendment.

Mr. Isidor Straus, of New York, submitted as an amendment to the amendment proposed by Mr. Johnson, of North Dakota, the following:

That the Secretary of the Treasury be, and he is hereby, authorized to issue from time to time coupon and registered bonds of the United States in denominations of $20 and multiples of that sum, payable in coin after five years from date, and bearing interest at a rate not exceeding 3 per cent per annum, payable quarterly in coin, and to sell and dispose of the same at not less than par in coin; and the proceeds of such bonds shall be paid into the Treasury and held and used for the purposes now authorized by law.

Mr. Bland made the point that the amendment submitted by Mr. Straus was not germane and not in order.

The Speaker sustained the point of order, and the amendment of Mr. Straus was not entertained.

Mr. Joseph G. Cannon, of Illinois, submitted as an amendment to the pending amendment proposed by Mr. Johnson, of North Dakota, several sections, of which the first was as follows:

That any owner of silver bullion may deposit the same at any coinage mint or at any assay office in the United States that the Secretary of the Treasury may designate, and receive therefor Treasury notes hereinafter provided for, equal at the date of deposit to the net value of such silver, at the market price, such price to be determined by the Secretary of the Treasury under rules and regulations prescribed, based upon the price current in the leading silver markets of the world.

Mr. Bland made the point of order that the amendment submitted by Mr. Cannon was not germane to the subject under consideration.

The Speaker sustained the point of order, saying:

The Chair is not familiar with, and has not been able to carefully consider, all of the provisions of this proposed amendment, but it is a well-established rule that if any part of an amendment is out of order, or is not germane, that fact taints the character of the whole; and the Chair thinks that in order to authorize an amendment to the pending proposition the gentleman must have his amendment in such shape that no part of it is out of order. It is clear to the Chair that the first proposition contained in this amendment is out of order and is not germane. Whereas the pending bill proposes to deal with the silver now in the Treasury, this is a proposition to permit all holders of silver to take it to the Treasury and have it coined under a free-coinage proposition—a proposition dealing with silver which his outside of the Treasury—and therefore the Chair does not think it is in order, and so holds.

5887. To a bill granting a right of way to a railroad, an amendment providing for the purchase of the railroad by the Government was held not to be germane.—On February 28, 1898,[2] Mr. Richard Bartholdt, of Missouri, by unanimous consent, presented the bill (H. R. 6358) authorizing the Nebraska, Kansas and Gulf Railway Company to construct and operate a railway through the Indian Territory, and for other purposes.

To this Mr. Adbert M. Todd, of Michigan, proposed as an amendment a provision, as follows:

That the United States of America shall have the right to purchase the franchise rights and other property herein granted, with the roadbed, bridges, telegraph lines, and tracks, together with such other property and rights as the Government may deem necessary for the proper operation of the road.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-fifth Congress, Record, pp. 2301, 2302.

at any time after ten years from this date, whenever the Government shall elect to exercise such right, by giving the railroad company or its assigns two years' notice of such intention to purchase, etc.

Mr. Bartholdt made the point of order that the amendment was not germane.

The Speaker, said:

The Chair understands that the Government does not grant a franchise to the road, but simply gives it a right of way. It does not give a charter to the road. * * * The Chair will have to sustain the point of order.

5888. To a bill relating to the resignation and salary of a district judge, an amendment providing for the division of that judge's district into two districts was offered and held not to be germane.—On January 5, 1899,[2] the House was considering in Committee of the Whole House on the state of the Union the bill (S. 4786) providing for the resignation of Cassius G. Foster, United States district judge for the district of Kansas, and the continuation of his salary.

To this bill Mr. Jerry Simpson, of Kansas, offered as a substitute an amendment providing for the division of Kansas into two judicial districts, for the holding of district and circuit courts therein, and for the appointment of the additional judge required for the second district.

Mr. David B. Henderson, of Iowa, made the point of order that the amendment was not germane.

The Chairman[3] sustained the point of order.

5889. To a bill providing for the holding of courts in certain existing judicial districts, an amendment providing for the creation of a new district was held not germane.

It is not in order to do indirectly, by a motion to commit with instructions, what may not be done directly by way of amendment.

On May 17, 1884,[4] the House having under consideration a bill relating to the judicial districts of the State of Texas, the bill was passed to be engrossed and read a third time under the operation of the previous question.

The question then being on the passage of the bill, Mr. Poindexter Dunn, of Arkansas, moved to recommit the bill to the Committee on the Judiciary, with instructions to report the same with an amendment in the nature of a substitute as submitted by him.

The Clerk having read a portion of the proposed amendment, Mr. Thomas M. Browne, of Indiana, made the point of order that the motion was not in order, for the reason that the proposed amendment was not germane to the pending bill.

The Speaker,[5] sustained the point of order, saying:

The Chair is inclined to think that the substitute embodied by the gentleman in his motion to recommit is not germane. The bill pending before the House is a bill to amend the act in relation to holding courts in certain judicial districts and to attach part of the Indian Territory to a judicial district now in existence-, whereas the bill which the gentleman from Arkansas has sent to the Clerk's desk creates an entirely new judicial district and provides for the appointment of an additional judge

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[1] Thomas B. Reed[7] of Maine, Speaker.

[2] Third session Fifty-fifth Congress, Record, p. 412.

[3] William P. Hepburn, of Iowa, Chairman.

[4] First session Forty-eighth Congress, Journal, p. 1247; Record, pp. 4256, 4257.

[5] John G. Carlisle, of Kentucky, Speaker.

and other necessary officers to hold courts in the Indian Territory. It relates alone to Indian Territory. * * * The question which the Chair is called upon to decide is whether the bill which the gentleman proposes to embody in his instructions is in fact germane to the subject to which the other bill relates. The Chair thinks it is not. There is Do doubt in the mind of the Chair that the bill now sent up would, under the rules of the House, have to receive its first consideration in the Committee of the Whole; whereas the other bill, as the Chair decided in view of former rulings, need not go to that committee, but might be considered at once in the House. The Chair thinks that these instructions are not in order, although a motion to commit simply would be in order. * * * It has been decided frequently that it is not competent for the House to accomplish indirectly, by reference to a committee with instructions, what could not be accomplished directly by offering an amendment on the floor—that is to say, if the bill which the proposed instructions direct the committee to report is not germane as an amendment, it can not be brought before the House on a motion to recommit.

5890. To a proposition to investigate the conduct of Members in relation to a Department of the Government, an amendment proposing an investigation of the Department itself was held not to be germane.

A privileged proposition may not be amended by adding thereto matter not privileged or germane to the original question.

On March 11, 1904,[1] the following resolution, involving a question of high privilege, was before the House.

Whereas Fourth Assistant Postmaster-General J. L. Bristow, in his report to the Postmaster-General, dated October 24, 1903, and which report has been transmitted to a committee of this House, has charged that "long-time leases for post-office premises were canceled and the rent increased upon the recommendation of influential Representatives;" and

Whereas it is charged in the same report that "if a Member of Congress requested an increase in the clerk hire allowed a postmaster, Beavers usually complied, regardless of the merits of the case;" and

Whereas certain cases of an aggravated character are cited on pages 133, 134, and 135 of said report to sustain the above charges; and

Whereas on page 145 of said report it is charged that Members of Congress have violated section 3739 of the Revised Statutes, and that "in the face of this statute Beavers has made contracts with Members of Congress for the rental of premises, either in their own names, the names of their agents, or some member of their families;" and

Whereas these charges and others contained in said report reflect upon the integrity of the membership of this House, and upon individual Members of this House whose names are not mentioned: Therefore be it

Resolved, That the Speaker of this House appoint a committee, consisting of five Members of this House, to investigate said charges; that said committee have power to send for persons and papers, to enforce the production of the same, to examine witnesses under oath, to have the assistance of a stenographer, and to have power to sit during the sessions of the House, and to exercise all functions necessary to a complete investigation of said charges, and to report the result of said investigation as soon as practicable.

To this Mr. John A. Moon, of Tennessee, proposed an amendment in the nature of a substitute, to strike out all after the word "resolved," and insert:

That the Speaker of the House appoint a committee, consisting of five Members of this House, to investigate the conduct and administration of the Post-Office Department; that said committee have power to send for persons and papers and enforce the production of the same, to examine witnesses under oath, to have the assistance of a stenographer and all necessary clerks, to have the power to sit during the sessions of the House and exercise all functions necessary to a complete investigation of all frauds and irregularities alleged to exist in the said Department, including alleged frauds, irregularities, illegalities, and improprieties by Members of Congress in connection with said Department, and to report the result of said investigation as soon as practicable.

[1] Second session Fifty-eighth Congress, Record, pp. 3146–3149; Journal, p. 418.

Mr. Jesse Overstreet, of Indiana, made the point of order that the proposed amendment was not germane and not privileged.

In the course of the debate on the question of order, Mr. David A. De Armond, of Missouri, said:

I rise for the purpose of making to the Chair a suggestion which I hope he may adopt; which if it seems to him proper to be adopted he will adopt, I think. It is that, instead of formally ruling upon this point of order, the Speaker do as very many of his predecessors did in the time past—submit the question to the House, to let it determine for itself.

At the conclusion of the debate the Speaker [1] ruled:

The gentleman from Tennessee offers the amendment which has been reported at the Clerk's desk. It provides for a general investigation of the conduct and administration of the Post-Office Department, and also coupled with it an investigation as to the action of Members of Congress touching matters referred to. To this amendment the gentleman from Indiana makes the point of order, first, that it is not germane; second, that it is not privileged, or, to put it in another way, that even if it were germane, he makes the point that it couples a nonprivileged matter with a privileged matter. The question before the House is a matter of such high privilege, touching the dignity of the House and the integrity of Members in their representative capacity, that it displaces all other business. The gentleman from Virginia this morning called for the regular order, although matters made privileged by the rules were ready for the consideration of the House, and that demand for the regular order postponed those privileged matters, because this is a question of the highest privilege. Otherwise it could not be here.

Some weeks ago the gentleman from Virginia rose in his place to a question of privilege. Gentlemen will recollect that he then had a nonprivileged matter coupled with his question of privilege, and the Chair, sustained by the House, held that the resolution first offered was subject to the point of order because, while part of it represented a question of privilege, a part of it did not, and the decisions that the Chair then referred to by Mr. Speaker Carlisle, by Mr. Speaker pro tempore Blackburn, of Kentucky, and others, are within the recollection of the House. [2] The Chair will refer to those briefly again. The gentleman offered the resolution embodied in the report, which I need not take the time of the House to again read, free from the nonprivileged matter, and the House sent that resolution to the Committee on Post-Offices and Post-Roads. That committee reports back, with the recommendation that that resolution (known as the Hay resolution) do lie upon the table. Pending the vote on laying that privileged resolution upon the table, by unanimous consent, the gentleman from Tennessee, under the special order, offers this amendment. First, is it germane? Clause 7, Rule XVI, is as follows:

"And no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

What is the question under consideration? A question of the highest privilege, touching the relations of the Members of this House to certain matters referred to in the report from the Post-Office Department. This amendment proposed to investigate the Post-Office Department generally, not only as to matters relating to Members of this House, but as to a wide variety of matters having no reference whatever to the Members of this House. A bare reading of the rule shows that the proposed amendment embodies a subject different from that under consideration. The Chair may insert, with the permission of the House—he will not take the time to read it—an extract from an opinion of Mr. Speaker Carlisle in construing the same rule, in which he gave the history of the rule and the practice of the House of Representatives heretofore. [3] It is an exceedingly clear opinion, like most of the opinions of Mr. Speaker Carlisle. The extract follows:

"The Congress of the Confederation, in 1781, adopted a rule in the following words:

"'No new motion or proposition shall be admitted under color of amendment as a substitute for a question or proposition under debate until it is postponed or disagreed to.'

"The House of Representatives of the First Congress, on the 4th of March, 1789, adopted the following rule upon this subject:

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] See sections 5809, 5810 of this chapter.

[3] See section 5825 of this chapter.

"'No new motion or proposition shall be admitted under color of amendment as a substitute for the motion or proposition under debate.'

"It will be observed that each of these rules admitted amendments introducing new motions or propositions if they were not offered as substitute for the motion or proposition under debate. But in March, 1822, the House changed the rule of 1789 so as to make it read as follows:

"'No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.'

"And in this form the rule has stood ever since, and now constitutes a part of the seventh clause of Rule XVI in the recent revision. The rule does not prohibit a committee reporting a bill from embracing in it as many different subjects as it may choose, but after the bill has been reported to the House no different subject can be introduced into it by amendment, whether as a substitute or otherwise.

"When, therefore, it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is simply that it (the proposed amendment) is a motion or proposition on a subject different from that under consideration. This is the test of admissibility prescribed by the express language of the rule."

Now, if it be germane and proper under the rules to couple a nonprivileged matter with a privileged matter, let us inquire a minute where it would lead the House. If this amendment to investigate the Post-Office Department is germane, an amendment to investigate the postal service is germane. If this is germane, an amendment to investigate the Interior Department or the Treasury Department would be germane. Any conceivable question connected with the Executive would be germane. If this be germane, whenever a Representative in a House of almost 400 Members desired to inaugurate an investigation touching any matter he need only make his motion so as to make it privileged, and then you could tack on all matters nonprivileged and nongermane, and the House, in the transaction of its business, would cease to be an orderly body, and would run lawless.

The Chair has a number of decisions here.

As early as 1827 a Speaker who occupied the Chair for four terms—Andrew Stevenson, of Virginia—held that an amendment commanding tariff revision was not germane to a resolution giving a committee power to investigate tariff subjects.[1] In later days Mr. Speaker Carlisle construed the rule with equal strictness, and held that a proposition to investigate the affairs of the New Orleans Cotton Exposition was not germane to a proposition to pay the indebtedness of that exposition.

But the Chair is not confined to reasonings on general principles. The particular question involved has been settled before, and the Chair may follow a broad and well-beaten pathway.

Questions precisely similar arose in the Forty-eighth Congress; and there are found in sections 1078 and 1079 of the Parliamentary Precedents well-considered rulings—one by Mr. Speaker Carlisle and the other by Mr. J. C. S. Blackburn, of Kentucky, as Speaker pro tempore—wherein it is specifically held that a privileged proposition may not be amended by adding thereto matter not privileged or germane to the original question. The reasonableness and justice of these rulings have not been questioned in twenty years.

Under the Constitution the House makes rules for its government. The House elects the Speaker who presides over the body. The House determines and construes the rules when a question is properly presented before him; but with a line of precedents running for almost a century, whoever might occupy the chair would, in the opinion of the present occupant of the chair, act the coward if he did not call the attention of the House to the precedents touching the germaneness of this and similar amendments. The grouping together of privileged and nonprivileged matters is contrary to all rules, and has been so held by all occupants of this chair, so far as the Chair has been enabled to find himself, and after availing himself of advice from one who perhaps has a better knowledge of the precedents than any other man within the sound of my voice.

Therefore the Chair is constrained to sustain the point of order, first, that the amendment is not germane, and, second, that it is in the teeth of the rule that prohibits the linking together of privileged and nonprivileged matters.

Mr. James M. Griggs, of Georgia, having appealed, the appeal was, on motion of Mr. Overstreet, laid on the table by a vote of yeas 154, nays 125.

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[1] See section 5853 of this chapter.

5891. To a proposition for the appointment of a select committee to investigate a certain subject, an amendment proposing an inquiry of the Executive on that subject was held not to be germane.—On June 8, 1850,[1] the House was considering a resolution providing for the appointment of a select committee to investigate the conduct of the Secretary of the Treasury in relation to certain Indian funds.

Mr. Joseph R. Chandler, of Pennsylvania, moved to amend by striking out all after the word "resolved," and inserting:

That the Secretary of the Treasury be requested to report to this House an account of all sums of money which may have been taken (if any) from the surplus fund, which had accumulated to said fund under the provisions of the act of Congress of 1795 from appropriations made for the Florida Indians, and for other purposes, under various specific appropriations.

The Speaker[2] said:

A resolution was offered to raise a select committee, and it is proposed to amend that resolution by adopting the amendment which calls upon one of the Departments for information. The Chair holds that a resolution calling for information belongs to a different class of business altogether from the other resolution; and there are rules of the House containing provisions in respect to resolutions calling for information which do not apply to other propositions. One of these provisions is very important. It provides that a resolution calling for information must lie over, and that it can not be considered on the same day on which it is offered. The resolution now pending is in order; but the moment the Chair entertains the amendment of the gentleman from Pennsylvania and that amendment is brought before the House, the House must stop in the midst of the proceeding and the resolution calling for information must go over. The Chair gives this illustration to show that a resolution calling for information is never in order to a resolution of the character of that now under consideration. There is also another difficulty in the way. The rule of the House declares that these resolutions calling for information shall never be considered on the same day on which they are offered. The rule would be null and void if such a resolution could be brought in by way of amendment, and the rule which requires calls for information to lie over one day would thus, in effect, be abrogated.[3]

5892. An amendment relating to the Government tax on liquors sold in prohibition communities was held not to be germane to a proposition to prohibit the sale of liquor in the Capitol.—On May 27, 1902,[4] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration of aliens into the United States, when an amendment was offered, without objection that it was not in order, as follows:

That no intoxicating liquors of any kind shall be sold within the limits of the Capitol building of the United States.

To this amendment Mr. Charles K. Wheeler, of Kentucky, proposed the following amendment:

And the collectors of revenue districts of the United States are hereby directed to refuse license to sell spirituous, vinous, and malt liquor by retail to any person living in a county or district where the inhabitants of said county or district have by vote prohibited the sale of such liquors in such county or district.

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[1] First session Thirty-first Congress, Globe, p. 1233.

[2] Howell Cobb, of Georgia, Speaker.

[3] This rule has been changed in later years.

[4] First session Fifty-seventh Congress, Record, pp. 6011–6013.

Mr. William B. Shattue, of Ohio, made the point of order that the amendment to the amendment was not germane.

After debate, the Chairman [1] said:

The Chair is prepared to rule upon the point of order made by the gentleman from Ohio to the amendment offered by the gentleman from Kentucky to the amendment proposed by the gentleman from Indiana. The amendment offered by the gentleman from Indiana provides that no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States. It will be observed that this amendment is not a general provision, prohibiting or restricting the sale of intoxicating liquors on all Government property or in all Government buildings, but is simply a prohibition against the sale of intoxicating liquors in one building, and any amendment restraining the sale of liquor in any other building or any other locality controlled by the Government would not be in order under the rule. The amendment offered by the gentleman from Kentucky also affects matters relating to the revenues, and would be original matter which would go to the committee dealing with matters relating to revenue. The Chair feels very clearly, therefore, that the amendment is not germane to the amendment offered by the gentleman from Indiana, and sustains the point of order made by the gentleman from Ohio.

Mr. Wheeler having appealed, the decision of the Chair was sustained—ayes 102, noes 16.

5893. An amendment prohibiting the sale of intoxicating liquors in all Government buildings accessible to aliens was held not germane to a proposition to prohibit such sale in immigrant stations.—On May 27, 1902, [2] the House was considering in Committee of the Whole House on the state of the Union the bill (11. R. 12199) to regulate the immigration of aliens into the United States, when Mr. Justin D. Bowersock, of Kansas, offered the following amendment:

On page 21, after the word "prescribe," in line 20, insert "provided that no intoxicating liquors shall be sold in any such immigrant station."

Mr. W. B. Shattuc, of Ohio, made the point of order that the amendment was not germane.

The Chairman [1] held:

The question is on the point of order raised by the gentleman from Ohio to the amendment offered by the gentleman from Kansas [Mr. Bowersock]. An examination of this bill discloses that section 30, in connection with section 32, provides in general terms for the government and regulation and the administration of the law in immigrant stations. In section 30 it is provided that eating-house privileges and other like privileges shall be disposed of by public competition, under the direction of the Commissioner of Immigration and the Secretary of the Treasury. These terms are general, and include the entire subject of the regulation and preservation of order in these immigrant stations. Any amendment making specific restrictions, and thereby limiting the general language in this section, would, in the opinion of the Chair, be clearly germane, and the point of order made by the gentleman from Ohio is therefore overruled.

Mr. Shattuc thereupon offered the following as a substitute for the amendment offered by Mr. Bowersock:

That hereafter it shall be unlawful to sell intoxicating liquor in any immigrant station or other building accessible to aliens, owned or used by the United States Government, or in the grounds appertaining to the same.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] First session Thirty-seventh Congress, Record, pp. 6005, 6006.

Mr. James R. Mann, of Illinois, made the point of order that the substitute was not germane.

After debate, the Chairman said:

The raising of a point of order necessarily throws upon the Chairman the responsibility of deciding it. This amendment offered by the gentleman from Ohio as a substitute, taken in its entirety, is certainly not germane to even the broadest scope or intent that could be given to this bill. As the Chair stated in ruling on the point of order, one test of the germaneness of an amendment that can always be made is this: Could the subject embraced in the amendment, if offered as an independent bill in the House, be referred to the committee which has reported the bill under consideration?

Now, that part of this amendment which restricts the sale of intoxicating liquor in all public buildings would certainly not be a matter which would be referred to the Committee on Immigration, and the description of these buildings as buildings which are accessible to aliens is a mere description of all public buildings by indirection or by circumlocution of words. It seems very clear to the Chair that, taken as a whole, this amendment, offered as a substitute, is not germane, and the Chair sustains the point of order made by the gentleman from Illinois.

5894. To a paragraph prohibiting the sale of firearms or intoxicating liquors to the natives of Alaska, an amendment providing a system for licensing the sale of liquor in that Territory was held not to be germane.— On January 11, 1899.[1] the House was considering the bill (H. R. 8571) to provide a criminal code for the district of Alaska. The Clerk read this section:

SEC. 145. That if any person shall, without the authority of the United States, or some authorized officer thereof, sell, barter, or give to any Indian or half-breed who lives and associates with Indians any firearms or ammunition therefor whatever, or any spirituous, malt, or vinous liquor, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than two months nor more than six months, or by fine not less than one nor more than five hundred dollars. Section 1955 of the Revised Statutes of the United States, and all that part of section 14 of "An act providing a civil government for Alaska," approved May 17, 1884, after the word "provided," is hereby repealed.

Mr. William H. Moody, of Massachusetts, had offered an amendment to strike out this section and insert the old provision of law prohibiting the sale of liquor in Alaska.

To this amendment Mr. Thomas H. Tongue, of Oregon, offered as an amendment a series of paragraphs providing a system for licensing the sale of intoxicating liquors in the district of Alaska.

Mr. William H. Moody, of Massachusetts, having reserved a point of order against the amendment, after debate the Speaker[2] decided:

The Chair would be very glad to submit the matter to the House, but is obliged to rule upon it according to his judgment and according to the precedents, which he has carefully examined. The section which it is proposed to amend does not deal generally with the liquor question. It is only a prohibition to sell intoxicating liquors, or firearms, or ammunition to Indians or half-breeds. It does not deal with the whole liquor question with reference to the Territory of Alaska, but is solely a prohibition to sell liquor and other things to Indians and half-breeds. Now, certainly it is not germane to a section of that sort to propose an entire change—to propose what is substantially and necessarily a revenue measure. That revenue measure may incidentally deal with the liquor question, but it deals with it only incidentally.

As the Chair has remarked, the gentleman from Oregon [Mr. Tongue], when he presented his original amendment, presented a complete scheme for raising revenue, not only by licensing the sale of

[1] Third session Fifty-fifth Congress, Record, pp. 580–584; Journal. pp. 67, 68.

[2] Thomas B. Reed, of Maine, Speaker.

liquors, but also by licensing various other occupations not of a similar character, and some that were of what might be called a similar character. That showed what his idea was when he originally presented the amendment, and the fact that he has stricken off all the other taxes does not in any way change the fact that the basis of this action is a tax. It is proposed to use that as an amendment to a proposition forbidding the sale of liquor to Indians and halfbreeds. Certainly if there ever was a case where a proposition was not germane it is this. The Chair has been reluctant to come to this conclusion, but it seems inevitable. The Chair therefore sustains the point of order.

5895. To a proposition to investigate the cost of armor plate, an amendment fixing the terms of purchase thereof was held not to be germane.— On March 2, 1905,[1] the House was considering Senate amendments to the naval appropriation bill, when this amendment was read:

And provided further, That the Secretary of the Navy shall cause a thorough inquiry to be made as to the cost of armor plate and of armor plant, the report of which shall be made to Congress.

Mr. Willard D. Vandiver, of Missouri, moved to recede and concur with this amendment:

Add to amendment No. 33 the following:

"*And provided also,* That in the purchase of the armament and armor appropriated for in this act all contracts shall be let to the lowest responsible bidder: but no contract shall be let for armor plate at a price exceeding $398 per ton."

Mr. George E. Foss, of Illinois, made the point of order that the amendment was not germane.

After debate the Speaker[2] held—

The point of order made by the gentleman from Illinois [Mr. Foss] is that it is not germane to the Senate amendment. The House will notice that the Senate amendment provides for an investigation. The amendment proposed by the gentleman from Missouri [Mr. Vandiver] provides to limit the purchase price to $398 a ton.

Now, it has been frequently held on similar questions that such an amendment is not germane. The Chair will not take time to quote more than one, namely, a decision made by Mr. Speaker Carlisle, as follows:

"To a proposition to make an appropriation for paying indebtedness and premiums of an exposition, an amendment to appoint a committee to investigate the affairs of the exposition was offered and held not to be in order."

Deciding the exact principle involved in this point of order.

Without the decision the Chair would have no hesitation in holding that the amendment proposed by the gentleman from Missouri [Mr. Vandiver] is not germane, and the Chair therefore sustains the point of order.

Thereupon Mr. Vandiver proposed this amendment:

And provided also, as follows: First, that for the purpose of carrying out this provision a board of inquiry shall be constituted of the Judge-Advocate-General of the Navy, the Admiral of the Navy, one experienced naval constructor, one experienced naval inspector of armor plate, and one machinist of the first class, experienced in the manufacture of armor plate, and shall make report to Congress in December, 1905

Second, that the said board shall investigate whether or not there is reason to believe that in the bidding for contracts to furnish armor to the Government any persons, firms, or corporations have entered into any combination, trust, or agreement, or understanding, the object or effect of which is or has been to deprive the Government of free and open competition.

Third, that if it shall reasonably appear that any persons, firms, or corporations have so combined or in any way contrived to deprive the Government of free and open competition, then all payments from

[1] Third session Fifty-eighth Congress, Record, pp. 3877–3879.

[2] Joseph G. Cannon, of Illinois, Speaker.

appropriations made in this act to such persons, firms, or corporations shall be withheld, and the facts laid before the Attorney-General for such action as he may deem proper under the law.

And provided further, That the Secretary shall cause a thorough inquiry to be made as to the cost of armor plate and of an armor plant, a report on which shall be made to Congress.

Mr. Foss made the point of order that the amendment was not germane.

After debate the Speaker held—

That amendment proposes an investigation touching the cost of the plate and the plant, and that only. The gentleman now proposes to concur in that amendment with an amendment. The amendment now proposed provides an additional investigation, far-reaching, about an entirely different matter, and legislates what shall be done if certain things are found in the investigation. Now, if this provision had been put upon this conference report and an agreement made in fun, it would have been a matter not in difference, and the recommendation would have been subject to the point of order by any Member. It is perfectly clear to the Chair that the proposed House amendment provides for entering on an investigation not now authorized by law, which would be subject to a point of order if under consideration upon a money bill under the terms of the rules, and is not germane, and is new legislation. Therefore the Chair sustains the point of order.

5896. To a provision requiring a record and report of a certain class of mail matter, an amendment providing for entering mail matter of a certain class was held not germane.—On April 12, 1906,[7] the Post Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

And the Postmaster-General shall require a record from July 1 to December 31, 1906, of all second class mail matter received for free distribution, and also at the 1 cent a pound rate, so as to show the weights in pounds, respectively, by classes, of daily newspapers, weekly and other than daily newspapers, magazines, scientific periodicals, educational periodicals, religious periodicals, trade-journal periodicals, agricultural periodicals, miscellaneous periodicals, and sample copies of said newspapers, magazines, and periodicals, and make report to Congress of such information by February 1, 1907, together with an estimate of the average length of haul of said respective classes above named.

Mr. Charles L. Bartlett, of Georgia, offered the following amendment:

Insert at page 17, line 24, end of line:

"And in the meantime and until said report is made, whenever any person or corporation shall apply to the Postmaster-General for the admission of any newspaper or publication to the mails at the second-class rate, and such application shall be denied or refused, such person or corporation shall have the right, and is hereby empowered, to apply for a writ of mandamus to the supreme court of the District of Columbia, or to the justices or any justice thereof; and the proceedings therein shall be had and governed as is provided for in the issuing, granting, and trial of such writs of mandamus in chapter 42 of the Laws of the District of Columbia, enacted March 3, 1901, and as amended by acts approved January 31 and June 30, 1902, and embraced in sections 1273 to 1282, inclusive, of said Code of the District of Columbia, and if upon the trial and hearing of said application for writ of mandamus it shall be decided by the supreme court of the District of Columbia, or the justices or any justice thereof, that such newspaper or publication is, under the law governing the admission of newspapers and publications to the mails as second-class matter, entitled to such admission, then it shall be the duty of said court, or said justices or any justice thereof, to issue the writ of mandamus directed to the Postmaster-General, requiring him to admit such newspaper or publication to the mails as second-class matter; the costs in such proceeding to be paid by the person or corporation making application for the mandamus."

Mr. Jesse Overstreet, of Indiana, raised a point of order.

After debate the Chairman[2] said:

Whether the provision in the bill as reported was in order or not, an amendment to it must be germane. But on the assumption that the provision was not in order, no point of order having been raised,

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[1] First session Fifty-ninth Congress, Record, pp. 5173–5175.

[2] James S. Sherman, of New York, Chairman.

of course it is in the bill. The question comes down to this point: An amendment thereto must first be germame; second, it must not add any new matter of legislation not contained in the provision the point of order upon which has not been raised.

Now, the provision in the bill provides for what? For a record of the transactions of the service and a report thereon to a future Congress. The amendment provides for a trial in a court and provides the machinery for relief where the complainants believe a wrong had been perpetrated. * * * The subject-matter of the provision is a record and a report. The subject-matter of the amendment is a writ of mandamus in case a wrong is perpetrated or is said to have been perpetrated.

But further than that, the amendment is obnoxious to the rule, which says that an amendment must be simply to perfect the text, and must not bring in some additional question of legislation. In the opinion of the Chair, this amendment is not germane, and it does propose to incorporate in the bill a new matter of legislation. Therefore the Chair is constrained to hold the amendment not in order.

Mr. Bartlett thereupon proposed this amendment:

After line 24, page 17, insert:

"And in the meantime and until said report is made, when any person or corporation shall apply to the Postmaster General for the admission of any newspaper or publication to the mails as second-class matter, and the same shall be denied admission to the mails as second-class matter, then such person or corporation shall have the right to an appeal to a board of appeals, hereby constituted and created for that purpose, to consist of the Postmaster-General, the First Assistant Postmaster-General, and the second Assistant Postmaster-General, who shall hear such appeal and the facts submitted by such person or corporation making the appeal, and if in the opinion of such board of appeals so constituted as above stated said newspaper or publication is entitled under the law to be admitted to the mails as second class matter, then such board of appeals shall so find and determine, and shall order said newspaper or publication to be admitted to the mails as second-class matter."

Mr. Overstreet having raised a question of order, after debate the Chairman held:

The provision of the bill relates to keeping a record of certain events and reporting thereon. The provisions of the amendment relate to the entry of certain mails under certain classes. Therefore it is new subject-matter, and is not germane to the amendment, and the Chair is again constrained to sustain the point of order.

5897. To a proposition to provide relief for destitute citizens of the United States in the island of Cuba, a proposition declaring a state of war in Cuba and proclaiming neutrality, etc., was held not germane.—On May 20, 1897,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented a resolution providing a time for the consideration of this Senate resolution:

That the sum of $50,000 be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the relief of the destitute citizens of the United States in the island of Cuba, said money to be expended at the discretion and under the direction of the President of the United States in the purchase and furnishing of food, clothing, and medicines to such citizens and for transporting to the United States such of them as so desire and who are without means to transport themselves.

Mr. Joseph W. Bailey, of Texas, moved to recommit the resolution providing for consideration, with instruction to amend it so as to provide also for the consideration of this resolution:

That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America shall maintain a strict neutrality between the contending powers, according to each all the rights of belligerents in the ports and territory of the United States.

Mr. Dalzell made the point of order that the amendment was not germane to the pending resolution.

[1] First session Fifty-fifth Congress, Record, p. 1187

The Speaker[1] decided that the amendment was in no wise in order.

Mr. Bailey having taken an appeal, the appeal was laid on the table by a vote of 114 yeas to 83 nays.

5898. To a resolution for printing a document relating to the colonial systems of the world, an amendment providing for the printing of maps of Cuba was offered and held not to be germane.—On February 25, 1899,[2] the House was considering a concurrent resolution providing for the printing of the report entitled "The colonial systems of the world."

Mr. Nicholas N. Cox, of Tennessee, offered as an amendment a proposition to print maps of the island of Cuba.

Mr. George D. Perkins, of Iowa, made the point of order that the proposed amendment was not germane.

The Speaker[1] sustained the point of order.

5899. To a provision providing clerks for the Members of one House an amendment providing them for Members of the other House has, at different times, been held both germane and not germane.—On March 2, 1885,[3] the House was considering certain amendments of the Senate to the bill (H. R. 8179) making appropriations for the legislative, executive, and judicial expenses of the Government. Among them was an amendment providing "for clerks to Senators who are not chairmen of committees, at $6 per day during the session, $39,432."

Mr. J. Warren Keifer, of Ohio, moved to concur in this Senate amendment with an amendment, which would make it read as follows: "For clerks to Senators and Representatives who are not chairmen of committees, at the rate of $100 per month during the session, $209,300."

A point of order having been made by Mr. William S. Holman, of Indiana, that this amendment was not germane, the Speaker[4] said:

> The Chair thinks it is germane. It relates to the subject of clerks for Members of Congress. The fact that the Senate amendment provides simply for clerks to Members of the Senate does not preclude the right of the House to so amend as to pay clerks of Members of the House. Suppose, for instance, the question was as to the compensation of the clerks of the Senate committees or the officers of the Senate, might it not be amended by adding the clerks or officers of the House? The Chair thinks it could. If you take it in the narrowest sense, of course, it relates only to the subject of clerks to the individual Senators; but the Chair thinks that would be an exceedingly narrow construction to put upon it and one not warranted by the rule.

5900. On April 14, 1896,[5] the House was considering Senate amendments to the legislative, executive, and judicial appropriation bill, the particular amendment under consideration being one providing for annual clerks for Senators.

To this Mr. Charles S. Hartman, of Montana, proposed this amendment:

> That the House recede from its disagreement to the amendment numbered 19 of the Senate, relating to 38 annual clerks to the Senators, and agree to the same with an amendment as follows: "And for 360 annual clerks to Members and Delegates of the House, at $100 per month, $432,000."

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Fifty-fifth Congress, Record, p. 2395.

[3] Second session Forty-eighth Congress, Record, pp. 2420, 2423.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Fifty-fourth Congress, Record, p. 3963.

Mr. Henry H. Bingham, of Pennsylvania, made the point of order that the amendment was not germane, and the further point that it was contrary to existing law.

The Speaker[1] sustained the point of order.

5901. To a resolution assigning clerks to committees an amendment assigning a clerk to each Member of the House was offered and ruled out of order.—On January 9, 1888,[2] Mr. Frank T. Shaw, of Maryland, submitted from the Committee on Accounts a privileged resolution assigning to various committees of the House the 31 clerks allowed by the legislative, executive, and judicial appropriation bill.

To this resolution Mr. Bishop W. Perkins, of Kansas, offered as an amendment the following:

Provided, That each Member of this House not the chairman of a committee given a clerk herein shall be given a clerk during the sessions of Congress, to be paid for from the House contingent fund, at the rate of $100 per month.

Mr. Charles E. Hooker, of Mississippi, made the point of order that the amendment was not germane.

After debate the Speaker[3] held:

The rule of the House provides that no proposition on a subject-matter different from that under consideration shall be admitted under color of an amendment; in other words, that every amendment offered to a pending proposition must be germane to that proposition. The report now before the House relates entirely to the assignment of clerks to committees of the House, while the amendment offered by the gentleman from Kansas proposes to assign a clerk to each Member. The Chair thinks the point of order is well taken and that the amendment is not in order.

5902. To a provision for the payment of clerk hire to Members and Delegates an amendment providing that under certain circumstances the Member should forfeit the payment was offered and ruled out of order.— On January 6, 1899,[4] the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph providing for the payment to Members and Delegates the amounts certified by them to have been paid for clerk hire had been reached, when Mr. Charles S. Hartman, of Montana, offered this amendment:

Provided, That every Representative or Delegate who shall retain or require to be paid to him any portion of the money now or hereafter appropriated for clerk hire shall upon the ascertainment and determination of such fact by the House, or any duly authorized committee thereof, forfeit all rights to any money so appropriated.

Mr. Henry H. Bingham, of Pennsylvania, made a point of order against the amendment.

The Chairman[5] sustained the point of order.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fiftieth Congress, Record, p. 305; Journal, p. 306.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Third session Fifty-fifth Congress, Record, p. 452.

[5] Sereno E. Payne, of New York, Chairman.

5903. To a provision relating to transfers of clerks from one department to another an amendment classifying the work of the clerks was held not to be germane.

Legislation may not be proposed under the form of a limitation.

On March 30, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the terms of a rule which precluded the raising of points of order on the provisions of the bill; and the Clerk read this paragraph:

SEC. 5. It shall not be lawful hereafter for any clerk or other employee in the classified service in any of the Executive Departments to be transferred from one Department to another Department until such clerk or other employee shall have served for a term of three years in the Department from which he desires to be transferred.

Mr. Henry W. Palmer, of Pennsylvania, proposed to this paragraph the following amendment:

Add after line 18, page 162, the following:

"The heads of Departments, offices, and bureaus appropriated for by this act shall grade the clerical work to be performed in their respective Departments before the 30th of June, 1906, into as many grades as there are classes in the classified service of the United States, as provided under Rule XIII of the civil-service rules and promulgated by the President, and thereafter all employees included in said classification shall be employed only upon the grade of work corresponding with their respective classes. Every person employed in said classification service shall receive payment for the grade of work which he performs and no other."

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that the amendment was not germane.

After debate the Chairman[2] held:

It has often been held that where a paragraph changing existing law is permitted to remain in the bill it may be perfected by any germane amendment. By the operation of the rule adopted yesterday this section 5 is permitted to remain in the bill. The Chair is of the opinion that it does change existing law, and that it is therefore subject to be perfected by any germane amendment; and if the only objection were that the proposed amendment does change existing law, the Chair would overrule the point of order.

But the objection that the amendment is not germane to section 5 requires an examination and comparison. It appears that section 5 relates wholly to the transfers of clerks in the classified service from one Department to another, providing that no clerk shall be transferred until he shall have served at least three years in the Department from which he desires to be transferred. The amendment on the other hand relates not to transfers, but provides for a classification, not of clerks, but of the work which they are to perform and upon which they are to be engaged. It requires that they shall be employed upon no other work than upon the work so classified, each clerk according to the proper class. It applies not merely to clerks transferred or desiring to be transferred, but to all work done by clerks and to all clerks.

That seems to the Chair a change of existing law upon a subject different from that embraced in the pending section. Therefore, for the reason that it is not germane, the Chair will be compelled to sustain the point of order.

The gentleman from Pennsylvania urges that it is a limitation on the appropriation. It does not seem, however, to limit the appropriation. The appropriations have been made in previous sections. This amendment does not impose a condition upon the payment of that money. Furthermore, it is a principle well established that in order to be a limitation the provision must cover only the year for

[1] First session Fifty-ninth Congress, Record, pp. 4506–4508, 4509.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

which the appropriation is made. This proposed amendment, as its language clearly indicates, is intended for permanent legislation. The Chair therefore sustains the point of order.

A little later Mr. Palmer offered the same amendment as a new section.

Thereupon Mr. Crumpacker made the point of order that it proposed legislation.

After debate the Chairman said:

The gentleman from Indiana makes the point that the proposed new section changes existing law in violation of the rule of the House upon that subject, and the gentleman from Ohio adds the additional point that it is not within the provision of the special rule adopted by the House yesterday and under which we are proceeding. The Chair understands that this is the same matter which was offered as an amendment to section 5. The Chair then said that it was not subject to the objection of changing existing law, because the section to which it was offered was open to the same charge. But it was ruled out because not germane to the section. It is now offered as an independent section, and is not aided by the fact that some other section offends. It manifestly changes existing law, and the Chair must sustain both points of order.

5904. To a proposition to give an extra month's pay to the officers and employees of the House, an amendment to include clerks of Members was held not to be germane.—On March 1, 1905,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this amendment was pending:

On page 76, after line 16, insert:

"To enable the Secretary of the Senate and the Clerk of the House of Representatives to pay to the officers and employees of the Senate and House borne on the annual and session rolls on the 31st day of January, 1905, including the Capitol police, the official reporters of the Senate and House, and W. A. Smith, Congressional Record clerk, for extra services during the third session of the Fifty-eighth Congress, a sum equal to one month's pay at the compensation then paid them by law, the same to be immediately available."

Mr. Roswell P. Bishop, of Michigan, propoped this amendment to the amendment:

Amend the amendment by inserting after the words "Record clerk "the following:

"And including clerks to Delegates and Members of the House of Representatives now in Congress, to be certified to by Members, as now prescribed by law."

Mr. Charles H. Grosvenor, of Ohio, having raised a question of order, the Chairman[2] held:

The gentleman from Ohio makes the point of order that the amendment submitted by the gentleman from Michigan is not germane. The Chair sustains the point of order.

Later Mr. Bishop offered this amendment to the text of the bill:

Insert after line 16, on page 76:

"Delegates and Members of the House of Representatives now in Congress, a sum equal to one month's pay for clerk hire, to be certified as now prescribed by law."

Mr. Oscar W. Underwood, of Alabama, made the point of order.

The Chairman[2] held:

The gentleman from Alabama makes the point of order that the amendment is not in order. The Chair sustains the point of order.

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[1] Third session Fifty-eighth Congress, Record, pp. 3807–3809.

[2] James R. Mann. of Illinois, Chairman.

5905. To a bill relating to laying of conduits for telephone wires, an amendment relating to the prices to be charged for services was held not to be germane.—On May 26, 1902,[1] the House was considering the bill (H. R. 12865) to provide for the removal of overhead telegraph and telephone wires in the city of Washington, for the construction of conduits in the District of Columbia, and for other purposes, when Mr. Thetus W. Sims, of Tennessee, proposed the following amendment:

Add to the bill a new section, to be section 8, to read as follows:

"Any telephone company operating under the provisions of this bill shall charge not to exceed $50 per year for telephones."

Mr. Joseph W. Babcock, of Wisconsin, raised the question of order that the amendment was not germane.

After debate the Speaker[2] said:

The Chair finds the authority cited by the gentleman and remembers the case very well. The title of that bill was a bill referring generally to the affairs of a gas company, and an amendment introducing the subject of the price of gas was held to be germane. On January 21, 1901, the House was considering a bill (H. R. 13660) relating to the Washington Gaslight Company, and for other purposes. Mr. William W. Grout, of Vermont, moved to recommit the bill to the Committee on the District of Columbia with instructions to report the bill back with this amendment:

"Provided further, That on and after July 1, 1902, the Washington Gaslight Company shall furnish gas to the people of the District of Columbia for 90 cents per 1,000 cubic feet; on and after July 1, 1903, for 80 cents per 1,000 cubic feet, and on and after July 1, 1904, for 75 cents per 1,000 cubic feet.

"Mr. Joseph W. Babcock, of Wisconsin, made the point of order that the bill did not deal with the price of gas, and that therefore the amendment proposed would not be germane."

The Speaker said:

"The Chair has not read the bill through, and the confusion of this morning made it almost impossible to hear it. Still the Chair sees that this is for the purpose of giving a franchise to this company. and here is a proviso:

"That the Commissioners of the District of Columbia may require said company to lay such mains or conduits in any graded street, highway, avenue, or alley in the District of Columbia not already provided therewith as may be necessary."

"It seems to be a general bill regulating the gas business and this gas company, and the Chair is of opinion that the point of order is not well taken and that the instructions of the gentleman from Vermont are in order."

Now, here was a general bill going into the question of the regulation of the gas company. As is stated in the decision, it treated of a franchise; but there is nothing of that character in the present bill. It does not grant any corporate rights. It does not establish a company or clothe it with power. It does not treat of stocks, bonds, or any of the elements connected with the organizing of a corporation, but treats of a corporation in existence and franchises and powers that the corporation already possesses. How? By authorizing the Commissioners of the District of Columbia to regulate this matter. It does not go into the question of prices or rates in any shape or form, nor does it invite anything of that kind. When you come to treat of incorporating a company, these are limitations that should be put on and enforced, but not on a bill of this kind, which treats wholly of the question of conduits.

The Chair thinks that the point of order is clearly well taken.

Thereupon Mr. William P. Hepburn, of Iowa, proposed the following amendment:

Add at the end of section 6 the following:

"Provided, That the privileges herein authorized to be extended to persons or corporations shall be exercised on condition only that service shall be furnished on the term and at the prices now authorized by law.

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[1] First session Fifty-seventh Congress, Record, pp. 5935, 5936.

[2] David B. Henderson, of Iowa, Speaker.

Mr. Babcock raised the question of order on the amendment also.

The Speaker held:

The amendment offered by the gentleman from Iowa is substantially the same as the one that has just been ruled upon, although framed in a different way. The Commissioners can not be treated from any standpoint except that which is tendered by the bill under consideration. The gentleman from Iowa can offer amendments affecting these conduits, the depth that they may be placed in the ground, the size of them, or anything bearing upon the propositions in the bill; but when he attempts to instruct the Commissioners and to bind them on a matter that is purely reached by the incorporating acts themselves, he steps entirely outside of the province of the bill and offers a proposition that is not germane thereto. * * * The distinction is a very sharp one. It is a pure conduit-planting bill, and anything bearing upon that question is legitimate and germane; but when you go back to the constituting instrument and the questions therein this bill does not permit it. If that should be permitted, then you could in this bill take up the question of capital stock. The Chair is very clearly of the opinion that this amendment is not germane.

5906. To a bill relating to corporations carrying passengers for hire over the streets of Washington an amendment regulating the size of tires of all vehicles passing over the streets was held not to be germane.—On March 2, 1907,[1] the House was considering the bill (S. 6147) entitled "An act authorizing changes in certain street-railway tracks within the District of Columbia, and for other purposes," with the amendment thereto reported by the Committee on the District of Columbia.

This bill as it came from the Senate contained only the subject of the approaches to the new railroad station as related to street-railroad tracks, and to a. certain omnibus line for the carriage of passengers, which was required to substitute motor vehicles for the existing conveyances.

The amendment reported by the Committee on the District of Columbia covered not only these subjects, but had the following section:

SEC. 13. That from and after the 1st day of January, 1908, every wagon or other vehicle of whatsoever kind or description weighing, when loaded, more than 2 tons exclusive of the weight of the vehicle, used, operated, or propelled on, over, or across any of the streets, avenues, alleys, bridges, or roadways of the District of Columbia shall have wheel tires not less than 4 inches broad. Any owner or driver or other person in control of such wagon or other vehicle so using, operating, or propelling the same who shall violate the provisions of this section shall, on conviction thereof in the police court of the District of Columbia, be punished by a fine not exceeding $25, or by imprisonment for not more than sixty days, or both.

Mr. John S. Williams, of Mississippi, made the point of order that the provision was not germane.

The Speaker[2] sustained the point of order.

5907. To a provision requiring two street-railway companies to issue free transfers each over the other's lines an amendment requiring the two companies to issue universal transfers over all intersecting lines was held not to be germane.—On May 23, 1898,[3] the House was considering the bill

[1] Second session Fifty-ninth Congress, Record, p. 4509.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 5124.

(H. R. 10293) to incorporate the East Washington Heights Traction Railroad Company, in the District of Columbia. To this provision of the bill:

Provided, That the said company and the Capital Traction Company are hereby required to issue free transfers, whereby a passenger on the said East Washington Heights Traction Company shall be entitled to a continuous ride over the line of the other company, or vice versa.

Mr. John B. Corliss, of Michigan, offered the following amendment:

Provided further, That universal free transfers shall be issued and exchanged by said company and said Capital Traction Company with all street railways whose lines intersect the lines of said companies, so that a passenger shall be entitled to a continuous ride over the line of said companies and any line intersecting the same for one fare.

Mr. Joseph W. Babcock, of Wisconsin, made the point of order against the amendment.

The Speaker pro tempore [1] ruled:

This is a bill to incorporate the East Washington Heights Traction Railroad Company in the District of Columbia. Section 19 provides for the rates of fare upon that road, and also further provides: "That the said company"—that is, the East Washington Heights Traction Railroad Company—"and the Capital Traction Company are hereby required to issue free transfers, whereby a passenger on the said East Washington Heights Traction Company shall be entitled to a continuous ride over the line of the other company, and vice versa."

That is, that these two companies can and must issue transfers one over the line of the other.

Now, this amendment provides that whatever railroads intersect with either of these two roads must issue transfers upon these two roads, and these two roads upon the others, for a continuous ride. Now, with all deference to what has been said, the Chair thinks that this is not germane to the proposition in the bill.

5908. To a bill requiring street-railway corporations to make annual reports amendments relating to transfers and accommodations for passengers were held not to be germane.—On May 26, 1890,[2] the House was considering the bill (H. R. 9105) requiring the street-railway companies of the District of Columbia to make annual reports, when Mr. William M. Springer, of Illinois, proposed an amendment providing, under suitable penalties, that street-railway companies in the District of Columbia should cause their cars to stop at all street crossings where connections were made with lines of cars on other streets and transfers be given for a sufficient length of time to enable passengers to make connections with other cars; and that no street-railway company in the District of Columbia should demand or collect fare from any passenger on any street car unless such passenger was furnished a seat in such car.

Mr. Louis E. Atkinson, of Pennsylvania, made the point of order that the proposed amendment was not germane to the bill and therefore not in order.

The Speaker pro tempore [3] sustained the point of order.

Mr. Joseph E. Washington, of Tennessee, moved to further amend the bill as follows:

That all street railways in this city at the point of crossing or junction shall issue transfer tickets and transfer passengers without extra charge.

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[1] Sereno E. Payne, of New York, Speaker pro tempore.

[2] First session Fifty-first Congress, Journal, p. 667; Record, pp. 5316, 5317.

[3] Julius C. Burrows, of Michigan, Speaker pro tempore.

Mr. Atkinson, of Pennsylvania, made the point of order that the proposed amendment was not germane to the bill, and therefore not in order.

The Speaker pro tempore sustained the point of order.

5909. To a bill providing for an interoceanic canal, specifying a certain route, an amendment providing for another route was held to be germane.—On January 9, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 3110) to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans when Mr. Richard W. Parker, of New Jersey, proposed an amendment providing for a canal across the Isthmus of Panama.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the amendment was not germane, because, while the bill provided for a canal at Nicaragua only, the amendment provided also for a canal at another place. After debate the Chairman[2] said:

The subject-matter of this bill—the enterprise upon which the House has entered—is, in the language of the bill—

"To construct a canal to connect the waters of the Atlantic and Pacific oceans."

The Chair is of the opinion that that is the purpose of the legislation sought; that the question of location is wholly a subordinate one, and that it is perfectly competent for Congress to reject one location and to adopt another. For instance, suppose it was a question of the building of a house for the purpose of storing the records of the Government, and a bill was introduced to locate it on a certain square in this city. Can anybody doubt that the proposition might be amended so as to locate it upon other square?

5910. To a bill providing for the reorganization of the Army a new section prescribing a system of competition in marksmanship among the soldiers was held to be germane as an amendment.—On January 31, 1899,[3] the bill (H. R. 11022) for the reorganization of the Army was under consideration in Committee of the Whole House on the state of the Union, and Mr. William P. Hepburn, of Iowa, offered as a new section or paragraph prescribing frequent target practice by enlisted men and providing for the giving of medals for the best records.

Mr. James Hay, of Virginia, made the point of order that the amendment was not germane to the bill.

After debate the Chairman[4] overruled the point of order.

5911. To a bill relating to the operation of a street railway in several particulars an amendment fixing the rate of fares on this and other street railways also was held not to be germane.—On February 11, 1907,[5] the bill (H. R. 22123) to amend an act to authorize the Baltimore and Washington Transit Company of Maryland to enter the District of Columbia, approved June 8, 1896, was under consideration in Committee of the Whole House on the state of the Union when Mr. Ollie M. James, of Kentucky, proposed this amendment:

Amend by striking out all of section 5 and inserting in lieu thereof the following:

"That from and after the passage of this act the rate of fare that may be charged for the transportation of passengers over any and all street-railway lines in the District of Columbia shall not exceed

[1] First session Fifty-seventh Congress, Record, pp. 553, 554.

[2] Charles H. Grosvenor, of Ohio, Chairman.

[3] Third session Fifty-fifth Congress, Record, p. 1324.

[4] Sereno E. Payne, of New York, Chairman.

[5] Second session Fifty-ninth Congress, Record, pp. 2723, 2724.

3 cents each, good for transportation of one passenger over the whole or any part of the line of such street-railway company over which such tickets are sold."

Mr. Joseph W. Babcock, of Wisconsin, made the point of order that the amendment was not germane.

After debate the Chairman [1] held:

This is a bill authorizing a street-railroad company from outside the District of Columbia to come into the District of Columbia and connect in the city of Washington with what is called the "Traction Company." It provides for a point of contact, and then provides that a single fare shall carry a passenger from his occupancy of the car outside to the end of the traction line in the city of Washington. The point of order is made to the amendment that it is not germane to the bill under consideration. It has been distinctly ruled heretofore, it seems to the Chair, exactly on all fours with that question:

"To a provision requiring two railroad companies in the District of Columbia to issue free transfers over the lines of one another an amendment requiring the two companies to issue universal transfers with all other intersecting lines in the District of Columbia was offered and held not to be germane."

Following that opinion and following the opinion which the Chair has, the point of order is sustained.

5912. To a bill relating to the salaries and expenses of judges an amendment forbidding them to receive passes, franks, etc., was held to be germane.—On January 27, 1903, [2] the House as in Committee of the Whole was considering the bill (S. 3287) "to fix the salaries of certain judges of the United States" when Mr. Choice B. Randell, of Texas, offered the following amendment:

Insert after line 15, on page 2, the following:

"That it shall be unlawful for any of the judges of United States courts to accept or receive any gifts, free transportation, or frank from any corporation or person engaged in operating any railroad, steamboat line, express or telegraph company. Any violation of this provision shall be punished by a fine not less than $100 and not exceeding $5,000."

Mr. John J. Jenkins, of Wisconsin, made the point of order that the amendment was not germane.

After debate the Speaker [3] said:

This question is one that troubles the Chair a little, but when we consider that this bill deals not only with salaries but also with the subject of expenses, the issuing of passes, franks, and other things that keep down the expenses would seem to be germane. At all events, the Chair will overrule the point of order and admit the amendment of the gentleman from Texas.

5913. To a bill relating to the salaries of the Federal judges and those of the District of Columbia an amendment relating to the salaries of the Porto Rican judges was held to be germane.—On January 27, 1903, [4] the House as in Committee of the Whole was considering the bill (S. 3287) "to fix the salaries of certain judges of the United States" when Mr. Vincent Boreing, of Kentucky, proposed this amendment:

To the judge of Porto Rico, $6,000.

Mr. John J. Jenkins, of Wisconsin, made the point of order that the amendment was not germane to the bill.

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[1] Charles II. Grosvenor, of Ohio, Chairman.

[2] "Second session Fifty-seventh Congress, Record, p. 1343.

[3] David B. Henderson, of Iowa, Speaker.

[4] Second session Fifty-seventh Congress, Record, p. 1341.

After debate the Speaker[1] said:

The Chair calls the attention of the gentleman from Wisconsin to the fact that the judges of the District of Columbia are incorporated in this bill. It seems that these Porto Ricans are appointed by the President of the United States. The provision has broadened out now from the Federal judges for the States to the judges for the District of Columbia. * * * The Chair is not entirely satisfied, but is inclined to hold, and will so hold, that the point of order is not well taken.

5914. To a bill relating to the control of several distinct public places in Washington an amendment providing for the removal of the fence around the Botanical Garden, in the same city, was held germane.—On May 23, 1898,[2] the House had under consideration the bill (H. R. 10294) relative to the control of wharf property and certain public places in the District of Columbia, the bill being considered in the House as in Committee of the Whole.

Mr. Joseph W. Babcock, of Wisconsin, offered the following amendment as a new section:

SEC. 5. *Provided,* That the park known as the Botanical Garden shall be open to the public the same as the other parks in the city of Washington; and within six months from the passage of this act the fence around the same shall be removed.

Mr. William Sulzer, of New York, made the point of order that the amendment was not germane to the bill.

The Speaker pro tempore[3] held:

The only question is whether the amendment is germane to the bill. The Chair thinks the amendment is germane to the bill, and therefore overrules the point of order of the gentleman from New York.

5915. To a proposition to create a board of inquiry an amendment specifying when the board should report was held to be germane.—On March 2, 1905,[4] the House was considering Senate amendments to the naval appropriation bill, when this amendment was proposed as an amendment to a Senate amendment:

And provided also, as follows: First, that for the purpose of carrying out this provision a board of inquiry shall be constituted of the Judge-Advocate-General of the Navy, the Admiral of the Navy, one experienced naval constructor, one experienced naval inspector of armor plate, and one machinist of the first class, experienced in the manufacture of armor plate.

To this amendment Mr. Willard D. Vandiver, of Missouri, offered the following amendment:

And that this board of inquiry shall make its report at the first regular session of the Fifty-ninth Congress.

Mr. George E. Foss, of Illinois, made the point of order that the amendment to the amendment was not germane.

The Speaker[5] said:

The Chair thinks the amendment is in order and is germane.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-fifth Congress, Record, p. 5120.

[3] Sereno E. Payne, of New York, Speaker pro tempore.

[4] Third session Fifty-eighth Congress, Record, p. 3879.

[5] Joseph G. Cannon, of Illinois, Speaker.

5916. To a bill providing generally for a Union Station in the District of Columbia an amendment levying a special tax in the District to defray the cost of the station was held to be germane.—On December 15, 1902,[1] the bill (S. 4825) "to provide for a Union Station in the District of Columbia and for other purposes," was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, offered this amendment:

Insert at the end of line 18, page 28, the following:

"That, in order to meet the extraordinary expenses entailed by the provision of this act, the rate of taxation on the assessed real and personal property in the District of Columbia for each of the next five fiscal years is hereby increased 25 per cent."

Mr. Sidney E. Mudd, of Maryland, made the point of order that the amendment was not germane.

After debate the Chairman,[2] said:

This is a bill to provide for a union railroad station in the District of Columbia, and for other purposes. It is reported from the Committee on the District of Columbia. It provides for the establishment of a park in the District of Columbia and for the opening of streets, and imposes considerable expense upon the District of Columbia.

It also imposes some expense upon the Treasury of the United States. If, as has been suggested, an amendment were offered increasing the tariff upon imports to meet such charges the objection would at once be made that under the rules such a measure must be referred to a different committee—the Ways and Means. In other words, the rules of the House would make an amendment touching the tariff not germane to such a bill as this.

But with the District of Columbia the case is different. If the amendment of the gentleman from Illinois were offered as a separate measure, it would go, under the rules, to the same committee which has reported this bill. The District Committee has jurisdiction of revenues as well as expenditures, and could, without infringing any rule, include in one bill the purposes of the bill and also of the amendment. While not entirely clear from doubt, the Chair is of the opinion that the amendment providing revenue to meet the expenditures entailed by the provisions of the bill itself upon the District of Columbia is germane to the bill, and therefore overrules the point of order.

5917. To a bill establishing a new department, creating offices, and fixing salaries an amendment for changing the salary of an officer of the department was held to be germane.—On January 17, 1903,[3] the Committee of the Whole House on the state of the Union was considering the bill (S. 569) to establish a Department of Commerce and Labor, when a section was reached for transferring the Census Bureau to that Department, and Mr. William S. Cowherd, of Missouri, proposed an amendment reducing the salary of the Director of the Census from $6,000 to $4,000.

Mr. James R. Mann, of Illinois, made the point of order that the amendment was not germane.

After debate the Chairman[4] said:

This is a bill to establish a Department of Commerce and Labor. It is not a general appropriation bill; it is new legislation. It creates new offices and fixes salaries. It transfers certain departments and certain officials to this new Department of Commerce. In section 12 it gives the Secretary of State the power to designate a certain person who shall perform certain duties, and in that connection gives

[1] Second session Fifty-seventh Congress, Record, pp. 332, 333.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] Second session Fifty-seventh Congress, Record, pp. 914, 915.

[4] George P. Lawrence, of Massachusetts, Chairman.

him the rank and salary of a chief of a bureau. It is new legislation, creates new officials, creates new salaries, and the Chair is of the opinion that an amendment changing the salary of any official who is transferred to this bureau is in order. The Chair therefore overrules the point of order.

5918. To a proposition to recoin full legal-tender silver dollars into subsidiary coin an amendment making the latter full legal tender was held to be germane.—On May 28, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H.R. 12704) to increase the subsidiary silver coinage, when Mr. Galusha A. Grow, of Pennsylvania, offered the following amendment:

After the word "coin," in line 9, add "*Provided,* That the subsidiary coins shall be half dollar, quarter dollar, and 10-cent and 5-cent pieces; each of the aforesaid pieces shall be an aliquot part of a dollar of 412½ grains.

Thereupon Mr. Francis G. Newlands, of Nevada, offered the following amendment to the amendment:

Add to the amendment offered by the gentleman from Pennsylvania the following words: "which shall be full legal tender for all debts, public and private."

Mr. Ebenezer J. Hill, of Connecticut, made the point of order that the amendment was not germane.

After debate the Chairman[2] said:

The amendment offered by the gentleman from Pennsylvania follows the word "coin," in line 9, and to that amendment the gentleman from Nevada offers an amendment providing that this subsidiary coinage shall be full legal tender. The coin that this amendment proposes to declare shall be full legal tender is to be made or recoined from full legal-tender silver dollars. In the opinion of the Chair, the amendment of the gentleman from Nevada is germane to the amendment of the gentleman from Pennsylvania, and therefore the Chair holds it in order.

5919. An amendment on the subject of renovated butter was held to be germane to a bill relating to "oleomargarine and other imitation dairy products."—On February 11, 1902,[3] the Committee of the Whole House on the state of the Union were considered the bill (H.R. 9206) to make oleomargarine and other imitation dairy products subject to the laws of the State or Territory into which they are transported and to change the tax on oleomargarine, when Mr. Henry D. Allen, of Kentucky, proposed the following amendment:

SEC. 4. That the Secretary of Agriculture is hereby authorized and required to cause a rigid sanitary inspection to be made from time to time, and at such times as he may deem necessary, of all factories and storehouses where butter is renovated; and all butter renovated at such places shall be carefully inspected in the same manner and to the same extent and purpose that meat products are now inspected. The quantity and quality of butter renovated shall be reported monthly. All renovated butter shall be designated as such by marks, brands, and labels, and the words "renovated butter" shall be printed on all packages thereof, in such manner as may be prescribed by the Secretary of Agriculture, and shall be sold only as renovated butter. Any person violating the provisions of this section shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be fined not less than $50, nor more than $500 and imprisoned not less than one month nor more than six months.

The Secretary of Agriculture shall make all needful sanitary and other rules and regulations for carrying this section into effect, and no renovated butter shall be shipped or transported from one State to another, or to foreign countries, unless inspected as provided in this section.

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[1] First session Fifty-seventh Congress, Record, pp. 6070, 6071.

[2] James A. Tawney, of Minnesota, Chairman.

[3] First session Fifty-seventh Congress, Record, pp. 1622–1624.

Mr. James A. Tawney, of Minnesota, made a point of order that the amendment was not germane.

After debate the Chairman [1] said:

The Chair is of the opinion that it is germane, although it is questionable as to whether the jurisdiction is obtained over the proposition without any taxation being connected with it. But the question being one of imitation butter, the Chair is of opinion that this section is germane. As to its constitutionality, of course the Chair can not pass upon that. The question is on agreeing to the amendment offered by the gentleman from Kentucky.

5920. To a resolution rescinding an order for final adjournment, an amendment assigning a new date was held to be germane.—On June 1, 1872,[2] the House was considering the following:

Resolved by the Senate (the House of Representatives concurring), That the resolution directing the President of the Senate and the Speaker of the House of Representatives to declare their respective Houses adjourned without day on Monday, the 3d day of June, at 12 o'clock meridan, be, and the same is hereby, rescinded.

Mr. Henry L. Dawes of Massachusetts moved to amend by striking out all after the resolving clause and inserting:

That the time of final adjournment of the second session of the Forty-second Congress be extended to Monday, June 10, at 12 o'clock meridan, at which time the President of the Senate and the Speaker of the House of Representatives shall adjourn their respective Houses without day.

Mr. Benjamin F. Butler, of Massachusetts, made the point of order that the amendment was not germane.

The Speaker [3] said:

They are both resolutions with reference to the termination of the session. The amendment of the gentleman from Massachusetts is entirely germane.

5921. To a bill referring generally to the affairs of a gas company, an amendment introducing the subject of the price of gas was held to be germane.—On January 21, 1901,[4] the House was considering a bill (H. R. 13660) "relating to the Washington Gaslight Company, and for other purposes."

Mr. William W. Grout, of Vermont, moved to recommit the bill to the Committee for the District of Columbia with instructions to report the bill back with this amendment:

Provided further, That on and after July 1, 1902, the Washington Gaslight Company shall furnish gas to the people of the District of Columbia for 90 cents per 1,000 cubic feet; on and after July 1, 1903, for 80 cents per 1,000 cubic feet, and on and after July 1, 1904, for 75 cents per 1,000 cubic feet.

Mr. Joseph W. Babcock, of Wisconsin, made the point of order that the bill did not deal with the price of gas, and that, therefore, the amendment proposed would not be germane.

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[1] John F. Lacey, of Iowa, Chairman.

[2] Second session Forty-second Congress, Globe, p. 4137.

[3] James G. Blaine, of Maine, Speaker.

[4] Second session Fifty-sixth Congress, Record, p. 1262.

The Speaker[1] said:

The Chair has not read the bill through, and the confusion of this morning made it almost impossible to hear it. Still the Chair sees that this is for the purpose of giving a franchise to this company, and here is a proviso—

"That the Commissioners of the District of Columbia may require said company to lay such mains or conduits in any graded street, highway, avenue, or alley in the District of Columbia not already provided therewith as may be necessary."

It seems to be a general bill regulating the gas business and this gas company, and the Chair is of the opinion that the point of order is not well taken, and that the instructions of the gentleman from Vermont are in order.

5922. To a bill relating to Federal elections and functions of the Federal courts therein, an amendment establishing a system of jury commissioners in such courts was held to be germane.—On July 2, 1890,[2] the Speaker announced as the regular order of business the further consideration of the bill of the House (H. R. 11045) to amend and supplement the election laws of the United States, and to provide for the more efficient enforcement of such laws.

Mr. Jonathan H. Rowell, of Illinois, moved to amend by inserting as a new section a provision for the establishment of a system of jury commissioners for the Federal courts.

Mr. W. C. P. Breckinridge, of Kentucky, having called attention to the fact that on a preceding day a provision relating to juries had been stricken from the bill, made the point of order that such provision was not germane to an election bill.

The Speaker[3] overruled the point of order.

5923. An amendment to censure a Member has been held germane to a resolution for his expulsion.—On April 12, 1864,[4] the House was considering a resolution providing for the expulsion of Mr. Alexander Long, of Ohio, when Mr. John M. Broomall, of Pennsylvania, proposed an amendment providing for the censure of Mr. Long as a substitute for the resolution of expulsion.

Mr. William S. Holman, of Indiana, made the point of order that the amendment was not germane to the original proposition.

The Speaker pro tempore[5] overruled the point of order.[6]

On appeal the decision of the Chair was sustained.[7]

5924. To a proposition to exclude a Member-elect from the House, a proposition to expel was offered as an amendment and held not to be germane.—On January 25, 1900,[8] the House was considering the report of the select

[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-first Congress, Journal, p. 807; Record, pp. 6926, 6927.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Thirty-eight Congress, Journal, pp. 518–520; Globe, p. 1593.

[5] Edward H. Rollins, of New Hampshire, Speaker pro tempore.

[6] See, however, section 5924.

[7] Another question was involved in this appeal, the Speaker pro tempore having also at the same time decided a point of order relating to the timeliness of the proposition to censure.

[8] First session Fifty-sixth Congress, Record, p. 1215, 1216; Journal, p. 196.

committee on the case of Brigham H. Roberts, Member-elect from Utah, when Mr. John F. Lacey, of Iowa, moved to amend the resolution as follows:

Insert in line 4, page 1, after the word "and," the following: "he is expelled, and;" so as to read: *"Resolved,* That under the facts and circumstances in this case Brigham H. Roberts, Representative-elect from the State of Utah, ought not to have or hold a seat in the House of Representatives, and he is hereby expelled, and that the seat to which he was elected is hereby declared vacant."

Mr. Robert W. Tayler, of Ohio, made the point of order that the proposed amendment was not germane.

After debate the Speaker[1] held:

The Chair will call attention to one or two facts preliminary to the decision of this question. We have two propositions pending before the House—one of exclusion, which is the proposition of the majority, and one in which we are served with notice that expulsion will be asked for, but involving first the swearing in of Mr. Roberts.

The resolution of the minority does not contain any element of expulsion, but notice is served by the minority that so soon as the oath is administered to Mr. Roberts his expulsion will be moved. The proposition offered by the gentleman from Iowa [Mr. Lacey] adds to the proposition recommended by the majority the idea of expulsion.

The proposition as it stands will deny Mr. Roberts a seat, will not allow him to sit for one instant in this House. That is the proposition of the majority. The amendment offered by the gentleman from Iowa [Mr. Lacey] does not deny him a seat alone, but says, with the majority, that he must not have or hold a seat, but that he must also be excluded from his seat.

The proposition of the majority, which denies Mr. Roberts a seat, can be carried through this House, under the rules, by a majority vote. With the amendment of the gentleman from Iowa [Mr. Lacey] added, that of expulsion, it will require a two-thirds vote to carry the amended resolution. Does anyone contend that changing a resolution from a condition where a mere majority can carry it through to a resolution which will require a two-thirds vote to carry it through—that such an amendment is germane to the original proposition?

The Chair does not entertain a single doubt but that this is not germane to the original resolution. [Applause.]

The gentleman from Iowa [Mr. Lacey] says, however, that this involves a question above and beyond the rules, being a question of the highest privilege.

The Chair holds with the gentleman from Iowa [Mr. Lacey] that it is a constitutional question and one of the highest privilege, but this body has pursued constitutional methods in treating it, and is now, through a committee appointed in recognition of this high right, considering the matter, and that committee, in the discharge of its great duty to this House under the Constitution, has brought in its two propositions.

The Chair therefore holds that the amendment is out of order, and recognizes the gentleman from Ohio [Mr. Tayler].

Mr. Lacey appealed, but during the vote on the motion to lay the appeal on the table Mr. Lacey withdrew the appeal, saying that the evident spirit of the House was to sustain the Chair.[2]

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[1] David B. Henderson, of Iowa, Speaker.

[2] See, however, section 5924 of this chapter and the action of the House in the Credit Mobilier case, section 1286 of Volume II.

Chapter CXXVII

GENERAL PRINCIPLES AS TO VOTING.[1]

1. **Provisions of the parliamentary law. Sections 5925, 5926.**
2. **The rule of the House. Section 5927.**
3. **Debate not in order after division begins. Sections 5928–5929.[2]**
4. **Withdrawal and change of vote. Sections 5930–5936.**
5. **As to right of a Member in custody to vote. Sections 5937–5940.**
6. **Member required but not compelled to vote. Sections 5941–5948.**
7. **Disqualifying personal interest. Sections 5949–5963.[3]**
8. **The Speaker's vote. Sections 5964–5971.[4]**
9. **Casting vote of the vice-President in the Senate. Sections 5972–5977.**
10. **General decisions. Sections 5978–5980.[5]**
11. **Announcement and effect of pain. Sections 5981–5984.**

5925. The question is put first on the affirmative and then on the negative side.

Debate may continue, the previous question not having been ordered, until the Speaker has put the negative side of the question.

Chapter XXXIX of Jefferson's Manual provides:

The question is to be put first on the affirmative and then on the negative side.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the negative be put; because it is no full question till the negative part be put. (Scob., 23; 2 Hats., 73.)

But in small matters, and which are of course such as receiving petitions, reports, withdrawing motions, reading papers, etc., the Speaker most commonly supposes the consent of the House where no objection is expressed, and does not give them the trouble of putting the question formally. (Scob., 22; 2 Hats., 79, 2, 87; 5 Grey, 129; 9 Grey, 301.)

5926. On a vote the Speaker first decides by the sound, but if he or any Member is dissatisfied, a division by rising is had.

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[1] See also—

As to voting by tellers. (Secs. 5985–6002 of this volume.)

As to voting by ballot. (Secs. 6003–6010 of this volume.)

As to voting by yeas and nays. (Secs. 6011–6105 of this volume.)

As to division of the question. (Secs. 6106–6162 of this volume.)

[2] As to what constitutes a division. (Sec. 6447 of this volume.)

[3] Principle of disqualifying personal interest as applied to Senators sitting in an impeachment trial. (Sec. 2061 of Vol. III.)

[4] See section 6061 of this volume.

[5] Effect of votes on resolutions relating to the right of a Member to his seat. (Sec. 2588 of Vol. III.)

The voice of a majority decides on a vote, but if the House be equally divided the motion fails.

When a quorum fails on a division the matter continues in the exact state it was before the division.

Questions of order arising during a division are decided peremptorily by the Speaker.

Jefferson's Manual, in Section XLI, has the following general provisions in regard to voting:

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall rise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House.[1] (Scob.)

A mistake in the report of the tellers may be rectified after the report made.[2] (2 Hats., 145, note.)

But in both Houses of Congress all these intricacies are avoided. The ayes first rise and are counted standing in their places by the President or Speaker. Then they sit, and the noes rise and are counted in like manner.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House, if irregular. He sometimes permits old experienced Members to assist him with their advice, which they do sitting in their seats, covered,[3] to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. (2 Hats., 143.)

The voice of the majority decides, for the lex majoris partis is the law of all councils, elections, etc., where not otherwise expressly provided. (Hakew., 93.) But if the House be equally divided, semper presumatur pro negante—that is, the former law is not to be changed but by a majority. (Towns., col., 134.)

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. (2 Hats., 126.)

5927. The rules prescribe the form in which the Speaker shall put the question.—Section 5 of Rule I[4] provides as to the duty of the Speaker in case of a division:

He shall * * * put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; * * *

5928. A division having commenced, debate is thereby precluded.—On January 20, 1891,[5] the Speaker announced that the question was on the approval of the Journal, and the question being taken the Speaker said that the "ayes" seemed to have it.

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[1] Section 5 of Rule I has practically the same provisions. (See sec. 5927.)

[2] This refers more particularly to the English system of voting, where formerly one side of the question left the room, the tellers counting those remaining in their seats and those going out as they returned.

[3] This is the English custom. The rules of the House of Representatives expressly forbid the Member to wear his hat.

[4] For full form and history of this rule see section 1311 of Volume II this work.

[5] Second session Fifty-first Congress, Journal, p. 157; Record, p. 1568.

Mr. Roger Q. Mills, of Texas, demanded a division.

The Speaker having announced that a division was demanded, Mr. Mills demanded the opportunity to debate,

The Speaker[1] held that, a division having commenced, debate was thereby precluded.

5929. On March 2, 1904,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a vote was taken on an amendment proposed by Mr. William S. Cowherd, of Missouri.

The question was put by the Chairman, and a vote being taken viva voce, the Chairman announced that the amendment was agreed to.

Mr. James T. McCleary, of Minnesota, demanded a division, and the House proceeded to divide, when Mr. Elmer J. Burkett, of Nebraska, asked if the amendment might be debated.

The Chairman[3] said:

> No; not while the House is dividing. * * * The Chair had announced the vote, and now we are verifying the vote by arising vote. The yeas are 31 and the nays 26, and the amendment is agreed to.

5930. Having given his vote, a Member may not withdraw it without leave of the House.—On February 7, 1894,[4] the House having under consideration a resolution relating to Hawaiian affairs, at the conclusion of the roll call Mr. Silas Adams, of Kentucky, asked leave to withdraw his vote.

Mr. James B. McCreary, of Kentucky, objected.

Mr. Thomas B. Reed, of Maine, made the point that Mr. Adams, as a matter of right, could withdraw his vote.

The Speaker[5] held that inasmuch as the rules of the House require Members to vote, a Member having cast his vote could not withdraw it without leave of the House.[6]

5931. Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote.[7]—February 28, 1829,[8] the House having under consideration an act to compensate Susan Decatur, widow of Stephen Decatur, the previous question was moved and the yeas and nays ordered and taken.

The Speaker rose and announced that there were yeas 79, nays 81.

At this stage of the proceedings, and before the Speaker had pronounced the decision of the House, Mr. Mark Alexander, of Virginia, rose and announced his wish to change his vote from the negative to the affirmative side of the question.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-eighth Congress, Record, p. 2709.

[3] George P. Lawrence, of Massachusetts. Chairman.

[4] Second session Fifty-third Congress, Journal, p. 143: Record, p. 2003.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] On February 27, 1861 (second session Thirty-sixth Congress, Globe, p. 1264), Mr. Speaker Pennington permitted a Member to withdraw his vote, although objection was made. So, also, on June 1, 1882, Mr. Speaker Keifer held that a Member might withdraw his vote at the close of the roll call, even though objection be made. (First session Forty-seventh Congress, Record, p. 4445.)

[7] See also sections 6093, 6094 of this volume for additional precedents on this point. Also see sections 6082, 6083 of this volume.

[8] Second Session Twentieth Congress. Journal. pp. 357, 358.

The Speaker[1] decided that Mr. Alexander had a right to change his vote; and Mr. Alexander's vote being changed, the question stood—yeas 80, nays 80.

An equal division of the House being thereby produced, the Speaker voted with the yeas, and pronounced the question, Shall the main question be now put? to be passed in the affirmative.

And thereupon Mr. Joel B. Sutherland, of Pennsylvania, rose and made a question of order whether the Speaker possessed the power to permit a Member of the House to change his vote after the numbers of votes on each side of the question had been announced from the Chair.

The Speaker decided that it was the right of a Member to change his vote at any stage of the proceeding before the decision of the House thereon should have been finally and conclusively pronounced from the Chair.

On appeal the decision was sustained, 122 yeas to 49 nays.

5932. On December 28, 1804,[2] Mr. Simon Larned, of Massachusetts, being recognized, said that a mistake had been committed by him in giving his vote on the final question taken this day on the bill to amend the charter of the town of Alexandria; that he had intended to vote against, but had been recorded by the clerk as in favor of it.

After debate the Speaker[3] decided that, in his opinion, agreeably to the rules of the House, after any question taken by yeas and nays, or otherwise, had been finally determined, and so stated from the Chair, no Member could be permitted to change his vote on such question unless by the unanimous consent of the Members present.

From this decision an appeal was made to the House by two Members. The Chair on this appeal was sustained.[4]

5933. On January 22, 1842,[5] immediately after the reading of the Journal, Mr. Patrick G. Goode, of Ohio, rose and stated to the House that in voting against

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[1] John W. Jones, of Virginia, Speaker.

[2] Second session Eighth Congress, Journal, pp. 167 (old edition), 71 (Gales & Seaton)

[3] Nathaniel Macon, of North Carolina, Speaker.

[4] The Annals gives the following (p. 865): Mr. Joseph B. Varnum, of Massachusetts, suggested that his colleague from Massachusetts (Mr. Larned) had made a mistake in his vote on the Alexandria bill which he wished to be permitted to rectify. Whether it would alter the decision of the House he did not know. The gentleman voted for the bill, although he was against it altogether, on the impression that he was voting on the question of recommitment instead of its final passage. If he was permitted to record his vote according to his intention it would make the result stand 53 to 52; and if the Speaker was to add his vote to the minority the bill would not pass.

This gave rise to a great deal of conversation relative to the rules of the House and its uniform practice, which appeared to have been against an alteration of the vote by yeas and nays, unless the alteration would produce no effect upon the vote by changing the majority into a minority. This idea was combated by the reason of the thing. It was deemed extremely improper to confine Members to lapsus linguae without suffering them to explain. While the argument was going on, Mr. Bailey (the Clerk) had been induced to examine his list of yeas and nays with the most careful scrutiny, an had discovered that the vote really was 55 yeas to 51 nays. The alteration requested being now found not to alter the decision, several Members hoped the gentleman might be indulged; but this having to be done by unanimous consent of the House, and Mr. Frederick Conrad, of Pennsylvania, refusing his consent, the alteration was not made.

[5] Second session Twenty-seventh Congress, Journal, p. 263; Globe, p. 160.

the laying upon the table, on the previous day, of the question of reception raised on the petition of citizens of the State of Massachusetts (presented by Mr. John Quincy Adams) for conferring certain privileges on colored persons, he voted under a misapprehension of the nature of the petition. He thereupon asked leave to change his vote.

The Speaker[1] I decided that such a request could only be granted by unanimous consent.

Unanimous consent was refused.

5934. On a vote for election of an officer a Member may change his vote at any time before the announcement of the result.—On January 18, 1850,[2] Mr. Robert M. McLane, of Maryland, rising to a parliamentary inquiry, asked whether it did not require the unanimous consent of the House to enable a Member to change his vote.

The Speaker[3] said:

> Under the practice of the House, so far as the Chair at this moment remembers it, unanimous consent would not be required; but a Member may change his vote at any time before the tellers report the result. The principle assimilates to that on which gentlemen are allowed, on taking the yeas and nays, to change their votes at any time before the Chair announces the result. This is the opinion of the Chair. Such has been the practice, and that practice has been acquiesced in by the House in all the elections, so far as they have proceeded.[4]

5935. In rare instances the House has refused to permit a Member to correct the record of his vote on a previous day.—On January 9, 1817,[5] Mr. David Clendennin, of Ohio, stated that on the previous day he had voted in the negative, when he intended to have voted in the affirmative, upon the question taken by yeas and nays on the bill relating to certain war claims, and moved that he have leave to correct the said mistake by placing his vote in the affirmative on that question.

The question being taken, it was determined in the negative.

5936. On July 7, 1822,[6] Mr. Jonathan McCarthy, of Indiana, stated in his place that, when the bill to modify and continue the act entitled "An act to incorporate the subscribers to the Bank of the United States" was under consideration in this House, he voted upon the amendment of Mr. Thomas, of Maryland, in the affirmative, but his name was, by mistake, recorded in the negative,[7] and he therefore asked the permission of the House to have his name changed from the negative to the affirmative side.

The House (although satisfied that he had voted in the affirmative as stated) refused to make the correction asked, or to have the ayes and noes as recorded changed. But it was agreed that the motion and the fact should be spread on the Journal.

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[1] John White, of Kentucky, Speaker.

[2] First session Thirty-first Congress, Globe, p. 186.

[3] Howell Cobb, of Georgia, Speaker.

[4] The House was at this time engaged in voting for Clerk and other officers.

[5] Second session Fourteenth Congress, Journal, p. 161; Annals, p. 442.

[6] First session Twenty-first Congress, Journal, p. 1109.

[7] This vote occurred July 2. (See Journal, pp. 1059, 1060.)

5937. Members present in custody of the Sergeant-at-Arms for absence were permitted to vote, although in earlier instances the right had been denied.

The Speaker declined to assume the authority to deprive Members present in custody of the Sergeant-at-Arms of the right to vote.

The House having, on April 28, 1892,[1] adopted a continuing order of arrest, on April 29 the Sergeant-at-Arms made report that certain Members would present themselves at the bar to answer to the House.

During the proceedings Mr. William W. Bowers, of California, presented his excuse for failure to attend part of the session of the preceding day, and Mr. Richard P. Bland, of Missouri, moved that he be excused.

The question being put, there were on the roll call 123 yeas and 53 nays.

Before the result was announced, Mr. Julius C. Burrows, of Michigan, submitted the question of order, whether Members in custody of the Sergeant-at-Arms were entitled to vote on the pending question, and made the point that several of such Members having voted, their names should be stricken from the roll; and cited in support of the point a decision in the Thirtieth Congress.

The Speaker[2] overruled the point of order, and held as follows:

The case referred to (in the Thirtieth Congress),[3] was a case in which 50 Members, perhaps, were under arrest, and a motion was made to discharge them all. The question was raised whether the Members under arrest were competent to vote on that question, and, as the Chair understands, the then Speaker held that they were not. What reason may have been given the present occupant of the chair does not know; perhaps it may have been because they were under arrest. But the present question is as to excusing the gentleman from California, and the question of the right to vote is raised not against that gentleman, but against other gentlemen who are under arrest or on parole by order of the House. The point is made that those gentlemen can not vote. The Chair does not understand how their right to vote can be taken away, and certainly under the present circumstances, the roll having been called and the gentlemen having answered, the Chair would not assume authority to direct their names to be stricken from the roll. If the House should desire to do so, it is another matter. The Chair could not assume any such authority under the circumstances.

5938. On January 8, 1894,[4] the House was considering the special order providing for the consideration of a bill (H. R. 4864) "to reduce taxation, to provide revenue for the Government, and for other purposes." A roll call having been completed, Mr. Thomas B. Reed, of Maine, made the point that certain Members who had been taken into custody by the Sergeant-at-Arms had voted on the question just taken and that their names should be stricken from the list of those voting.

The Speaker[2] stated that no report from the Sergeant-at-Arms had been made showing that Members were in custody and that the House had no power to thus deprive Members of their right to vote.

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[1] First session Fifty-second Congress, Journal, pp. 167, 168; Record, pp. 3762, 3768, 3770.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] This case arose July 13, 1848 (first session Thirtieth Congress, Globe, p. 928; Journal, p. 1035), and the circumstances were as stated in the decision of Mr. Speaker Crisp. Mr. Abraham W. Venable, of North Carolina, rising to a parliamentary inquiry, asked if the Members under arrest might vote. The Speaker (Robert C. Winthrop, of Massachusetts,) replied: "The Chair is of the opinion that they are not entitled to vote." The Speaker also declined to recognize one of them to make a motion. The Globe records these incidents, but they are not among the decisions of questions of order in the Journal,

[4] Second session Fifty-third Cougress, Journal, pp. 71, 72; Record, pp. 530, 531.

5939. On February 10, 1865,[1] about fifty Members of the House, presented under an order of arrest adopted the evening before, were brought to the bar of the House by the Sergeant-at-Arms. The order of arrest was as follows:

Resolved, That the Sergeant-at-Arms be directed to bring the Members now, absent without leave before the bar of the House at 1 o'clock to-morrow, Friday, February 10, 1865, or as soon thereafter as possible; and that they then be required to show cause why they shall not be declared in contempt of the House, and abide the order of the House.

Questions arising as to procedure, the Speaker[2] said:

The Chair will state that his predecessors have decided that a gentleman under arrest has no right to make a motion or a speech except in reference to the question. * * * The names of over fifty gentlemen are included in this list; and neither of those gentlemen is entitled to vote until he is excused by the House.

5940. On February 20, 1869,[3] several Members were arraigned at the bar of the House, having been ordered to be arrested during proceedings on the previous day. And the question was put on laying on the table the whole question as to the punishment of the gentlemen at the bar.

The Speaker[2] said:

The gentlemen at the bar of the House, of course, can not vote on this question.

5941. Every Member shall be present and vote unless he have a direct personal or pecuniary interest in the question.

Form and history of Rule VIII, section 1, relating to attendance and voting of Members.

The Rules of the House provide, in section I of Rule VIII, as follows:

Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

This rule in its present form dates from the Fifty-first Congress,[4] when the old form that had existed since the revision of the Forty-sixth Congress was modified by striking out, after the word "unless," in the last clause, the following words: "on motion made before division on the commencement of the roll call and decided without debate, he shall be excused, or." The effect of this was to eliminate the motion to excuse a Member from voting, which had become a fruitful source of obstruction. The words were restored in the Fifty-second Congress, but dropped again in the Fifty-third.

The form adopted in the revision of the Forty-sixth Congress[5] was derived from the old rule No. 29, which dated from April 7, 1789,[6] and provided that "no Member shall vote on any question in the event of which he is immediately and particularly interested; or in any case where he was not present when the question was put." To this was added the old rule No. 31, dating also from April 7, 1789, and

[1] Second session Thirty-eighth Congress, Globe, p. 735.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Third session Fortieth Congress, Globe, p. 1422.

[4] First session Fifty-first Congress, Record, p. 1105. 1,

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] First session First Congress, Journal, p. 9.

providing that "every Member who shall be in the House when a question is put shall vote on the one side or the other, unless the House for special reasons shall excuse him;"[1] the rule, dating from April 13, 1789,[2] "that no Member absent himself from the service of the House,[3] unless he have leave or be sick and unable to attend;" and a rule relating to motions to excuse from voting, which dated from September 14, 1837.[4]

In 1847[5] the House found it necessary to rescind the rule which permitted a Member to make a brief verbal statement of his reasons for asking to be excused from voting.

5942. The Speaker has no power to compel a Member to vote.—On the legislative day of April 4, 1888,[6] but on the calendar day of April 9, a vote had been taken by yeas and nays, when Mr. Charles A. Boutelle, of Maine, made the point of order that Mr. C. R. Breckinridge, of Arkansas, had failed to vote, in violation of the rule.

The Speaker pro tempore[7] overruled the point of order on the ground that the Speaker had no power to compel a Member to vote.

5943. A Member declined to vote in 1832, and the House found itself powerless to compel a vote in this as in later instances.—On July 11, 1832[8] the House was considering a resolution relating to words spoken in debate by Mr. William Stanbery, of Ohio, and the yeas and nays were being caused on the question of agreeing to the resolution. When the name of Mr. John Quincy Adams, of Massachusetts, was called, Mr. Adams rose and asked to be excused from voting,[9] assigning his reasons in a paper which the Clerk read as follows:

> I ask to be excused[10] from voting on the resolution, believing it to be unconstitutional, inasmuch as it assumes inferences of fact from words spoken by the Member, without giving the words themselves; and the facts not being warranted, in my judgment, by the words which he did use.

The question being taken, "Shall Mr. Adams be excused?" it was decided in the negative.

Mr. Adams's name was again called, when he responded: "I decline to answer."

A motion to reconsider the vote whereby the House had declined to excuse Mr. Adams being decided in the negative, the Speaker read the rule of the House requiring every Member to vote, and directed the Clerk to call Mr. Adams's name again.

The Clerk again called the name, but no response was made by Mr. Adams, who was in his seat in the House.

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[1] Members are never compelled to vote.

[2] First session First Congress, Journal, p. 13.

[3] The Continental Congress had the rule: "No member shall leave Congress without permission of Congress or his constituents.—(Journal of Congress, May 26, 1778.)

[4] First session Twenty-fifth Congress, Globe, p. 31.

[5] Second session Twenty-ninth Congress, Journal, p. 538.

[6] First session Fiftieth Congress, Journal, pp. 1543, 1545; Record, p. 2818.

[7] William H. Hatch, of Missouri, Speaker pro tempore.

[8] First session Twenty-second Congress, Journal, pp. 1139–1141; Debates, pp. 3905, 3907.

[9] Under the present practice of the House a roll call may not be interrupted in this way.

[10] The motion that a Member be excused from voting now has no privilege.

Thereupon Mr. William Drayton, of South Carolina, moved the following resolutions:

Resolved, That John Quincy Adams, a Member from Massachusetts, in refusing to vote when his name was called by the Clerk, after the House had rejected his application to be excused from voting, for reasons assigned by him, has committed a breach of one of the rules of the House.

Resolved, That a committee be appointed for the purpose of inquiring and reporting to this House the course which it ought to adopt in a case so novel and so important.

Mr. Drayton, in presenting his resolutions, said that if this breach of rule should be passed over in silence it might hereafter be in the power of a minority to defeat the legislative functions of the body by combining together in a similar refusal.

In order to complete the roll call on the pending resolution—that relating to Mr. Stanbery—the consideration of Mr. Drayton's resolution was postponed until the next day.

On July 12,[1] after considerable discussion, during which some doubt was expressed as to the constitutional right of the House to make a rule requiring Members to vote, the resolutions were laid on the table, yeas 89, nays 63.

5944. On the legislative day of March 3, 1835,[2] but in the early morning hours of the calendar day of March 4, there was a vote by yeas and nays, and the name of Mr. Samuel Beardsley, of New York, was called. Thereupon he declined to answer, on the ground that the term for which the Members of the Twenty-third Congress had been elected had expired, and that, according to the Constitution of the United States, this House had ceased to exist at 12 o'clock midnight.

After some remarks and suggestions from various Members and the Chair, it was informally agreed to pass the name of Mr. Beardsley.

5945. On December 14, 1838,[3] Messrs. John Quincy Adams, of Massachusetts, and Henry A. Wise, of Virginia, refused to vote on certain resolutions declaring the powers of Congress in regard to slavery and providing a way of disposing of resolutions relating to petitions for the abolition of slavery.

Each, as his name was called, arose and announced that he refused to vote. The Speaker[4] called to order for such interruptions of the roll call.[5]

5946. A Member having declined to vote in 1836, the House finally abandoned its attempt to compel him.

A Member having declined to vote on a call of the yeas and nays, the Speaker held that the resulting question of order might be acted on at the conclusion of the call of the roll.

Instance of an early protest against prolonging a session into the hours of Sunday.

On March 26, 1836,[6] the House having under consideration an appeal from a ruling of the Speaker on the question of allowing the session to be protracted after

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[1] Journal, pp. 1143, 1144; Debates, pp. 3908–3912.

[2] Second session Twenty-third Congress, Journal, p. 527; Debates, p. 1660.

[3] Third session Twenty-fifth Congress, Journal, p. 83; Globe, p. 33.

[4] James K. Polk, of Tennessee, Speaker.

[5] For an instance in the Senate where a Senator refused to vote see Record, p. 2474, October 13, 1893, first session Fifty-third Congress.

[6] First session Twenty-fourth Congress, Journal, p. 580; Globe, p. 265.

midnight Saturday, a motion was made by Mr. George W. Lay, of New York, that the House do adjourn. And in deciding the question by yeas and nays, Mr. Henry A. Wise, of Virginia, rose and notified the House that Mr. John Quincy Adams, of Massachusetts, was in his seat when his name was called by the Clerk and that he did not answer to the call, and thereupon demanded a compliance with that rule [1] of the House which declares that "every Member who shall be in the House when a question is put shall give his vote, unless the House for special reasons shall excuse him."

The Speaker [2] stated that the proper time to make the question was when the name of the Member had been called the second time; that, several Members having been called and answered after the name of Mr. Adams had been passed, and the roll not being called through, it would be the proper time to act on the question when the call of the roll had been completed.

The name of Henry A. Wise, of Virginia, was called, when he rose and stated that he declined to answer until Mr. John Quincy Adams and other Members whose names stood before his on the list of yeas and nays, and who were in their seats when their names, respectively, were called, and who did not vote, should have voted.

A motion was then made by Mr. Samuel Beardsley, of New York, that Mr. Adams be excused from voting.

Mr. Adams declined to be excused, and stated to the House his reasons therefor, saying that he had no conscientious scruples against voting or transacting business on Sunday, but he held that the House had no right to sit there at that hour without first passing an express order setting forth that the public business demanded it.

Mr. Beardsley thereupon withdrew his motion, and Mr. Charles F. Mercer, of Virginia, moved that Mr. Adams be not required to vote.

After debate this motion was withdrawn, and Mr. Wise moved that Mr. Adams be compelled to vote. This also was withdrawn after debate, and, after some remarks and suggestions from various Members and from the Chair, it was informally agreed to pass the name of Mr. Adams and other Members who had been in their seats and had not voted.[3]

Of the debate on Mr. Wise's motion to compel Mr. Adams to vote none is given in the record of debates, but it is stated that it was "of an angry and painfully personal character."

5947. A Member having declined to vote, and a question arising, the Speaker held that the pending vote should be completed and announced, leaving the incidental question until after the announcement.—On May 25, 1836 [4] the House was considering a series of resolutions reported from the select committee to whom had been referred various matters relating to the abolition of

[1] See section 5941 of this chapter.

[2] James K. Polk, of Tennessee, Speaker.

[3] This question has risen many times. On February 24, 1875, Mr. Speaker Blaine said that he knew of no means whereby a Member could be forced to vote. (Second session Forty-third Congress, Record, p. 1733.)

[4] First session Twenty-fourth Congress, Journal, pp. 877–879; Debates, pp. 4032, 4050.

slavery in the District of Columbia. Pending the calling of the yeas and nays on the first of these resolutions,. Mr. Thomas Glascock, of Georgia, Mr. Francis W. Pickens, of South Carolina, and Mr. John Robertson, of Virginia, asked to be excused from voting, and Messrs. Waddy Thompson, jr., of South Carolina, and Henry A. Wise, of Virginia, refused to vote. Also, after the roll had been called through, Mr. John Chambers, of Kentucky, rose and stated that he also declined to vote.

The question was at once stated on excusing Mr. Glascock, when Mr. John Quincy Adams, of Massachusetts, required that Mr. Glascock should state his reasons for not voting, and that these reasons should be entered on the Journal. Debate arose, and the matter went over until the next day.

Then, on May 26, the Speaker[1] stated the condition of the subject before the House. The select committee had made a report concluding with three resolutions. The previous question had been demanded and was ordered to be put by a vote of the House. The main question was on concurring with the committee in their resolutions. Before the question. was put, a division was called, and the vote taken by yeas and nays on agreeing to the first resolution. Pending the call of the yeas and nays on this vote, several members declined voting, and asked to be excused; other Members declined to vote, but did not ask to be excused. After the list of Members was called through, and before the result of the vote was announced, some other points were raised upon the question of excusing a Member; and at this stage of the proceedings on yesterday, the House passed to the special order of the day.

The Speaker stated that in 1832 a case had occurred where a Member declined voting, and asked to be excused, and the decision of the question before the House was announced without his vote, though the House had refused to excuse him, leaving the incidental question connected with his refusal to vote for the after consideration of the House. Were a different course to be pursued, it would lead to much embarrassment, as upon the question to excuse one Member from voting, taken by yeas and nays, another might decline voting on that question and ask to be excused; and this course might be pursued still further, so as to prevent any decision upon the original question before the House. And as the result in this case could not be affected by the votes of those who declined voting, whether given to the one side or the other, the Chair was of the opinion that the vote of yesterday should not be suspended, but the decision upon the resolution of the committee should be announced, leaving the incidental questions which had arisen to be subsequently settled, whenever it should suit the pleasure of the House to take them up for consideration.[2]

Mr. Elisha Whittlesey, of Ohio, having appealed, the decision of the Chair was sustained, yeas 137, nays 9.

The main question having been disposed of, the cases of the Members not voting came up, but were very soon displaced by other business.

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[1] James K. Polk, of Tennessee, Speaker.

[2] On May 30 this decision was the subject of debate, and the Speaker justified it in a lengthy review. (See Debates, pp. 4090–4094.)

5948. On March 10, 1840,[1] Mr. John Quincy Adams, of Massachusetts, did not vote on a question relating to the New Jersey contested election cases. There upon, at the end of the roll call, Mr. David Russell, of New York, moved that Mr. Adams be required to vote before the announcement of the result by the Chair. Mr. Russell urged that as the rule required Members to vote it should be enforced.

A point of order was made that the motion was not in order at that time. Mr. Speaker Hunter having ruled that the motion was in order, an appeal was taken, and the Chair was overruled, yeas 86, nays 103. So the attempt to require Mr. Adams to vote failed.

5949. The rule of parliamentary law as to the conduct of a Member when his private interests are concerned in a question.—Section XVII of Jefferson's Manual provides:

> Where the private interests of a Member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to.[2] (2 Hats., 119, 121; 6 Grey, 368.)

5950. The Speaker has usually held that the Member himself should determine whether or not his personal interest in a pending matter should cause him to withhold his vote.—On March 2, 1877,[3] the yeas and nays were being taken on a motion to suspend the rules in order to take up the Senate bill (No. 14) to extend the time for the construction and completion of the Northern Pacific Railroad.

During the call of the roll Mr. William P. Frye, of Maine, said that he did not feel at liberty to vote on the bill until the Chair had ruled upon his right to do so, since he was a stockholder in the road.

The Speaker[4] said:

> Rule 29 reads: "No Member shall vote on any question in the event of which he is immediately or particularly interested."
>
> Having read this rule, it is for the gentleman himself to determine whether he shall vote, not for the Chair.

Mr. Frye declined to vote.

On December 17, 1895[5] the House was considering the report of the Committee on Rules, and had reached the portion relating to the Committee on Elections, the pending question being an amendment offered by Mr. William L. Terry, of Arkansas, relating to the mode of considering election cases in the House.

As the vote was about to be taken, Mr. Jo Abbott, of Texas, rising to a parliamentary inquiry, stated that his seat was contested, and that he had an indirect interest in both the amendment and the rule. Therefore he asked for the advice of the Speaker.

The Speaker[6] said:

> The Chair can not undertake to decide that question. The gentleman must decide it for himself.

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[1] First session Twenty-sixth Congress, Journal, p. 575; Globe, p. 256.

[2] For rule of the House, see section 5941 of this chapter.

[3] Second session Forty-fourth Congress, Record, p. 2132.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] First session Fifty-fourth Congress, Record, p. 216.

[6] Thomas B. Reed, of Maine, Speaker.

Thereupon Mr. Abbott asked to be excused from voting, and the House excused him.[1]

5951. On March 1, 1901,[2] the House had voted by yeas and nays on the motion to concur in the Senate amendments to the army appropriation bill, when Mr. John J. Lentz, of Ohio, questioned the vote of Mr. John A. T. Hull, of Iowa, alleging that he had a personal interest in the pending question, and should not under the rule be allowed to vote.

The Speaker[3] said:

But the gentleman will also find in the Digest that it is the uniform practice that each gentleman must be the judge of that for himself. The Chair overrules the point of order.

5952. Where the subject-matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting.

The power of the House to deprive one of its Members of the right to vote on any question is doubtful.

On April 11, 1874,[4] the House was considering the bill of the House (No. 1572) to amend the several acts providing a national currency and to establish free banking, and for other purposes.

During the proceedings Mr. Robert M. Speer, of Pennsylvania, made the point of order that certain Members holding stock in national banks were not entitled to vote, being personally interested in the pending question. Mr. Speer mentioned three Members—Messrs. Poland, of Vermont, and Hamilton and Phelps, of New Jersey—who were officers of national banks, and therefore, as he held, not entitled to vote on the pending question, which included the following proposition:

That in lieu of the tax of 1 per cent per annum now imposed by law on the outstanding circulation of national banks, a tax of 3 per cent per annum, payable semiannually in gold, shall be collected upon the circulation which has been issued to each national bank which has not been returned for cancellation.

The Speaker,[5] in ruling, said:

The Chair will say that the question in fact lies somewhat back of the rules of the House, and while the Chair is going to give his opinion upon the rule and construe it, he begs to make a remark that goes somewhat deeper than the rule. When a very distinguished predecessor in this chair, Mr. Nathaniel Macon, of North Carolina, occupied it, as is familiar to the House, a question arose upon the amendment to the Constitution changing the mode of counting the votes for the election of President and Vice-President. The rule at that time was peremptory that the Speaker should not vote except in the case of a tie. It has since been changed. The vote, if the Chair remembers correctly, as handed up to Mr. Macon was 83 in favor of the amendment and 42 opposed to it. The amendment did not have the necessary two-thirds and the rule absolutely forbade the Speaker to vote, and yet he did vote, and the amendment became engrafted in the Constitution of the United States upon that vote, and he

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[1] On July 7, 1797 (First session Fifth Congress, Annals, p. 459), Mr. Thomas Blount, a Member of the House, asked to be excused from voting on the question of the impeachment of a Senator who was his brother. The House excused him. On May 5, 1828 (First session, Twentieth Congress, Journal, p. 687; Debates, p. 2576), Mr. John Floyd, of Georgia, asked to be excused from voting on a bill relating to deported slaves on the ground that he was "immediately and particularly interested." The House excused him.

[2] Second session Fifty-sixth Congress, Record, pp. 3393, 3384.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Forty-third Congress, Journal, pp. 771, 772; Record, pp. 3019, 3020.

[5] James G. Blaine, of Maine, Speaker.

voted upon the distinct declaration that the House had no right to adopt any rule abridging the right of a Member to vote; that he voted upon his responsibility to his conscience and to his constituents; that although that rule was positive and peremptory it did not have any effect upon his right. He voted, and, if the Chair remembers correctly, it was attempted to contest afterwards by some judicial process whether the amendment was legally adopted. But the movement proved abortive, and the amendment is now a part of the Constitution. Now, the question comes back whether or not the House has a right to say to any Member that he shall not vote upon any question, and especially if the House has a right to say that if 147 Members come here, each owning one share of national-bank stock (which there is no law to prohibit them from holding), they shall by reason of that very fact be incapacitated from legislating on this whole question.

If there is a majority of one in the House that holds each a single share of stock, and it incapacitates the Members from voting, then of course the House can not approach that legislation; it stops right there. * * * Now, it has always been held that where legislation affected a class as distinct from individuals a Member might vote. Of course everyone will see the impropriety of a sitting Member in the case of a contest voting on his own case. That is so palpably an individual personal interest that there can be no question about it. It comes right down to that single man. There is no class in the matter at all. But where a man does not stand in any way distinct from a class, the uniform ruling of the American House of Representatives and of the British Parliament, from which we derive our rulings, have been one way. In the year 1871-the Chair is indebted for the suggestion to the gentleman from Massachusetts [Mr. G. F. Hoar], but he remembers the case himself—when a bill was pending in the British House of Commons to abolish the right to sell commissions in the army, which officers had always heretofore enjoyed, and to give a specific sum of money to each army officer in lieu thereof, there were many officers of the army members of the British House of Commons, as there always are, and the point was made that those members could not vote on that bill because they had immediate and direct pecuniary interest in it. The House of Commons did not sustain that point, because the officers referred to only had that interest which was in common with the entire class of army officers outside of the House—many thousands in number.

Since I have had the honor of being a Member of this House, on the floor and in the chair, many bills giving bounty to soldiers have been voted on here. We have the honor of the presence on this floor of many gentlemen distinguished in the military service who had the benefit of those bounties directly and indirectly. It never could be made a point that they were incapacitated from voting on those bills. They did not enjoy the benefit arising from the legislation distinct and separate from thousands of men in the country who had held similar positions. It was not an interest distinct from the public interest in any way. * * * And the same with pensions. * * * And further, as the gentleman from Massachusetts, the chairman of the Committee on Ways and Means [Mr. Henry L. Dawes], has well said, if it should be decided to-day that a Member who holds a share of national-bank stock shall not vote on a question relating to national banks, then the question might come up whether a Member interested in the manufacture of cotton shall have the right to vote upon the tariff on cotton goods; or whether a Member representing a cotton State shall vote upon the question whether cotton shall be taxed, for that interest is largely represented here by gentlemen engaged in the planting of cotton. And so you can go through the whole round of business and find upon this floor gentlemen who, in common with many citizens outside of this House, have an interest in questions before the House. But they do not have that interest separate and distinct from a class, and, within the meaning of the rule, distinct from the public interest. The Chair, therefore, has no hesitation in saying that he does not sustain the point of order presented by the gentleman from Pennsylvania [Mr. Speer].

Mr. William S. Holman, of Indiana, having appealed from this decision, the appeal was laid on the table, and so the decision of the Chair was sustained.

5953. It was held in 1840 that the sitting Members from New Jersey might vote on incidental questions arising during the consideration of their titles to their seats.—On June 16, 1840,[1] the report of the Committee on Elections relating to the New Jersey contests was presented as a question of privilege, and the Speaker having decided it not in order, an appeal was taken from his

[1] First session Twenty-sixth Congress, Journal, pp. 1283, 1300; Globe, p. 531.

decision. Before the result of the vote on the appeal was announced, Mr. Edward Stanly, of North Carolina, raised this question of order:

Have the sitting Members from New Jersey, viz, whose rights to seats in this House are in controversy, the right to vote on the question just taken?

The Speaker[1] decided that they had the right to vote on that question, as it was a question affecting the time only at which the subject should be considered, and did not touch the merits of the case.[2]

From this decision Mr. Stanly took an appeal to the House, and the decision of the Chair was sustained, 124 yeas to 39 nays.

5954. Members who were stockholders in the Bank of the United States were excused from voting on a question relating to that institution.—On May 10, 1830,[3] the question being on a motion to lay on the table resolutions relating to the renewal of the charter of the Bank of the United States, Messrs. William Drayton, of South Carolina, and Campbell P. White, of New York, were severally excused from voting on the question, because they were interested, as stockholders, in the Bank of the United States.

5955. A bill affecting a particular corporation being before the House, the Speaker held that a Member directly interested in that corporation as a shareholder had no right to vote.

Instance wherein the Committee of the Whole reported a question of order to the House for decision.

On February 28, 1873,[4] the Senate amendments to the legislative appropriation bill were under consideration in Committee of the Whole House on the state of the Union, and a vote by tellers was taken on an amendment relating to the Central Pacific Railroad.

Before the announcement of this vote, Mr. William S. Holman, of Indiana, made the point of order that Mr. Samuel Hooper, of Massachusetts, who had voted, was personally interested in the railroad, and therefore not entitled to vote under the rule.

The Chairman[5] said:

That is a question of fact, which the Chair is not called upon to decide. The Chair rules that no Member interested directly in the effect of this vote is entitled to vote—neither the gentleman from Massachusetts nor any other Member of the House. If any gentleman violates this rule in voting, he is subject to such discipline in this House as the House itself shall determine.

Further objection being made, Mr. James A. Garfield, of Ohio, moved that the Committee rise and report the question to the House for its decision. This motion being agreed to, the Speaker[6] held:

The Chairman of the Committee of the Whole reports that the Committee have had under consideration the Senate amendments to the legislative, executive, and judicial appropriation bill; that the ninety-third amendment of the Senate being reached (relating to the payment of interest by the Union Pacific and Central Pacific Railroad companies), the gentleman from Indiana [Mr. Holman] raised the

[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] For rules of the House relating to personal interest, see section 5941 of this volume.

[3] First session Twenty-first Congress, Journal, p. 621; Debates, p. 922.

[4] Third session Forty-second Congress, Globe, p. 1916.

[5] Henry L. Dawes, of Massachusetts, Chairman.

[6] James G. Blaine, of Maine, Speaker.

point of order upon the gentleman from Massachusetts [Mr. Hooper] that the latter gentleman, being directly interested, had no right to vote. Upon that question this Chair will state that as a matter of parliamentary law it is laid down in the rules that where the interest is direct a Member has no right to vote. In this case if the gentleman from Massachusetts [Mr. Hooper] be a stockholder in that road the Chair would rule he had no right to vote. It differs from the case of national banks, which has been brought up in several instances, in the fact that this is a single corporation, and is not of general interest held throughout the country by all classes of people in all communities. It was long ago ruled by Speaker Winthrop, in a decision in the Massachusetts legislature, which has ever since been held to be a guide on that subject, on the point being made against a gentleman who had some corporate interest in some corporations which were general throughout the Commonwealth, and it was shown to be an interest in no sense individual, and could not be narrowed down to a question of personal interest as separate and distinct from the general interest. In reference to the question of national banks, which circulate the currency of the whole nation, whose stockholders are numbered by thousands, residing in every community, the Chair would hold no point could be made against a Member, because there is no interest there separate and distinct from the general public interest. But if a stockholder in a single railroad corporation, as in this case, has his vote challenged it would be the duty of the Chair to hold, if he is actually a stockholder of the road, that he has no right to vote. * * * The Chair so decides without any knowledge in this particular case. It is for the gentleman from Massachusetts [Mr. Hooper] whose delicacy the Chair knows and cheerfully recognizes to relieve the House from any embarrassment on that question.

Mr. Hooper withdrew his vote.

5956. A point of order being made that a Member was disqualified for voting by a personal interest, the Speaker held that the Chair might not deprive a Member of his constitutional right to represent his constituency.—On January 19, 1881,[1] the Speaker announced as the regular order of business the bill of the House (H. R. 4592) to facilitate the refunding of the national debt. The House having proceeded to its consideration, Mr. Edward H. Gillette, of Iowa, as a question of order under Rule VIII, clause 1, made the point of order that Mr. John S. Newberry, of Michigan, was not entitled to vote on the pending bill or any amendment thereto, basing said point on the statement of Mr. Newberry that he was a stockholder and director in a national bank, and that as a result Mr. Newberry had a "direct personal or pecuniary interest" in said bill.

After debate the Speaker[2] said:

The Chair must be governed by the rules of the House and by the interpretations which have been placed on those rules in the past by the House, * * * This is not a new question. It was brought to the attention of the country in a remarkable manner in the Seventh Congress when Mr. Macon, then Speaker of the House, claimed his right as a representative of a constituency to vote upon a pending question, notwithstanding there was a rule of the House to the contrary. * * * The Chair is not aware that the House of Representatives has ever deprived a Representative of the right to represent his constituency. A decision of the Chair to that extent would be an act, the Chair thinks, altogether beyond the range of his authority. The Chair doubts whether the House itself should exercise or has the power to deprive a Representative of the people of his right to represent his constituency. The history of the country does not show an instance in which a Representative has been so deprived of that right.

The Chair then cited previous decisions, concluding as follows:

In view of these decisions and because of the reasons given in this debate, the Chair overrules the point of order.

Mr. Gillette having appealed, the appeal was laid on the table, yeas 221, nays 32.

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[1] Third session Forty-sixth Congress, Journal, p. 204; Record, pp. 764–769.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

5957. In the proceedings relating to the New Jersey Members in 1839, each contestant did not generally vote on his own case, but voted on the identical cases of his associates.—On December 6, 1839,[1] the House had not yet organized, and Mr. John Quincy Adams, of Massachusetts, was presiding as Chairman until the House could settle questions arising from the fact that there were two sets of claimants for five of the New Jersey seats.

The pending question was on agreeing to a resolution that the Clerk should proceed with the call of the roll by States in the usual way, calling the names of such Members from New Jersey as held commissions from the governor of that State.

Mr. R. Barnwell Rhett, of South Carolina, moved that the resolution lie on the table, and in putting the question on this motion an inquiry arose as to whether or not the New Jersey Members referred to in the resolution should be allowed to vote.

The Chairman held that they might vote.

Mr. Rhett then called the attention of the Chair to the fact that the meeting had adopted temporarily the rules of the last House, and that among those rules was the following:

> No Member shall vote on any question in the event of which he is immediately or particularly interested.

The Chairman considered that this rule did not apply to the present case, because it was not the Members from New Jersey but their constituents who were interested.

On the succeeding day, recurring to the subject, he said that there was a precedent under the old form of government which might serve to throw some light on this subject. If gentlemen would consult the journals of the old Congress, fourth volume, page 406, they would find that a gentleman claiming a seat from the State of Rhode Island, by the name of Howard, rose to speak upon a motion, when he was called to order by Mr. Mercer, and a question was made whether he had a right to speak or participate in the proceedings of Congress, because the State of Rhode Island only elected Members for one year, and that year had expired. This question was put to the House in ten or fifteen different forms, as to whether the Members from Rhode Island should be permitted to vote, and on every one of these questions the Members from Rhode Island did vote until the question was finally given up.

In opposition to this, Mr. James J. McKay, of North Carolina, contended that the English precedents—and he read from Hatsell—were the other way. It was the uniform practice in the British Parliament, when seats were contested, that both parties should withdraw until their case was decided by those who were not personally interested in the matter. As to the case in the Continental Congress, the Rhode Island Members did not vote in their own case in the first instance, although afterwards they did.

On December 10 the question was taken on Mr. Rhett's motion, and none of the New Jersey Members whose titles to seats were in dispute voted.

There was, however, a disputed vote cast by a Pennsylvania Member whose seat was contested, and a question being raised, the Chairman decided that this vote

[1] First session Twenty-sixth Congress, Journal, pp. 7, 13; Globe, pp. 21, 29, 36, 40.

could not be questioned, the effect of this decision being that the motion of Mr. Rhett would be decided in the negative by a tie vote.

An appeal being taken from the decision of the Chair, on that appeal four doubtful New Jersey votes were cast on one side and three on the other.

Thereupon the right of each of the Members casting these doubtful votes was submitted to the House, the question being first taken whether the vote of Mr. John B. Aycrigg, of New Jersey, should be counted.

Mr. Aycrigg announced that he should not vote on his own case; but Messrs. Halstead, Maxwell, Stratton, and Yorke, whose cases were precisely the same as his, voted that his vote be counted, while three of the contestants on the other side voted in the negative.

It was decided that Mr. Aycrigg's vote should not be counted, and then the question was taken on the vote of Mr. Maxwell. On this question Mr. Maxwell did not vote. Mr. Aycrigg also did not. But Messrs. Halstead, Stratton, and Yorke voted in favor of counting the vote of Mr. Maxwell.

The question on counting the votes of Messrs. Halstead, Stratton, and Yorke were taken together, and on this vote none of these voted. Messrs. Aycrigg and Maxwell also did not vote.

5958. The same question affecting the right of four Members to their seats, each voted on the cases of his associates, but not on his own.

An instance wherein the Speaker decided that a Member should not vote, because of disqualifying personal interest.

On February 14, 1844,[1] the House was considering the following resolution:

Resolved, That the following Members from New Hampshire, to wit, Edmund Burke, John R. Reding, Moses Norris, jr., and John P. Hale, have been duly elected, and are entitled to seats in this House as Members from the State aforesaid.

Mr. Robert C. Schenck, of Ohio, raised the question of order that under the rule providing, "No Member shall vote on any question in the event of which he is immediately and particularly interested," the Members from the State of New Hampshire were not entitled to vote on this resolution.

Before the Speaker pronounced his decision on this question, it was arranged that the question should be divided so as to take the vote separately on the right of each Member from the State of New Hampshire to a seat.

The Speaker[2] then decided that the interest of the Member upon whose right to a seat the vote was about to be taken was such as to disqualify him from voting on this question.

This decision was acquiesced in by the House, and each Member refrained from voting when the question was put on his own case; but each voted on the case of his colleagues. Thus, Mr. Hale did not vote on his own case, but he voted on the cases of Messrs. Burke, Reding, and Norris.

5959. A Senator having voted on a question affecting directly his title to his seat, the Senate ordered that the vote be not received in determining the question.—On March 23, 1866,[3] the Senate voted on a motion

[1] First session Twenty-eighth Congress, Journal, pp. 379–383; Globe, pp. 285, 286.

[2] John W. Jones, of Virginia, Speaker.

[3] First session Thirty-ninth Congress, Globe, pp. 1601, 1635–1648.

that John P. Stockton was duly elected and entitled to his seat as a Senator from the State of New Jersey, and there were yeas 21, nays 21. Thereupon Mr. Stockton, who had been seated on his prima facie right, asked that his name be called, and voted in the affirmative. A question was at once raised, but the President pro tempore (La Fayette S. Foster, of Connecticut) said that there was no rule of the Senate on the question, and that the Senator's name was on the roll. On March 26, Mr. Charles Sumner, of Massachusetts, raised a question as to this vote, contending that natural law, as set forth by such authorities as Hobart, Coke, and Holt, forbade a man acting as judge in his own case. The parliamentary law also forbade such action, and in England a vote given by a member somewhat interested in the question had been disallowed. On the other hand, it was contended by Reverdy Johnson, of Maryland, and others that the question was not personal to Mr. Stockton, but that the Constitution gave him a vote, and he was of right authorized to use it on a question affecting the representation of his State. The interest was not personal, but public. Mr. Sumner embodied his proposition, after consultation, in the following resolution:

Resolved, That the vote of Mr. Stockton be not received in determining the question of his seat in the Senate.

A motion to refer this to the Judiciary Committee was negatived, yeas 18, nays 22. The resolution was then agreed to without division.

The Senate, before adopting Mr. Sumner's resolution, had reconsidered the vote of the 23d, so this left the question free for a vote wherein Mr. Stockton should not be counted.

5960. On a motion to discharge a committee from consideration of a resolution affecting the seats of several Members, the Chair held that the Members concerned might vote.—On February 6, 1844,[1] Mr. George C. Dromgoole, of Virginia, as a question of privilege, moved that the Committee of the Whole House on the state of the Union be discharged from the consideration of the report of the Committee on Elections on the certificates of election or other credentials of the Members from the States of Georgia, New Hampshire, Missouri, and Mississippi, where the elections had not been held by districts as provided by law.

The yeas and nays were ordered on this motion, and after the roll had been called, but before the result had been announced, Mr. John Campbell, of South Carolina, raised a question of order that, under the provision of the rule, "No Member shall vote on any question in the event of which he is immediately and particularly interested," the Members from the said States were precluded from voting.

During the debate on the point of order the decision of Chairman Adams in the Twenty-sixth Congress was quoted.

The Speaker pro tempore[2] decided that the Members from the four States were entitled to vote on the pending question.

Mr. Robert C. Schenck, of Ohio, having appealed, the decision of the Chair was sustained, yeas 117, nays 61.[3]

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[1] First session Twenty-eighth Congress, Journal, pp. 353–356; Globe, pp. 240, 241.

[2] Samuel Beardsley, of New York, Speaker pro tempore.

[3] This report of the Committee on Elections found that the Members from the States in question were entitled to retain their seats.

5961. A Member against whom a resolution of censure was pending cast a decisive vote on an incidental question; but on the main question did not vote, except once in the negative, on the motion to lay the resolution on the table.—In 1842,[1] the House considered from January 24 to February 7 a proposition to censure Mr. John Quincy Adams, of Massachusetts, for presenting the petition of certain citizens of Massachusetts, who prayed for a dissolution of the Union. On January 25 Mr. Adams voted in the negative on a motion to lay the resolution of censure on the table; but on January 27,[2] on a question as to whether or not the House would consider the proposition, Mr. Adams did not vote. On the same day he did not vote on a proposition to lay the subject on the table.[3] On February 2,[4] Mr. Adams presented four resolutions calling on the Executive Departments for information which he declared to be necessary for his defense. A motion being made to lay these resolutions on the table, Mr. Adams voted in the negative; and on agreeing to the first resolution he voted in the affirmative. On this vote there were yeas, 97, nays 96; but although Mr. Adam's vote was decisive it does not seem to have been questioned. On the final vote on February 7,[5] whereby the whole subject was laid on the table, Mr. Adams did not vote.

5962. A Member who had been assaulted was excused from voting on a question relating to the punishment of his assailant.—On April 20, 1832,[6] during the trial of Samuel Houston at the bar of the House for assault on Mr. William Stanbery, a Member from Ohio, for words spoken in debate, a question arose as to certain testimony offered by Mr. Stanbery, and a vote by yeas and nays was taken.

Mr. Stanbery was, at his own request, excused from voting on this question, as well as on any question which might arise in the hearing of the trial of Samuel Houston.

5963. A Member of a State legislature having cast for himself a decisive vote for United States Senator, the Senate declined to hold the election illegal.

The Senate has entertained no doubt of its right to look behind the credentials given by a governor to the facts of the election.

On February 26, 1827,[7] the credentials of Ephraim Bateman, as Senator from New Jersey, were presented in the Senate, and on February 28 remonstrances of members of the legislature and citizens of that State against the legality of his election were presented. On December 3, 1827, Mr. Bateman appeared and took the oath. On May 6, 1828, the remonstrances were referred to a select committee, of which Mr. John MacP. Berrien, of Georgia, was chairman, and, on May 22, he submitted the following report:

That, by a reference to the proceedings of the legislature of New Jersey, assembled in joint meeting on the 9th November, 1826, of which a duly certified copy has been exhibited by the memorialists,

[1] Second session Twenty-seventh Congress, Journal, p. 277; Globe, p. 169.

[2] Journal, pp. 281, 282; Globe, p. 180.

[3] Journal, p. 283.

[4] Journal, p. 302; Globe, p. 201.

[5] Journal, p. 314.

[6] First session Twenty-second Congress, Journal, p. 619.

[7] Election Cases, Senate document No. 11, special session Fifty-eighth Congress, p. 176.

it appears that an election for a Senator, to represent the said State of New Jersey in the Congress of the United States for six years from the 4th day of March then next ensuing, was on that day held; that Theodore Frelinghuysen, Ephraim Bateman, Thomas Chapman, and George K. Drake were put in nomination for the said appointment; that Ephraim Bateman was at that time a member of the said legislature of New Jersey, vice-president of the council, and chairman of the joint meeting; that the names of Thomas Chapman and George K. Drake were with leave respectively withdrawn; that the said Ephraim Bateman thereafter withdrew from the chair of the joint meeting, and at his instance William B. Ewing, esq., was called to the same; and, on motion, the same was confirmed by the joint meeting; that, after some discussion as to the manner of proceeding, the said Ephraim Bateman returned to the assembly room and resumed the chair; that the secretary was thereupon directed to call the joint meeting, which being done, the members voting viva voce, it appeared that there were for Theodore Frelinghuysen 28 votes and for Ephraim Bateman 29 votes, and that the said Ephraim Bateman voted for himself, and was accordingly declared to be duly appointed.

It moreover appears to the committee that in virtue of such election, and the commission of the governor of New Jersey founded thereon, the said Ephraim Bateman now holds his seat in the Senate of the United States.

The memorialists object to the validity of this election because the said Ephraim Bateman, being a member of the legislative council, vice-president of the State, and chairman of the joint meeting of the two houses of the legislature, permitted himself to be nominated as a candidate for the office of Senator in Congress of the United States; that he presided as chairman of the joint meeting during the said election; that, before the vote was taken, he made a motion that he should be excused from voting, because he was a candidate, and therefore interested; and, on the question being put on his said motion, voted that he should not be excused, the other members of the joint meeting being equally divided on the same; and that, on the vote for Senator for six years, the joint meeting, without the vote of the said Ephraim Bateman, being again equally divided, he, the said Ephraim Bateman, voted for himself.

The transcript of the proceedings of the legislature of New Jersey, which has been exhibited to the committee, does not show what motions were made and decided before the joint meeting proceeded to the election of a Senator; but it does show that on proceeding to that election, the votes of the joint meeting were for Theodore Frelinghuysen 28 and for Ephraim Bateman 29, and that Ephraim Bateman voted for himself. The question, therefore, which is presented to the consideration of the committee is whether this act invalidates the election.

On the preliminary point which is discussed in the argument forwarded in behalf of the memorialists, as well as in that submitted by the respondent, and which relates to the right of the Senate to look behind the commission granted by the governor, the committee can not permit themselves to entertain a doubt.

The Senate is empowered by the Constitution to judge of the elections, returns, and qualifications of its Members, and can not therefore be precluded by the commission emanating from the executive of a State from any inquiry which is necessary to the exercise of that judgment. If this were not so, the governor of a State, by an abuse of his trust, either from misapprehension or design, might assume to himself the appointing power in exclusion of the legislature.

The question whether the election of the respondent is invalidated by the fact that he voted for himself, and that without such vote he had not a majority of the votes of the joint meeting by which he was declared to be elected, is then forced upon the attention of the committee.

The following clauses of the Constitution of the United States relate to the manner of election:

"The Senate of the United States shall be composed of two Senators from each State, who shall be chosen by the legislature thereof."

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The legislature of New Jersey has enacted the following provision:

"Senators of the United States on the part of this State shall be appointed by the council and general assembly, in joint meeting assembled, at the place where the legislature shall then sit."

It is manifest from the aforegoing clauses that Congress may prescribe the mode of electing Senators, and that in the absence of any provision by them it is competent to the legislatures of the several States to do so. It seems equally clear that each State must possess the power of defining by its organic law

the constituents of its own legislative department, of prescribing the qualifications of its members, and the limitations under which the trust confided to them shall be exercised; and that the interest of a member in any subject of legislative action may be declared to constitute, as to that subject, a ground of disqualification to the exercise of his legislative functions by such interested member. But no such provision exists. For aught that appears to the committee the respondent was a member of the legislature of New Jersey duly elected and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one. The committee have not considered the question of the propriety or delicacy of the act complained of by the memorialists as coming within the scope of the reference made to them by the Senate. Nor have they felt themselves at liberty to apply to this question any abstract principles of right or of that system of jurisprudence which, however its principles may have become intermingled with our statutory regulations or its rules of proceeding may be seen to operate in the forms which are in use in our judicial tribunals, has no intrinsic validity in those tribunals or in any other forum in the United States.

Contenting themselves with this brief view of the subject, it appears to the committee that the facts set forth in the memorial referred to them are not sufficient to invalidate the election of Ephraim Bateman as a Senator of the State of New Jersey in the Congress of the United States, under the election had in the joint meeting of the assembly of that State on the 9th day of November, 1826. They therefore recommend the following resolution:

Resolved, That the select committee raised on the remonstrance and petition of sundry citizens of the State of New Jersey be discharged from the further consideration of the same.

The resolution was agreed to by the Senate.

5964. The rule as to the Speaker's vote.

In all cases of a tie vote the question shall be lost.

Form and history of Rule I, section 6.

The provision of the House rules relating to the vote of the Speaker is section 6 of Rule 1:

He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot and in all cases of a tie vote the question shall be lost.

When the first rules were adopted on April 7, 1789,[1] the following was among them:

In all cases of ballot by the House, the Speaker shall vote; in other cases, he shall not vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal, and in case of such equal division, the question shall be lost.

On December 9, 1833,[2] Mr. John M. Patton, of Virginia, proposed a rule providing that "in all cases the Speaker shall vote," and urged it in an elaborate speech, saying that the existing rule was taken from Parliament, where conditions were different. The proposition was opposed on the ground that if the Speaker should vote he would or should have the right to explain his vote, and so would become too partisan. This view prevailed, and the proposition was defeated, 122 to 96. Again, in 1837,[3] during a revision of the rules, Mr. Patton urged his proposition again. After a discussion as to the proper time for the Speaker to vote, whether at the beginning or end of the roll call,[4] the amendment was defeated. On

[1] First session First Congress, Journal, p. 9.

[2] First session Twenty-third Congress, Journal, pp. 30, 77; Debates, pp. 2162, 2182.

[3] First session Twenty-fifth Congress, Globe, p. 35.

[4] The name of the Speaker is not printed on the roll. If he desires to vote, he directs the Clerk at the end of the roll call to call his name.

January 4, 1850, the attempt was successful, the words "he shall not vote" being changed to "he shall not be required to vote."[1] The adoption of this amendment was the occasion of an interesting debate. The opponents argued that the privilege would make the Speaker more of a partisan and less impartial. Ex-Speaker Robert C. Winthrop, of Massachusetts, argued on the other hand that the old rule was in violation of the Constitution. But if the Speaker was to vote on all occasions that he pleased, he should also have the right to speak whenever he wished, in order to explain his vote. It was the privilege and right of the Speaker, according to the precedents of the House of Commons, to give his reasons at the same time that he gave his casting vote. But it had been the uniform practice of the House of Commons, and the unchanged practice of this House since the formation of the Constitution, that the Speaker should keep his own seat and conduct the business of the House and not mingle in debate unless in committee. For one, he was in favor of maintaining that precedent.[2]

In the Twenty-sixth Congress the words "in all cases of ballot" were changed to "in all cases of election," but the old form was restored in the Thirty-second Congress.

In the revision of 1880[3] the committee reported the rule in a form requiring the Speaker to vote "in case of a tie, or where his vote, if given with the minority, would make a tie, or will make or prevent a two-thirds vote where such vote is required." On January 27, when the section was considered in Committee of the Whole, Mr. Joseph R. Hawley, of Connecticut, proposed, in order to make the verbiage less complicated, the present form. After extended debate the House adopted the amendment.[4] There seems to have been no intention of relieving the Speaker entirely from the necessity of voting, as has been the result, since under the parliamentary law a question is decided, even though the vote be a tie.[5]

5965. The Speaker's vote is recorded at the end of the roll call or after it.—The Journal records the vote of the Speaker, not among the yeas and nays of the roll call, but by adding the following after the record of the roll call:

The Speaker voted.

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[1] First session Thirty-first Congress, Globe, pp. 142–145.

[2] The Speakers have, in the recent history of the House, exercised sparingly the privilege of voting, confining it generally to important measures. On the resolution for the impeachment of President Johnson, on February 24, 1868, the Speaker (Mr. Colfax) voted, saying that he could not consent that his constituents should be silent on so grave a question (Cong. Globe, second session Fortieth Congress, p. 1400). In more recent Congresses it has been quite common for Speakers to vote, among the instances being the votes of the Speaker (Mr. Reed) on the passage of the tariff bill on March 31, 1897 (Cong. Record, first session Fifty-fifth Congress, p. 557), the passage of the bill appropriating $50,000,000 for the national defense on March 8, 1898, and the legislation relating to the war with Spain. Mr. Speaker Cannon voted on several occasions, as, on December 6, 1906, on the so-called pilotage bill.

[3] Congressional Record, second session Forty-sixth Congress, p. 204.

[4] Congressional Record, second session Forty-sixth Congress, pp. 551, 552.

[5] The Speaker never has two votes on the same roll call; that is, having voted as a Member of the body he may not vote again should the result be a tie. Speaker Cheeves has been represented as casting two votes in this way, but the Journal shows that he simply voted to make a tie, thus defeating the bill. (Journal, second session Thirteenth Congress, January 2, 1815; Annals of Congress, p. 1026.) In the choice of Presidential electors by the legislature of Delaware in 1824 a speaker voted twice; but he was given this right by express provisions of a statute. (Niles's Register, Nov. 27, 1824, Vol. XXVII, p. 195.)

An instance occurred on May 10, 1866,[1] when Mr. Speaker Colfax voted for the joint resolution proposing an amendment to the Constitution. The entry was:

The Speaker voted in the affirmative.

5966. Mr. Speaker Macon, following the example of Mr. Speaker Trumbull, exercised his constitutional right to vote, although the rule forbade.— On December 9, 1803,[2] the House resumed the consideration of the question which was depending the day before at the time of adjournment, "that the House do now agree to the resolution of the Senate, in the form of a concurrent resolution of the two Houses, proposing an amendment to the Constitution of the United States respecting future elections of a President and Vice-President," and, after further debate thereon, the said question was taken and resolved in the affirmative by yeas and nays, two-thirds of the Members present concurring in their agreement to the said resolution of the Senate, to wit, yeas 83, nays 42.

And the Speaker declared himself with the yeas.[3]

5967. On March 16, 1792,[4] the House was considering the following resolution:

Resolved, That Anthony Wayne was not duly elected a member of this House.

And the yeas and nays being ordered, every member voted in the affirmative, the roll call beginning—Jonathan Trumbull, Speaker,[5] Fisher Ames, John Baptist Ashe, etc.

5968. Under the early rule and practice the Speaker did not record his vote in cases where it would not be decisive, unless by permission of the House.—On December 22, 1823,[6] Mr. Speaker Clay asked and obtained of the House permission to record his vote on the bill making a grant of money to General Lafayette. The Speaker explained his wish to be recorded on the ground of "having been precluded, by the place he held, from the expression of his sentiments."

5969. The Speaker has voted when a correction on the day after the roll call has created a condition wherein his vote would be decisive.[7]

Where a Member votes and the Journal fails to include his name among the yeas and nays, he may demand a correction as a matter of right before the approval of the Journal.

On December 4, 1876,[8] the House, by a vote of 156 yeas to 78 nays—exactly the two-thirds vote required—suspended the rules and passed a resolution presented by Mr. Abram S. Hewitt, of New York, providing for special committees to investigate the recent Presidential election in Louisiana, Florida, and South Carolina.

On the following day, December 5, Mr. Nathaniel P. Banks, of Massachusetts, moved that the Journal and Record be corrected so as to include the name of Mr.

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[1] First session Thirty-ninth Congress, Journal, p. 687.

[2] Journal, first session Eighth Congress, p. 482; Annals, p. 775 (Gales & Seaton ed.), Nathaniel Macon, of North Carolina, Speaker.

[3] At this time the rule of the House forbade the Speaker voting unless the House should be "equally divided." (See sec. 5964 of this chapter.)

[4] First session Second Congress, Journal p. 537.

[5] In the present usage the Speaker votes at the end of the roll call instead of the beginning.

[6] Second session Eighteenth Congress, Journal, p. 74; Debates, p. 55.

[7] See also sections 6061, 6089 of this volume.

[8] Second session Forty-fourth Congress, Journal, p. 23; Record, p. 44.

Harris M. Plaisted, of Maine, in the negative on the adoption of the resolution submitted the previous day by Mr. Abram S. Hewitt.

The Speaker[1] decided that it was the right of the gentleman from Maine to have his vote recorded upon the said resolution upon the statement made by Mr. Plaisted that he did vote in the negative when his name was called.

Mr. Benoni S. Fuller, of Indiana, asked that the Journal and Record might be further corrected so as to show that he voted in the affirmative upon the aforesaid resolution, stating that he was present and so voted when his name was called.

The Speaker decided, as in the case of Mr. Plaisted, that the gentleman from Indiana was entitled to have his name recorded.

And therefore the names of Mr. Plaisted and Mr. Fuller were recorded, the first in the negative and the last-named Member in the affirmative, upon the adoption of the aforesaid resolution.

After the two votes had been recorded the Speaker said:

> The vote on the resolution offered by the gentleman from New York, Mr. Hewitt, as announced was, ayes 156, noes 78. There seems to have been an omission on each side. The votes omitted, if correctly recorded, would have made the vote 157 to 79. The Speaker was ready on yesterday to have voted, as was his constitutional right, if his vote would have produced a result either way; and if the Journal had shown the vote to be 157 to 79 he would have voted in the affirmative, still making the two thirds. * * * The Chair must insist upon his right to vote in the case that his vote would produce a result. * * * The Chair, then, exercises that right, and asks that his vote may be recorded in the affirmative.

5970. In case of error, whereof the correction leaves decisive effect to the Speaker's vote, he may exercise his right even though the result has been announced.

The Speaker's name is not on the voting roll and is not ordinarily called.

On July 19, 1882,[2] during the consideration of the contested-election case of Smalls *v.* Tillman, the question was taken on the resolution declaring that Tillman was not elected, etc., and the announcement was 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.

The Speaker[3] 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—one 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.

Mr. Gibson Atherton, of Ohio, made the point of order that the Speaker might not vote in such a manner.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Forty-seventh Congress, Journal, pp. 1675, 1676; Record, pp. 6234–6237, 6264–6267.

[3] J. Warren Keifer, of Ohio, Speaker.

After debate, the Speaker cited precedents in 1803, 1849, and under the speakership of Mr. Randall, to show that such a vote was proper. He further said:

It has never been the rule or practice for the Speaker's name to be called in the regular roll call, and therefore the Speaker does not respond to the roll call as other Members do, nor does he come within the provision of the rule which is applicable to other Members whose names are upon the roll.

Therefore the Speaker held that, while a Member might not have his vote recorded after the conclusion of the roll call, the Speaker might.

On the following day a resolution providing for an examination of this act of the Speaker was introduced and debated, but subsequently withdrawn after a full discussion of the matter.

5971. The Speaker having cast his vote in case of an apparent tie, asserted his right to withdraw it when the roll seemed to show that there was in fact no tie vote, but later caused it to be recorded to change the result.—On January 10, 1870,[1] the pending question was a motion to reconsider the vote whereby the main question was ordered on the joint resolution (H. Res. 106) declaring Virginia entitled to representation in Congress.

On this motion there appeared yeas 76, nays 76, whereupon the Speaker announced his vote in the negative, and declared that the House refused to reconsider the vote whereby the main question had been ordered.

After another roll call on a motion to adjourn, a question was raised as to the accuracy of the vote on the motion to reconsider, and on the statement of two Members as to their votes, it appeared that instead of standing 76 to 76, the vote really was 77 yeas to 76 nays. The Speaker thereupon withdrew his vote, and declared that the vote had stood 77 to 76, and that the motion to reconsider was disagreed to.

Objection was made that the Speaker might not thus withdraw his vote, but that, it having been given in, it stood like the vote of a Member on the floor.

The Speaker[2] said:

The duty of voting in the decision of tie votes is one of the most unpleasant that is imposed on the Chair. * * * The Chair has the same right as any other Member of the House to vote at any time. But he follows the usage and etiquette of his position, which he desires not to violate, when he abstains from voting as well as taking a part on the one side or the other in debates upon questions with reference to the discussion of which he ought to maintain a position of impartiality. * * * The Chair voted under a certain condition of circumstances, but that condition of circumstances having changed, the Chair now withdraws his vote. * * * No other Member of the House is circumstanced as the Chair is in respect to voting. The Chair is uniformly excused from voting. The Chair has a right to vote if he chooses, or not to vote. The Chair, in a given state of circumstances, voted. That given state of circumstances has been corrected and entirely changed under the privileges of the House, and the Chair, therefore, does not vote. If the question were on the final passage of the resolution the Chair would have doubts as to the propriety of his course, but as it merely remits it to the decision of the House upon a point already once decided and now reconsidered by a majority of one, the Chair assumes and decides that he has a right to withdraw his vote under the circumstances.

So, under this state of facts, the vote was reconsidered, and the question recurred on ordering the previous question, and being taken by yeas and nays, there appeared, yeas 66, nays 80. So the previous question was not ordered.

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[1] Second session Forty-first Congress, Journal, p. 112; Globe, pp. 339, 340, 361, 362.

[2] James G. Blaine, of Maine, Speaker.

On January 11 the Speaker announced that when the yeas and nays; on the first vote to reconsider were transferred to the Journal, it was found, in fact, that, with the Speaker's vote as given in, the yeas were 77 and the nays 77, instead of yeas 76 and nays 77, as announced at the time. Therefore, the vote being a tie, the motion to reconsider was disagreed to. The Speaker stated that in accordance with the practice of the House, all proceedings "subsequent to the erroneous announcement of a vote" were treated as a nullity, and the Journal had accordingly been made up to show the Speaker as voting and the vote as 77 yeas and 77 nays and the motion to reconsider disagreed to.

5972. The right of the Vice-President to give a casting vote extends to cases arising in the election of officers of the Senate.—On January 9, 1850,[1] in the Senate, Vice-President Millard Fillmore raised a question whether, under his constitutional power to give a casting vote,[2] he might vote in a case where there was a tie in the election of an officer of the Senate. Mr. Fillmore asked the opinion of the Senate. During the debate, Mr. John C. Calhoun, of South Carolina, recalled that several times when he was Vice-President he cast his vote on Executive nominations. The opinion of the Senate seeming to be in favor of the power of the Vice-President to vote in the case before them, Mr. Fillmore cast his vote for one of the candidates.

5973. On December 14, 1829,[3] the Senate proceeded to the election of a Chaplain, and the whole number of ballots collected was 42, of which the Reverend Henry Van Dyke Johns had 21, and the Reverend John P. Durbin had 21.

The vote of the Vice-President[4] was then taken, which decided the election in favor of the Reverend Henry Van Dyke Johns.[5]

5974. On January 17, 1877,[6] the Senate considered but disagreed to a rule providing that the Vice-President should vote when the Senate was equally divided. It was objected that this was making a requirement beyond that of the Constitution, and that the Senate would have no power to enforce it.

5975. Instance wherein the Vice-President cast a deciding vote on questions relating to the organization of the Senate.—On March 18, 1881,[7] the Senate was considering a resolution proposed by Mr. George H. Pendleton, of Ohio, providing committee assignments of Senators.

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[1] First session Thirty-first Congress, Globe, p. 128.

[2] Section 3 of Article I of the Constitution of the United States provides: "The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided." Many of the States have in their constitutions identical or similar provisions.

[3] First session Twenty-first Congress, Senate Journal, p. 28.

[4] John C. Calhoun, of South Carolina, Vice-President.

[5] At this session also the Senate was equally divided on May 10, 1830 (Senate Journal, p. 457) over the question, "Will the Senate advise and consent to the appointment of Amos Kendall?" [as Fourth Auditor of the Treasury], and the Vice-President voted in the affirmative. Again, on May 28 (Senate Journal, p. 469), he again voted in the affirmative on the confirmation of M. M. Noah.

[6] Second session Forty-fourth Congress, Record, p. 692.

[7] Special session of Senate, Forty-seventh Congress, Record, p. 33.

Mr. Henry B. Anthony, of Rhode Island, moved to postpone indefinitely the resolution; and the Vice-President [1] announced:

The yeas are 37, and the nays are 37. The Senate being equally divided, the Chair votes "yea."

Mr. Eli Saulsbury, of Delaware, without raising a question of order, expressed the opinion that the Constitution did not confer on the Vice-President the right to vote on a question of this character.

Mr. John A. Logan, of Illinois, replied, citing a precedent of the Senate, made on December 15,[2] 1829, when Vice-President John C. Calhoun, of South Carolina, voted in the case of a tie on the election of Chaplain.

Mr. Anthony then offered a resolution providing a plan of committee assignments, and on the vote the yeas were 37, nays 37. Thereupon the Vice-President voted in the affirmative, and the resolution was agreed to.

5976. The Vice-President votes on all questions wherein the Senate is equally divided, even on a question relating to the right of a Senator to his seat.—On November 26, 1877,[3] in the Senate, a motion was made that the Senate proceed to the consideration of executive business, and there appeared, yeas 29, nays 29. Thereupon the Vice-President [4] voted "aye" and the motion was agreed to.

5977. On November 28, 1877,[5] the Senate was considering the following:

Resolved, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States, etc.

To this Mr. Allen G. Thurman, of Ohio, offered an amendment to strike out all after the word "resolved" and insert the following:

That M. C. Butler be now sworn as a Senator from the State of South Carolina.

On agreeing to this amendment there appeared, yeas 30, nays 30.

The Vice-President [4] thereupon said:

The vote of the Senate being equally divided, the Chair votes in the negative.

Mr. Thurman challenged the right of the Vice-President to vote on a question affecting the right of a Senator to his seat. Debate arose, during which reference was made to the precedent of January 9, 1850, when the Vice-President voted on the election of an officer of the Senate.

Mr. Thurman finally withdrew his question of order.

The Vice-President said:

The Chair * * * has very carefully considered the question raised by the Senator from Ohio, and he has no doubt of his right to vote in all cases in which the Senate is equally divided * * * as at present advised, he will, on occasion, exercise the right in his discretion.

5978. The House chose the location of the World's Columbian Exposition by a viva voce vote.—The selection of a place for holding the World's

[1] Chester A. Arthur, of New York, Vice-President.

[2] This election occurred December 14, 1829. (See section 5973 of this chapter.)

[3] First session Forty-fifth Congress, Record, p. 650.

[4] William A. Wheeler, of New York, Vice-President.

[5] First session Forty-fifth Congress, Record, pp. 737–740.

Fair of 1893 was made by the House voting viva voce in accordance with a special order prescribing the method of selection.[1]

5979. Two independent amendments may be voted on together, only by unanimous consent.—On January 18, 1905,[2] the House was considering the fourth and fifth articles impeaching Judge Charles Swayne, when Mr. Marlin E. Olmsted, of Pennsylvania, proposed two amendments, one to the fourth and the other to the fifth article.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if the vote might be taken on both amendments at the same time.

The Speaker[3] said:

> It can be done by unanimous consent; not otherwise.

5980. Where a vote was taken by States, a question standing 5 to 3, with three States divided, was held to be carried.[4]—On July 7, 1787,[5] in the convention to frame the Federal Constitution, the question was on agreeing to the clause relating to the power of originating revenue bills, when there appeared, on a vote by States, 5 yeas, 3 nays, and three States divided.

And a question moved and seconded, whether the vote so standing was determined in the affirmative, it was decided, as follows, that it was—yeas 9, nays 2. The two nays were New York and Virginia. The first had been divided, and the second had voted "nay."

5981. Pairs, which are announced but once during the legislative day, are announced after the completion of a roll call, and are published in the Congressional Record.

Growth of the practice of pairing in the House.

Present form and history of section 2 of Rule VIII.

Section 2 of Rule VIII provides:

> Pairs shall be announced by the Clerk, after the completion of the second roll call, from a written list furnished him and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting: *Provided* pairs shall be announced but once during the same legislative day.

Pairs, although receiving recognition in the rules of the House, are essentially a matter of private arrangement between Members. Originally the rules did not recognize such an arrangement, although it seems to have existed for many years, On May 17, 1824,[6] Mr. Henry W. Dwight, of Massachusetts, stated that he wished to be excused from voting on the pending bill, as he had arranged with a Virginia gentleman who was, on this question, opposed to him, that they should both leave town that morning. The Virginia Member had gone, but he had been detained. As a matter of keeping faith he wished to be excused from voting. The House voted to excuse him. On March 23, 1840,[7] Mr. John Quincy Adams, of Massa-

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[1] First session Fifty-first Congress, Journal, p. 266.

[2] Third session Fifty-eighth Congress, Record, p. 1056.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] See, however, footnote to section 6008 of this volume.

[5] Elliot's Debates, first edition, vol. 4, p. 89.

[6] First session Eighteenth Congress, Annals, p. 2633.

[7] First session Twenty-sixth Congress, Journal, p. 652.

chusetts, moved a resolution declaring that the practice of pairing off, "first openly avowed at the present session of Congress," involved a violation of the Constitution and of a rule of the House. The practice continued, and on April 19, 1871,[1] Mr. Speaker Blaine spoke of the announcement of pairs at the time of the roll call as an "indulgence," a practice that had "grown up without rule," and was tolerated only by unanimous consent. At the time of the revision of 1880 the Committee on Rules for the first time gave it recognition by proposing this rule:

> Pairs shall be announced by the Clerk, after the completion of the second roll call, from a list furnished him by Members, which list shall be published as a part of the proceedings immediately following the names of those not voting.

When this was debated on January 29, 1880,[2] Mr. Joseph C. S. Blackburn, of Kentucky, proposed the amendment providing for the publication of the pairs in the Record, the object being to prevent cumbering the Journal. The provision that the Member should sign the statement of the pair was suggested by Mr. George D. Robinson, of Massachusetts, and the prohibition of more than one announcement of a pair on the same legislative day was added on motion of Mr. Mark H. Dunnell, of Minnesota. Thus the rule was brought to its present form.

On April 26, 1890,[3] a resolution declaring all pairs off was introduced, but withdrawn after a point of order had been made that the rules took no cognizance of pairs except to permit their announcement.

On June 2, 1888,[4] a question arose as to whether or not paired Members might vote in Committee of the Whole, and the Chairman,[5] held that it was a question for the Members themselves to determine individually.

Before the rule in regard to the announcing of pairs, Members used sometimes to rise and announce to the House that they had paired.[6]

5982. A suggestion being made that a pair had been disregarded, the Speaker held that this was not a question for the House.—On March 25, 1902,[7] the yeas and nays had been taken on the contested-election case of Moss *v.* Rhea, of Kentucky, when Mr. James A. Tawney, of Minnesota, said:

> I notice in the announcement of the pairs a pair between Mr. Overstreet and Mr. Hanbury, of New York. My recollection is that Mr. Hanbury—I do not know whether he is here—has voted.

The Speaker[8] said:

> The gentleman is recorded as voting in the affirmative. The House can not decide that question. It is a matter of honor for any gentleman as to whether he will observe his pair. The Chair knows of no law governing the matter.

5983. On December 1, 1856,[9] Mr. Speaker Banks declared "a pair-off is not binding upon the House."

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[1] First session Forty-second Congress, Globe, p. 801.

[2] Second session Forty-sixth Congress, Record, pp. 604, 605.

[3] First session Fifty-first Congress, Journal, pp. 528, 529; Record, pp. 3909, 3910.

[4] First session Fiftieth Congress, Record, p. 4859.

[6] William M. Springer, of Illinois, Chairman.

[7] See instance April 18, 1860, first session Thirty-sixth Congress, Globe, p. 1780.

[7] First session Fifty-seventh Congress, Record, pp. 3255, 3256.

[8] David B. Henderson, of Iowa, Speaker.

[9] Third session Thirty-fourth Congress, Globe, p. 7.

5984. Pairs are not announced in Committee of the Whole.—On April 20, 1900,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the vote was being taken by tellers on an appeal from the decision of the Chair on a point of order.

Before the announcement of the vote Mr. Charles K. Wheeler, of Kentucky, requested that pairs be announced.

The Chairman[2] said:

> The Chair does not think pairs should be announced in Committee of the Whole. It is an unprecedented thing; and the Chair does not think it can be done.

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[1] First session Fifty-sixth Congress, Record, p. 4497.

[2] Sereno E. Payne, of New York, Chairman.

Chapter CXXVIII.

VOTING BY TELLERS AND BY BALLOT.

1. **Rule for tellers. Sections 5985, 5986.**[1]
2. **Member's duty to serve as teller. Sections 5987–6989.**[2]
3. **Vote by tellers interrupted by failure of quorum. Section 5990.**
4. **Inaccuracies in vote by tellers. Sections 5991–5995.**
5. **Chair may be counted in vote by tellers. Sections 5996, 5997.**
6. **Tellers may be demanded after refusal of yeas and nays. Section 5998.**
7. **Right to demand not precluded by intervention of question as to quorum. Sections 5999–6000.**
8. **In relation to motion that Committee of Whole rise. Section 6001.**
9. **Tellers may not be demanded under general parliamentary law. Section 6002.**
10. **The rule for election by ballot. Sections 6003–6005.**[3]
11. **General decisions as to voting by ballot. Sections 6006–6010.**[4]

5985. Tellers may be ordered by the Speaker, if he is in doubt, or by one-fifth of a quorum.—Section 5 of Rule I[5] provides as to the vote by tellers:

He shall * * * put questions in this form, to wit: "As many as are in favor (as the question may be), say aye;" and after the affirmative voice is expressed, "As many as are opposed, say no;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question, to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.

5986. In Committee of the Whole twenty, one-fifth of the quorum of one hundred, are required to order tellers.—On May 16, 1890,[6] during consideration of the tariff bill (H. R. 9416) in the Committee of the Whole House on the state of the Union, a question arose on a point of order raised by Mr. Benton McMillin, of Tennessee, as to the number required to order tellers in Committee of the Whole, and the Chairman[7] ruled:

The Chair will state that in the rules of the House the following is the only provision in regard to tellers: "If he, "referring to the Speaker, under Rule I, "still doubts or a count is required by at

[1] A demand for tellers held dilatory. (Secs. 5735, 5736 of this volume.)
[2] Delegates appointed as tellem. (Secs. 1302, 1303 of Vol. II.)
[3] As to the Journal record of a vote by ballot. (Sec. 232 of Vol. I.)
[4] Proceedings in balloting for President of the United States—
In 1801. (Sec. 1983 of Vol. III.)
In 1825. (Sec. 1994 of Vol. III.)
Voting by ballot for managers of an impeachment. (Secs. 2368, 2417 of Vol. III.)
[5] For history of this rule, see section 1311 of Vol. II of this work.
[6] First session Fifty-first Congress, Record, pp. 4784, 4786.
[7] Charles H. Grosvenor, of Ohio, Chairman.

least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative."

The rule applies literally to the House, and one-fifth of a quorum would, in the present case, be thirty-four gentlemen rising. The rules state that these rules shall be applicable to the Committee of the Whole where applicable. Unless that rule does apply in the Committee of the Whole, then there would be no rule that would designate any number that would be sufficient to demand a vote by tellers. So that the Chair will hold that a quorum of the Committee of the Whole being 100, a demand of 20 is sufficient to order tellers.[1]

5987. It is the duty of the Member to serve as teller when appointed by the Chair.—On June 26, 1882,[2] on a question of order in Committee of the Whole, the Chairman[3] overruled a point of order made by Mr. Philip B. Thompson, jr., of Kentucky. Mr. Thompson having appealed and tellers being ordered on the appeal, the Chairman appointed Mr. Thompson one of the tellers.

Mr. Thompson declined to serve.

Then the Chairman turned to Mr. S. S. Cox, of New York, an old Member, and asked him if he would serve as teller.

Mr. Cox replied:

With the greatest pleasure, sir; it is my duty. [Applause.]

5988. After gentlemen favoring an amendment had declined to act as teller for a pending vote the Chair appointed the second teller from those opposed.—On March 1, 1907,[4] the House was in Committee of the Whole, when tellers were ordered on an amendment to the bill (S. 529) to promote the national defense, etc., known as the ship-subsidy bill, offered by Mr. William Sulzer, of New York. The Chairman[5] appointed as tellers Mr. Lucius N. Littauer, of New York, and Mr. Sulzer.

Mr. Sulzer declined to serve as teller.

The Chairman thereupon appointed Mr. Swager Sherley, of Kentucky.

Mr. Sherley declined to serve.

Thereupon the Chairman asked if any gentleman who favored the amendment would serve as teller.

No one responding, the Chairman appointed Mr. Sereno E. Payne, of New York, who was an opponent of the amendment, to act with Mr. Littauer, who was also an opponent.

5989. Two members of the minority party having successively declined to act as tellers, the Speaker directed the Member who had been appointed teller for the majority party to count the vote.—On March 29, 1894,[6] the House was considering an order proposed by Mr. Josiah Patterson, of Tennessee, that the Sergeant-at-Arms take into custody absent Members, the order to continue in force beyond the adjournment of the session for the day and until the further order of the House.

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[1] See also Record, p. 1785, first session Fifty-first Congress, for similar ruling.

[2] First session Forty-seventh Congress, Record, p. 5376.

[3] John H. Camp, of New York, Chairman.

[4] Second session Fifty-ninth Congress, Record, p. 4371.

[5] Frank D. Currier, of New Hampshire, Chairman.

[6] Second session Fifty-third Congress, Record, p. 3340; Journal, pp. 284, 286, 287.

The yeas and nays having been demanded, Mr. Sereno E. Payne, of New York, a member of the minority party in the House, demanded that the vote on ordering the yeas and nays be taken by tellers, and tellers were ordered.

The Speaker appointed Mr. Payne and Mr. Patterson as tellers.

Mr. Payne declined to act as teller.

The Speaker thereupon appointed Mr. Thomas B. Reed, of Maine, another member of the minority, who also declined to act.

The Speaker[1] then directed the other teller [Mr. Patterson] to count the vote on ordering the yeas and nays.

5990. When in the House a vote by tellers fails for lack of a quorum and motions relating to a call of the House interrupt, the vote by tellers is taken anew rather than by a count additional to the first vote.—On February 27, 1893,[2] Mr. George D. Wise, of Virginia, moved that the rules be suspended, and that the House agree to the amendments of the Senate to the bill (H. R. 9350) to promote the safety of employees and travelers upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes.

A second having been demanded by Mr. James D. Richardson, of Tennessee, and no quorum appearing on the question of seconding the motion,

Mr. Richardson moved that there be a call of the House, which motion was disagreed to.

The tellers, being still in their places, proceeded to count additional votes in favor of seconding the motion of Mr. Wise.

Mr. C. B. Kilgore, of Texas, made the point of order that inasmuch as the motion for a call of the House had been entertained and voted upon since the previous report of the tellers was made, the vote on seconding the motion of Mr. Wise must be taken de novo.

The Speaker[1] sustained the point of order.

5991. The count by tellers becoming uncertain by reason of confusion, the Chair ordered the vote taken again.—On June 24, 1882,[3] in a case wherein on a vote by tellers, Messrs. William D. Kelley, of Pennsylvania, and Samuel J. Randall, of Pennsylvania, being tellers, the committee divided amid great confusion, and after the vote was completed the Chairman[4] of the Committee of the Whole announced the vote as, ayes 99, noes 103. Mr. Randall at once challenged this, declaring that his count showed 103 in the affirmative; Mr. Kelley stated that his count made it less. The Chairman ruled that as the tellers disagreed, a new count should be had, and it was so ordered.

On February 21, 1905,[5] the House had resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the Philippine tariff bill (H. R. 18967).

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 117–1 Record, p. 2240.

[3] First session Forty-seventh Congress, Record, p. 5319.

[4] John H. Camp, of New York, Chairman.

[5] Third session Fifty-eighth Congress, Record, p. 3001.

In the course of the consideration thereof, Mr. E. Y. Webb, of North Carolina, offered an amendment, and, after a division, Mr. Webb asked tellers; tellers were ordered, and the Chair appointed Mr. Sereno E. Payne, of New York, and Mr. Webb.

The committee again divided.

The tellers having announced several additions to the affirmative and negative votes, and there being some confusion in the count, producing uncertainty, the Chairman [1] said:

The Chair would say that this vote has become so confused that it is impossible to announce the exact result. The vote will therefore be taken again.

The committee again divided, and the tellers reported ayes 88, noes 98.

The Chairman announced:

The tellers announce ayes 88, noes 98. Accordingly, the amendment is rejected.

5992. Before the Chairman had declared the result of a vote by tellers, a question arose as to the count, and by unanimous consent the vote was taken again.—On February 23, 1904,[2] the House being in Committee of the Whole House on the state of the Union for the consideration of the naval appropriation bill, a vote was taken by tellers and a question arose as to the count, and there was a misunderstanding between the tellers as to the result.

Mr. Alston G. Dayton, of West Virginia, asked unanimous consent that the vote be taken again.

There was no objection, and it was so ordered.

5993. A vote by tellers having been taken and the result announced, a recount may be had only by unanimous consent.—On September 27, 1850,[3] while the general appropriation bill was under consideration in Committee of the Whole House on the state of the Union, an appeal was taken from a decision of the Chair, and the vote was taken by tellers. On this vote the tellers reported in favor of sustaining the Chair 67, and opposed 59. The tellers also reported that they were informed by several Members that they had voted under a misapprehension and desired a recount.

The Chairman [4] said that he knew of no means by which a recount could be had except by unanimous consent.

5994. On May 12, 1852,[5] in Committee of the Whole House on the state of the Union, a vote had been taken by tellers on an appeal from the decision of the Chair.

The result of the vote having been announced as ayes 63, noes 64, Mr. Edward Stanly, of North Carolina, made the point of order that a number of names were included in the count after the tellers had reported and that the confusion had been so great that there had been no fair count.

Objection being made to a recount, the Chairman [6] said:

The Chair is of opinion that after a vote has been taken, and the decision announced, there can not be a recount except by unanimous consent.

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[1] Charles F. Scott, of Kansas, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 2280.

[3] First session Thirty-first Congress, Globe, p. 1990.

[4] Armistead Burt, of South Carolina, Chairman.

[5] First session Thirty-second Congress, Globe, p. 1348.

[6] Harry Hibbard, of New Hampshire, Chairman.

An appeal being taken, the decision of the Chair was sustained, ayes 80, noes 63.

5995. After the Chair had announced the result of a vote by tellers, he proposed, because of confusion during the voting, to order the vote taken again, but the Committee of the Whole, on appeal, decided against the proposed action.—On February 9, 1846,[1] the House was in Committee of the Whole House on the state of the Union considering the joint resolution giving notice to Great Britain of the termination of the convention regarding the Oregon territory. Upon a vote by tellers on an amendment declaring that the differences with Great Britain should be adjusted by honorable negotiation, the vote was announced as 102 ayes, and then as 101 ayes, to 99 noes.

There was some dissatisfaction, and Mr. Stephen A. Douglas, of Illinois, one of the tellers, was understood to say that as Members passed through rapidly a mistake might have occurred, but he entertained no doubt that the vote as reported was correct.

The Chairman thereupon ordered another count.

Mr. Robert B. Rhett, of South Carolina, said that as the Chairman had declared the amendment agreed to he should object to the vote being retaken.

The Chairman[2] admitted that he had declared the amendment adopted, but as difficulty had arisen and some mistake might have occurred he would order a new vote. Thereupon he appointed tellers again, and they were proceeding to take their places when Mr. Robert C. Schenck, of Ohio, appealed from the decision of the Chair, holding that one of the tellers had stated his belief that the count was accurate, although there had been confusion. A vote being taken on the appeal, the decision of the Chair was reversed by a vote of 108 to 90. So the vote was not taken anew.

5996. The Chair may be counted on a vote by tellers.—On February 14, 1901[3] while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a vote was taken on an amendment proposed by Mr. James D. Richardson, of Tennessee, and relating to certain payments on account of the old custom-house in New York City.

On a division, there being ayes 75, noes 75, Mr. Richardson demanded tellers, which were ordered.

Before the announcement of the vote by tellers the Chairman[4] announced that he would like to be considered as having gone between the tellers. Thereupon he announced the result, ayes 92, noes 92, and that the amendment was lost.

5997. On February 18, 1904,[5] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of Union when Mr. Choice B. Randell, of Texas, proposed an amendment and a vote thereon was ordered by tellers.

The tellers reported ayes 79, noes 78.

Thereupon the Chairman[6] announced that he voted in the negative, that the ayes were 79 and noes 79, and that the amendment was disagreed to.

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[1] First session Twenty-ninth Congress, Globe, p. 347.

[2] John W. Tibbatts, of Kentucky, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2434.

[4] Henry S. Boutelle, of Illinois, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 2049.

[6] James S. Sherman, of New York, Chairman.

5998. A demand for tellers is not precluded or set aside by the fact that the yeas and nays are demanded and refused.—On May 26, 1906,[1] Mr. Robert Adams, jr., of Pennsylvania, moved to close general debate in Committee of the Whole House on the state of the Union on the pending consular and diplomatic appropriation bill, and the Speaker announced the result of a division, ayes 100, noes 93.

Mr. James Breck Perkins, of New York, demanded tellers.

Mr. De Alva S. Alexander, of New York, demanded the yeas and nays.

The yeas and nays were refused.

Mr. Lemuel P. Padgett, of Tennessee, called attention to the pending demand for tellers.

Mr. Adams made the point of order that after the refusal of the yeas and nays it was too late to demand or order tellers.

The Speaker[2] held:

The Chair, after inquiry, does not find that this question is controlled or enlightened by a precedent. There may be precedents in the premises, but, if so, they can not be found after hasty examination. Now, the gentleman demanded tellers. Pending that demand the yeas and nays were demanded and the yeas and nays were refused. It does seem to the Chair that the demand for tellers, not having been disposed of, might be regarded as pending, because, perchance, the Chair may have miscounted, the vote being close, or, perchance, gentlemen may have changed their judgment between the time the count was made by the Chair and the present time. As many as are in favor of ordering tellers will rise and stand until counted.

5999. The right to demand tellers as a further evidence of the vote is not waived by the fact that a question has been raised as to the presence of a quorum on the division, and the Chair has counted the House.—On April 26, 1890,[3] the House was considering the legislative, executive, and judicial appropriation bill, and the question being on the motion of Mr. Benjamin Butterworth, of Ohio, that the previous question be ordered on the bill and amendments, there were, on division, ayes 136, noes 10.

Mr. William D. Bynum, of Indiana, made the point of order that no quorum had voted, and the further point that no quorum was present.

The Speaker pro tempore overruled the first point of order and proceeded to count the House.

After completing the count the Speaker pro tempore stated that 167 Members, more than a quorum, were present.

Mr. Bynum demanded tellers upon the vote.

Mr. Lewis E. Payson, of Illinois, made the point of order that the demand was not in order after the count by the Speaker pro tempore.

After debate on the point of order, the Speaker pro tempore[4] said:

This question comes up under the motion of the gentleman from Ohio for the previous question on the bill and amendments. That question was put to the House and the Chair declared the ayes seemed to have it, whereupon a division was demanded, and the vote on division was declared to be 136 in the affirmative and 10 in the negative. Thereupon the gentleman from Indiana made the point

[1] First session Fifty-ninth Congress, Record, p. 7473.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fifty-first Congress, Journal, pp. 528, 529; Record, p. 3911.

[4] Julius C. Burrows, of Michigan, Speaker pro tempore.

that no quorum had voted and that no quorum was present. The Chair overruled the point of order that no quorum had voted, and to ascertain whether a quorum was present proceeded to count the House. Upon counting the House the Chair found 167 Members present and overruled the second point of order. Thereupon the gentleman from Indiana demanded tellers. Against this demand the gentleman from Illinois makes the point of order that the demand comes too late and that the right to demand tellers has been waived.

The Chair thinks the point of order is not well taken. Upon the division, a quorum not having voted, it was the right of any Member to make the point that a quorum was not present and arrest all proceedings until that fact could be ascertained. Upon the ascertainment of that fact, and a quorum found to present, it was the right of the House to have either tellers or the yeas and nays on the pending motion for the previous question.

The Chair therefore overrules the point of order.

6000. On March 29, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a vote was taken viva voce on an amendment specifying the qualifications of a law clerk provided for one of the Departments.

The Chair having announced that the noes appeared to have it, Mr. Charles L. Bartlett, of Georgia, called for a division.

On division there appeared ayes 20, noes 43.

Mr. Charles L. Bartlett made the point that no quorum was present

The Chair, after counting, announced 106 gentlemen present—a quorum.

Mr. Bartlett, rising to a parliamentary inquiry, asked if it was too late to demand tellers.

The Chairman[2] referring to a precedent quoted in the Manual, decided it in order to demand tellers.

6001. Tellers having been ordered and appointed in Committee of the Whole, it is not in order to move that the committee rise pending the taking of the vote.[3]—On January 13, 1898,[4] during the consideration of the agricultural appropriation bill in Committee of the Whole, Mr. Sereno E. Payne, of New York, called for tellers after a vote by division had been taken on an amendment.

Tellers were ordered, and Messrs. Champ Clark, of Missouri, and Payne were appointed.

Thereupon Mr. James W. Wadsworth, of New York, moved that the committee rise.

Mr. Clark made the point of order that the motion was not in order while the committee was dividing.

The Chairman[5] held:

Tellers having been ordered, it is not in order, as the Chair understands, to move that the committee rise pending the taking of the vote. The tellers will take their places.

6002. Before the adoption of rules, while the House was acting under the general parliamentary law, it was held that the right to demand tellers did not exist.

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[1] First session Fifty-ninth Congress, Record, p. 4462.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] See also sections 4771–4773 of Vol. IV of this work.

[4] Second session Fifty-fifth Congress, Record, p. 605.

[5] John A. T. Hull, of Iowa, Chairman.

The rules of one House of Representatives are not binding on a succeeding House, directly or indirectly, unless adopted by the latter House.

The right of appeal insures the House against the arbitrary control of the Speaker, and can not be taken away from the House.

One of the suppositions on which the parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division.

On January 21, 1890,[1] before rules had been adopted and while the House was proceeding under general parliamentary law, a division was had on the motion of Mr. Richard P. Bland, of Missouri, to amend the Journal, and the Speaker declared that the noes had it and that the motion was lost.

Mr. Bland demanded tellers.

The Speaker[2] held that there was no rule requiring or authorizing the appointment of tellers and declined to appoint tellers on the said motion.[3]

Mr. Bland having appealed, the appeal was debated at length, and the Speaker, in submitting the question to the House, said:

The Chair desires to state the pending matter to the House.

The Chair has always been unable to see how it was possible for a House which had passed out of existence to bind by rules and regulations a House which was to come into existence in the future. The recent decisions by the Speaker of the House have been to the effect that the rules of the last House (did not become the rules of the present House directly.[4] The Chair is unable to see how they can become the rules of the present House indirectly.

The very fact that they have been made as rules shows clearly the necessity for their special enactment. If they became by any indirection the rules of the next House it would not become necessary to reenact them.

This House, then, is governed by the general parliamentary law such as has been established in the same manner that the common law of England was established, by repeated decisions and the general acquiescence of the people in a system which governs all ordinary assemblies.

The United States is filled with a people unusually devoted to public meetings. These public meetings have to be governed by a system of rules or principles which have been both designated and acted upon by various meetings in great numbers to such an extent that a well-defined parliamentary law has been established.

The suggestion which has been made during this debate that the matter of the control of the House is under the exclusive control of the occupant of the chair is at this very moment receiving a negative, because an appeal is pending in this case, as has been or might be in many others, against the decision of the Chair. All decisions from the Chair by appeals, which are made under proper circumstances and in good faith, are subject to revision by the majority of the House. Consequently there is not and can not be any arbitrary control of this body against its will. The Speaker, for the time being and as a matter of convenience arising from the nature of his office, makes a ruling upon the subject which is before the House. That ruling is always subject to revision by the House itself, and no one can take away that right on the part of the House.

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[1] First session Fifty-first Congress, Journal, p. 144; Record, pp. 741–749.

[2] Thomas B. Reed, of Maine, Speaker.

[3] For rule of the House relating to tellers see section 5985 of this chapter.

[4] At the beginning of the Government it was assumed that the rules ceased to be effective when the House ceased; and in the Second Congress the House by resolution adopted the rules of the House in the First Congress. (First session Second Congress, Journal, p. 439; Annals, p. 143.) See also debate of May 15, 1797 (first session Fifth Congress, Annals, p. 51), where the view was taken that the rules of a former House were not binding on its successor. (See also secs. 6743–6755 of this volume.)

The present occupant of the chair has frequently ordered tellers since the beginning of this session of Congress on demand of the Members of the House and is not in any way unwilling to do so; but the question has come up now as a matter of right, and whatever the wishes of the present occupant of the chair may be, he is obliged to decide in accordance with what he regards as the unmistakable parliamentary law.

It has been stated that tellers are usual in the British Parliament. That is true. It is one of their customs. But the taking of a vote by tellers there is different from the taking of a vote by tellers here. It requires those who occupy a certain attitude toward the question to go out into the lobby and to be counted, while the others are counted in another place, a proceeding entirely unlike that adopted in this country. It is a method of division.

Some fears have been expressed as to what would be the result if the occupant of the chair desired to wrest from the Members their control. All parliamentary law must be based upon the supposition that a man who it elected to preside over the deliberations of a body will be an honest official—honestly perform his duty.

It has been suggested here also that the Speaker might, on a question of yeas and nays, miscount, and that if tellers can be ordered, as under the rules of the last House, that miscount might be corrected; but it is necessary in order to have tellers to have one-fifth of a quorum, and under the rules of the last House the Speaker himself counts that one-fifth. Ultimately, the House will perceive, the Speaker is the counting officer, and the supposition that he would betray his duties is not a supposition upon which parliamentary law is founded, or the rules of the last House. Finding parliamentary law to be what I conceived it to be, that a division may be had whereby the Speaker may count, first, by sound of voice, and, second, by Members rising in their places, and that the division as recorded may be corrected under the constitutional rights for the yeas and nays, I have been compelled to make the decision that I have made; and the question is, Shall the judgment of the Chair stand as the judgment of the House?

On motion of Mr. Joseph G. Cannon, of Illinois, the appeal was laid on the table by a vote of 149 yeas to 137 nays, and so the decision of the Chair was sustained.

6003. The rule provides that on an election by ballot a majority shall be required to elect, and, if necessary, ballots shall be repeated until a majority be obtained.

In balloting in early years of the House there was uncertainty as to treatment of blanks, but later a rule established the principle that they should not be considered as votes.

Present form and history of Rule XL.

Rule XL provides:

In all other cases of ballot[1] than for committees a majority of the votes given shall be necessary to an election, and where there shall not be such a majority on the first ballot[2] the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

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[1] July 20, 1629, the newly arrived emigrants at Salem, Mass., chose their pastor and teacher, "the vote being taken by each one's writing in a note the name of his choice. Such is the origin of the use of the ballot on this continent." History of United States, Bancroft, Vol. I, pp. 271, 272.

[2] Where each ballot cast contains several names some curious results may be produced.

Thus, in choosing a committee of three, twenty ballots (each evidently containing the names of three candidates) produced for the five candidates, A, B, C, D, and E, the following result:

A	16
B	15
C	12
D	11
E	6
	60

This is the exact form reported in the revision of 1880.[1] It was formerly Rule No. 12, and dated from April 7, 1789, and September 15, 1837.

The portion adopted in 1789[2] was as follows:

In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election; and where there shall not be such a majority on the first ballot, the ballots shall be repeated until a majority be obtained.

The rule immediately preceding this provided that all committees consisting of more than three members should be chosen by ballot, and provided for the con

(Footnote—Continued.)

Thus four, instead of three, had the required majority, eleven being a majority of twenty. This paradox is not only possible, but is capable of taking forms still more troublesome.

Thus there might have been either of the following results:

A	20	16	12
B	17	11	12
C	11	11	12
D	11	11	12
E	1	11	12
	60	60	60

And had the twenty persons (each voting for three) divided their votes among six persons instead of five the result might have been as follows:

A	11	16
B	11	14
C	11	14
D	11	14
E	11	1
F	5	1
	60	60

Thus in each case more than three have the majority number, eleven.

It will be noticed also that if the number voted for be reduced to four the possibilities of the complication greatly increase:

A	15	20
B	15	18
C	15	11
D	15	11
	60	60

If the votes are so divided that each of the number of persons to be chosen has of votes as many as or more than a majority of the ballots (not votes) cast, and no one else has a number of votes as large as that majority of the ballots, the result may be said to be determined satisfactorily.

Thus either of the following results would be satisfactory for the election of a committee of three by a club of twenty where six persons were voled for:

A	11	13
B	11	12
C	11	11
D	9	10
E	9	9
F	9	5
	60	60

[1] Second session Forty-sixth Congress, Record, p. 207.

[2] First session First Congress, Journal, p. 10.

tingency of several ballots and plurality elections in case the members required should not each receive a majority.

(Footnote—Continued.)

When, under conditions otherwise the same, the number voted for should be five the results as follows would be satisfactory:

A	14	15	18
B	13	14	12
C	13	13	11
D	10	9	10
E	10	9	9
	60	60	60

Where, under conditions otherwise the same, four persons are voted for the following results would be satisfactory:

A	20	17	17	20
B	19	17	17	19
C	11	17	16	11
D	10	9	10	10
	60	60	60	60

If, now, under the same conditions, the votes are divided among eight persons instead of four these results would be satisfactory:

A	11	13	20
B	11	12	19
C	11	11	11
D	7	10	6
E	5	9	1
F	5	2	1
G	5	2	1
H	5	1	1
	60	60	60

It is evident that the liability to produce majorities for more than the required number increases as the number of persons voted for diminishes, and vice versa.

It seems impossible to evolve any formula that will enable a ballot to be tested on strict mathematical principles.

The experiences of various bodies have, however, evolved satisfactory solutions. The United States House of Representatives once had a rule governing balloting for committees. That rule, adopted first on April 7, 1789 (Journal of House, first session First Congress, p. 10), and continued until the revision of 1880, when it was apparently dropped because the House had ceased to elect committees (Journal, first session Forty-sixth Congress, p. 624), provided for certain contingencies:

"If upon such ballot the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail; and in case a greater number than are required to compose or complete the committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots."

Under this rule those who had a majority on the first ballot were considered elected, and the second ballot was taken for selection of the remaining members. But this rule might not have been satisfactory under certain conditions.

It is a wrong principle under these circumstances to have a ballot vote hampered by an unqualified majority requirement. The rule provided in the statutes of Maine and Massachusetts, and established in the latter State as early as 1836, seems on the whole the best:

"And if a number greater than is required to be chosen receive a majority of said whole number, the number so required of those who have the greatest excess in votes over such majority shall be declared elected."

Later the rule was changed to provide that all committees should be appointed by the Speaker;[1] but the phraseology of the rule relating to the ballot has remained in its first form.

A question was arising frequently for which the rule in this form gave no answer. On December 10, 1821,[2] at the election of Chaplain of the House, the tellers reported a blank ballot. It did not, however, affect the result. On February 10, 1829,[3] in the election of printer of the House, 2 blanks were counted in determining the total vote and the number needed for a choice, but they did not affect the result, and no question seems to have been raised.

On February 14 and 15, 1833,[4] 14 ballots were taken for the election of a printer to the House, and on every one of these ballotings but 2 blanks were cast and reported by the tellers. On the eighth ballot 4 blanks were thrown, and the number of votes required for a choice was 99. F. P. Blair had 98. If the 4 blanks had been rejected the number required for a choice would have been 97, and Mr. Blair would have been elected. On the fourteenth ballot Gales & Seaton were elected. No question seems to have been made as to counting the blanks.

Again, on December 3, 1833,[5] on the second ballot for Clerk the result was Clarke 112, Franklin 114, blanks 2. It being considered that no one had a majority, a third ballot was had.

On June 2, 1834,[6] at the election of Speaker to succeed Mr. Speaker Stevenson, who had resigned, 6 blanks were cast on the ninth ballot. Counting these blanks the total votes was 211, and 106 was necessary to a choice. John Bell, of Tennessee, had 104, and under the system of counting blanks as votes, was not elected. So the House proceeded to another ballot. Not counting the 6 blanks the total vote would have been 205, necessary to choice 103, and Mr. Bell would have been elected on the ninth ballot.

In the Senate, also, on June 28, 1834,[7] in electing a President pro tempore, on the first ballot 2 blanks were counted, making the total vote 42, necessary to a choice 22. Mr. Poindexter having 21, was not elected, although 21 would have been just enough to elect had the blanks been rejected. No question was raised.

These precedents do not, however, represent a fixed practice that blanks should be counted, as was shown in no less an instance than the balloting for a President of the United States in the House of Representatives.[8]

Probably because of the uncertainties in the practice, on September 15, 1837,[9] Mr. Levi Lincoln, of Massachusetts, suggested this addition to the rule, which was adopted:

> And in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

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[1] See section 4448 of Vol. IV of this work.

[2] First session Seventeenth Congress, Annals, p. 533.

[3] Second session Twentieth Congress, Journal, p. 271.

[4] Second session Twenty-second Congress, Debates, pp. 1725, 1726.

[5] First session Twenty-third Congress, Debates, p. 2137.

[6] First session Twenty-third Congress, Debates, p. 4372.

[7] First session Twenty-third Congress, Debates, p. 2122.

[8] See section 6008 of this chapter.

[9] First session Twenty-fifth Congress, Journal, p. 64; Globe, p. 35.

The ballot has long been unused in the House.[1] Officers are elected viva voce, and the committees are appointed by the Speaker.

6004. The rule in relation to election by ballot does not require that method of voting.

It being proposed to elect an officer of the House, an amendment prescribing viva voce election is in order.

On December 3, 1838[2] the House was considering a motion to proceed to the election of a Clerk, and Mr. George C. Dromgoole, of Virginia, had moved an amendment "that the election be made viva voce."

Objection was made, especially by Mr. John Quincy Adams, of Massachusetts, that such a motion would conflict with the rule of the House requiring election by ballot.

The Speaker[3] said that there was no such rule, the only one having reference to that point merely providing what should be done in case of election by ballot.

The Speaker also held that such a motion was in order in connection with the motion to proceed to the election of Clerk.

6005. On December 10, 1838,[4] Mr. George C. Dromgoole, of Virginia, proposed the following rule:

> In all cases of election by the House the vote shall be taken viva voce.

Mr. Dromgoole urged the rule as necessary to carry out the great Democratic doctrine of accountability. Viva voce voting prevailed at the elections in his State. The rule was opposed on the ground that it was inconvenient, an innovation on the practice of fifty years in the House, and destructive of independent voting.

The rule was agreed to, yeas 124, nays 84.

After the adoption of the rule, Mr. John Quincy Adams, of Massachusetts, raised the question that the rule was unconstitutional, since the Constitution provided that elections by the House should be by ballot.[5]

The rule was thereupon amended by inserting after the word "House" the words "of its officers."

6006. It being ordered that a majority of the ballots cast shall elect, it is not in order at the conclusion of a ballot to move that the person having a plurality only shall be declared elected.—On March 1, 1827,[6] the Senate having agreed to a resolution that on a ballot for public printer a majority of those voting should be required to elect the ballot was taken, and of a total of 47 votes, Duff Green had 22.

Mr. John Henry Eaton, of Tennessee, offered a resolution that, as Duff Green had a plurality of votes, he was duly elected printer.

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[1] See, however, the chapter on "Impeachments," of which the managers have in many cases been elected by ballot. As late as 1868 the managers of the impeachment of the President were chosen by ballot. (See section 24117 of Vol. III.)

[2] Third session Twenty-fifth Congress, Journal, p. 8; Globe, pp. 1, 2.

[3] Ames K. Polk, of Tennessee, Speaker.

[4] Third session Twenty-fifth Congress, Journal, p. 49; Globe, pp. 19, 20.

[5] The reference is to Article XII of the Constitution, which requires that the House shall vote for a President of the United States by ballot.

[6] Second session Nineteenth Congress, Debates, p. 499. John C. Calhoun, Vice-President.

The Chair decided that the resolution was not in order, and another ballot was then taken.

6007. After the tellers have begun to count the ballots it is too late for a Member to offer his vote.—On December 5, 1831,[1] the House, having been called to order by the Clerk, and the presence of a quorum having been ascertained and announced, proceeded without further motion to the election of a Speaker by ballot.

After the tellers had commenced counting the votes, Mr. Eleutheros Cooke, of Ohio, who had been out of the Hall when the ballot boxes were passed around, offered his ballot to the tellers.

The tellers hesitated as to receiving it, a question of the regularity of such proceeding being raised, and Mr. Cooke refrained from pressing his claim to vote.

The count being completed, the tellers announced that 195 votes had been cast, and that 98 votes were necessary to a choice. Mr. Andrew Stevenson, of Virginia, having just 98 votes, was therefore elected.

6008. Early precedents as to blank ballots in the elections of a Speaker and a President of the United States.—On May 22, 1809,[2] a quorum being present, the House proceeded by ballot to the choice of a Speaker.

Tellers having been appointed, and the ballot[3] having been taken, one of the tellers reported the following result:

For Joseph B. Varnum, 60; Nathaniel Macon, 36; Timothy Pitkin, jr., 20; Roger Nelson, 1; C. W. Goldsborough, 1; blank ballots, 2.

Mr. Varnum. having 60 votes, it was submitted to the decision of the House by the tellers whether the blank ballots should be considered as votes; if not, there being but 118 votes, Mr. Varnum, having 60, had a majority.

Discussion arising, Mr. Macon, of North Carolina, who was second in the ballot, expressed the opinion that blank ballots could not be counted, and hoped that Mr. Varnum would be conducted to the Chair. He recalled the blank ballots cast in the Presidential election of 1801 as a precedent.[4]

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[1] First session Twenty-second Congress, Debates, p. 1420. The Journal (p. 7) merely announces that the House proceeded to ballot and that upon the examination of the first ballot it appeared, etc.

[2] First session Eleventh Congress, Journal, p. 5 (Gales & Seaton, ed.); Annals, pp. 54–56.

[3] Speakers are no longer elected by ballot.

[4] The facts as to those blanks were as follows (Journal, second session Sixth Congress, pp. 801, 803, Gales & Seaton ed.): On the eighth ballot there were eight States for Jefferson, six for Burr, and two divided, i. e., the ballot in the State delegation showed a tie, and so the vote was reported "divided" under the rule. The same result continued until the thirty-sixth ballot, where they were ten States for Jefferson, four for Burr, and the votes of two States "given in blank."

From a footnote in the Annals (p. 1033) it appears that the States voting in blank were Delaware and South Carolina. Delaware had one Member. The States reported divided in the earlier ballots were Vermont and Maryland. In the final ballot these went to Jefferson. Maryland did it in this wise: She had formerly thrown four votes for Jefferson and four for Burr, but in the final ballot the four supporters of Burr threw four blanks. This made the vote four for Jefferson and four blank. Query.—If a blank is a ballot should not Maryland have continued to be reported divided? The rule under which the election was held provided: "In case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in case the ballots of the State be equally divided, then the word 'divided' shall be written on each duplicate."

Mr. John Randolph, of Virginia, opposed this view strenuously. He said the House had not elected their Speaker. A Member should not consent to take the Chair on the vote of a minority. He hoped the House would elect their Speaker "more majorum, after the manner of their ancestors."

Mr. Randolph then moved that they proceed to ballot a second time for Speaker, which motion was carried, 67 ayes, to 43 noes. On the next ballot Mr. Varnum had a majority of votes, 65 out of a total of 119. On the next day the entry in the Journal simply stated that a majority of the votes were for Mr. Varnum. Thereupon Mr. Randolph moved to amend the Journal so as to show the facts in regard to the two ballots. After a discussion [1] of the decision of the previous day and its analogy to the precedent of 1801, Mr. Randolph's motion was agreed to.

In the amended form the Journal states: "Sixty-five votes, being a majority of the whole number of members present, were found in favor of Joseph B. Varnum." The Journal nowhere states, however, that all present voted. The can of the roll by States records 126 responding on the call by States, just preceding the election of Speaker. Although only 119 voted on the second ballot, the 65 for Mr. Varnum were a majority of all present as well as of all voting.

6009. On August 21, 1852,[2] a select committee of the Senate reported on the contested case of Yulee *v.* Mallory, from Florida, where the joint convention of the legislature had voted under the concurrent order:

> *Resolved,* That a majority of all the members-elect, composing the two houses of general assembly shall be necessary to determine all elections devolving upon that body.

At the voting the following occurred:

> The president of the senate presided, and upon a call of the roll, a poll viva voce was taken of the members, pursuant to the requirements of the constitution of the State, and twenty-nine responded David L. Yulee, and twenty-nine blank, whereupon the presiding officer declared that no choice had been made; they then proceeded to a second and third vote, with substantially the same result. On the 15th of January they again met in convention for the same purpose, and upon a call of the roll thirty-one members responded R. S. Mallory, and twenty-seven votes for Mr. Yulee and others; whereupon the president declared Mr. Mallory to be duly elected.

The committee found that the legislature had proceeded in accordance with a valid order, and that Mr. Mallory was elected. The Senate concurred in the report.

6010. On a ballot to elect managers for an impeachment, ballots on which the names were doubtful were not counted.—On January 2, 1804 [3] the House was balloting for 11 managers of the impeachment of Judge Pickering, when several votes given for Messrs. Randolph, Mitchell, Campbell, and Clay were not counted owings to there being other gentlemen of similar names in the House. Messrs. J. Randolph, S. L. Mitchell, G. W. Campbell, and J. Clay were leading candidates, all of whom were elected. It does not appear that nominations were made preceding the balloting.

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[1] The Annals (pp. 57, 58) do not give this discussion.

[2] First session Thirty-second Congress, 1 Bartlett, p. 611.

[3] First session Eighth Congress, Annals, p. 796.

Chapter CXXIX.

THE VOTE BY YEAS AND NAYS.

1. **Provisions of the Constitution. Section 6011.**[1]
2. **In order before organization of the House. Sections 6012, 6013.**
3. **Order of yeas and nays not affected by failure of quorum. Sections 6014, 6015.**[2]
4. **May be ordered by less than a quorum. Sections 6016–6027.**[3]
5. **Not to be demanded again after being refused. Sections 6028–6031.**[4]
6. **Not in order on a vote seconding a motion. Sections 6032–6036.**
7. **General decisions as to demanding. Sections 6037–6045.**
8. **Rule prescribing the manner of roll call. Sections 6046, 6047.**
9. **Roll of yeas and nays as distinguished from roll for organization. Section 6048.**
10. **Recapitulation and interruptions of roll call. Sections 6049–6059.**
11. **Changes and corrections in vote of Member. Sections 6060–6083.**
12. **Wrong announcement of result is corrected at any time. Sections 6084–6094.**
13. **As to challenge of the recorded vote of a Member. Sections 6095-W99.**
14. **Effect of an order of yeas and nays on close of debate. Sections 6100–6105.**

6011. The Constitution provides that the yeas, and nays shall be entered on the Journal at the desire of one-fifth of those present.[5]**—**The Constitution of the United States, in section 5 of Article I, provides:

> The yeas and nays of the Members of either House on any question shall, at the desire of one-fifth[6] of those present, be entered on the Journal.

In section 7 of Article I, which provides for the return of bills from the President of the United States with his objections and their consideration, this requirement is made:

> But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House, respectively.[7]

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[1] Demand for yeas and nays not to be held dilatory. (Sec. 5737 of this volume.)

Not to be demanded in Committee of the Whole. (Secs. 4722–4724 of Vol. IV.)

Votes by yeas and nays in impeachment trials. (Sec. 2094 of Vol. III.)

[2] Rule combining call of the House with a vote by yeas and nays. (Sec. 3041 of Vol. IV.)

[3] See also section 3010 of Volume IV.

[4] As to reconsideration of vote ordering yeas and nays. (Secs. 5689–5693 of this volume.)

[5] See section 5689 of this volume for decision as to ordering the yeas and nays on a motion to reconsider a vote ordering the yeas and nays.

[6] In the Continental Congress the yeas and nays were, by rule, ordered at the demand of a single Member. (Journal, May 26, 1778.)

[7] The House for a time had a rule that the yeas and nays should be taken on the passage of every general appropriation bill, but in 1886 it was repealed as useless. (First session Forty-ninth Congress, Journal, p. 1156.)

6012. According to the latest practice the yeas and nays are taken on questions arising before the organization of the House.—On December 6, 1839,[1] at the organization of the House, the call of the roll by States for the ascertainment of a quorum had been suspended at the State of New Jersey, and a controversy had arisen as to who were entitled to be called as the occupants of five of the seats of that State. Mr. John Quincy Adams, of Massachusetts, had been chosen to preside as chairman of the meeting of the Members-elect, and the Members were proceeding to determine who, if any, should be allowed to vote as the five Members from New Jersey.

A vote being about to be taken on an appeal from a decision of the Chair, Mr. Alexander Duncan, of Ohio, inquired if the yeas and nays could be taken on the question before the House.

The Chairman replied that, at the present state of organization of the House, the yeas and nays could not be taken, the House being not yet constituted.

On December 11, in the course of the effort to determine the status of the contestants, the question was put as to each one of them, whether or not he should be permitted to vote, and decided.

After this, the yeas and nays being demanded on a pending question, the Chairman stated that, on a former occasion, he had decided that the roll of the Members of the House not being complete, the yeas and nays could not be taken; but that now, considering that many of the obstructions existing in the organization of the House had been partially removed by the decisions of the House of this day as to the votes of certain Members whose right to vote had been contested, the yeas and nays might be taken by general consent.[2]

No objection being made, the yeas and nays were taken.

6013. On December 4, 1849,[3] before a Speaker had been elected or rules adopted, Mr. Christopher H. Williams, of Tennessee, moved that the House adjourn until the hour of 12 to-morrow.

Mr. Thomas H. Bayly, of Virginia, demanded the yeas and nays on the motion to adjourn.

The Clerk[4] decided that the demand for the yeas and nays was not in order.

Mr. Bayly appealed, urging that the body of Members-elect was a House before organization, and was proceeding according to the directions laid down for the House by the Constitution. They were keeping a journal and electing a Speaker, as required by the Constitution to do. The mandate as to the yeas and nays applied to them.

The Clerk thereupon said that he would withdraw the decision, and would submit the question to the House. Thereupon Mr. Bayly withdrew his appeal, and the Clerk declared that the question was on taking the yeas and nays.

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[1] First session Twenty-sixth Congress, Journal, pp. 7, 14; Globe, pp. 27, 40.

[2] On December 11, the House being still unorganized, the Chairman decided that the yeas and nays could not be called without the consent of all present. (Globe, p. 42.)

[3] First session Thirty-first Congress, Journal, pp. 32, 147–156; Globe, pp. 4, 6.

[4] Thomas J. Campbell, Clerk.

A question then arose as to whether the vote of a majority was required to order the yeas and nays, and pending this discussion Mr. Williams withdrew his demand.

On December 5 and 22 the yeas and nays were taken several times, and in each case the Journal specifically states that they were demanded by one-fifth.

6014. When a yea-and-nay vote on a bill fails for lack of a quorum, the order for the yeas and nays remains effective whenever the bill again comes before the House.—On May 10, 1886,[1] a District of Columbia day, the House was considering the bill (H. R. 7083) to incorporate the trustees of the Young Women's Christian Home, in Washington, D. C., and on the passage, the yeas and nays having been ordered, there were 145 yeas, 1 nay; no quorum.

The House then adjourned.

On June 14, 1886, District of Columbia business being again in order, Mr. John S. Barbour, of Virginia, called the bill up again, and a proposition for debate was made.

The Speaker[2] said:

> The yeas and nays were ordered on the passage of the bill and they were taken, but no quorum appeared. If the yeas and nays are dispensed with, it must be by unanimous consent.

6015. On August 28, 1890,[3] the Speaker stated the pending question to be on the appeal of Mr. William E. Mason, of Illinois, from the decision of the Chair, made on the 26th instant, that the bill of the House (H. R. 11568) defining "lard," also imposing a tax upon and regulating the manufacture and sale, importation and exportation of compound lard, was the pending business before the House, on which appeal the yeas and nays had been ordered, and on which no quorum voted.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that this day having been assigned to the Committee on Labor the bill named should go over as unfinished business until to-morrow or Monday, or such subsequent time as unfinished business might be properly considered.

The Speaker[4] declined to entertain the point of order on the ground that the question raised was the one pending and to be now voted on.

The question being again put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative, yeas 130, nays 46.

6016. In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way.—On April 30, 1852,[5] the House having under consideration a bill for the relief of Osborn Cross, the question was taken on the engrossment and third reading.

Mr. Orlando B. Ficklin, of Illinois, having demanded the yeas and nays, there were, ayes 22, noes 58, no quorum voting.

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[1] First session Forty-ninth Congress, Journal, pp. 1566, 1885; Record, pp. 4342, 5679, 5680.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-first Congress, Journal, p. 998; Record, p. 9277.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Thirty-second Congress, Globe, p. 1220; Journal, pp. 651, 652.

Mr. George W. Jones, of Tennessee, submitted that it did not require that there should be a quorum present to call the yeas and nays, and quoted the provision of the Constitution that "the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal." [1]

The Speaker [2] said:

> That is the constitutional provision, but the construction which the Chair puts upon the provision in reference to this subject is this: That it is competent for the House to adjourn with less than a quorum from day to day, but it is not competent for less than a quorum to pass a bill. There is another provision of the Constitution, the gentleman will remember, which requires a quorum to be present to do business, and, therefore, for the purpose of doing business, less than one-fifth of a quorum, in the judgment of the Chair, can not call the yeas and nays. * * * We can not pass a bill with less than a quorum, and the yeas and nays would be idle, therefore, less than a quorum being present.

On appeal this decision was sustained.

6017. On December 28, 1852,[3] the House was voting on a resolution relating to the reports of committees, when the Speaker announced that no quorum voted on the pending motion.

Mr. Alexander H. Stephens, of Georgia, demanded the yeas and nays.

The Speaker [2] decided, in conformity with his decision of the last session and which was sustained by the House, that less than a quorum could not act upon a demand for the nays and nays any more than upon any other business; and consequently that the demand for the yeas and nays was not now in order. He thought that, taking the clause of the Constitution authorizing "one-fifth of the Members present to cause the yeas and nays to be entered on the Journal," in connection with that requiring "a majority of the Members to constitute a quorum to do business," it was clearly intended that the "Members present," one-fifth of whom may order the yeas and nays, should amount to a quorum. It would be different if the pending motion was to adjourn or for a call of the House, as less than a quorum was competent to act on either of those motions.

Mr. Alexander H. Stephens having appealed, on the next day the decision of the Chair was sustained by the withdrawal of the appeal by Mr. Stephens.

Again, on January 18, 1853,[4] Mr. Stephens raised the same point of order, and the Speaker affirmed his previous decision. Mr. Stephens appealed, and, after debate on the meaning of the constitutional provision, the appeal was laid on the table, ayes 96, noes 23.

6018. On January 28, 1863,[5] during prolonged dilatory proceedings over a bill relating to negro soldiers, a motion was made to fix the day to which the House should adjourn, and the previous question was moved. On this latter motion the yeas and nays were demanded. On a vote by tellers there were 23 ayes and 3 noes.

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[1] Not long after this, on May 24, 1852 (first session Thirty-second Congress, Journal, p. 727; Globe, pp. 1458, 1459), Mr. Jones, who made the point of order, was in the chair as Speaker pro tempore when the same question arose again. Those voting on ordering the yeas and nays not being a quorum, he decided that a quorum was not necessary, thus overruling the decision of Mr. Speaker Boyd. On appeal Mr. Jones's ruling was sustained.

[2] Linn Boyd, of Kentucky, Speaker.

[3] Second session Thirty-second Congress, Journal, p. 87; Globe, pp. 163, 164.

[4] Journal, p. 145; Globe, pp. 334, 335.

[5] Third session Thirty-seventh Congress, Globe, p. 573.

Mr. William S. Holman, of Indiana, made the point that there was no quorum present, as disclosed by the vote.

The Speaker[1] ruled that a quorum was not required to order the yeas and nays.

An appeal from this decision was laid on the table, 96 yeas to 2 nays; so the Chair was sustained.

6019. On December 1, 1877,[2] Mr. Roger Q. Mills, of Texas, moved to suspend the rules and adopt the following resolution:

Resolved, That the Committee on Ways and Means be instructed to so revise the tariff as to make it purely and solely a tariff for revenue and not for protecting one class of citizens by plundering another.

On this motion the yeas and nays were ordered, yeas 27, nays 57.

Mr. John H. Baker, of Indiana, made the point of order that a quorum had not voted on the demand.

The Speaker[3] overruled the point of order on the ground that a quorum was not necessary to order the yeas and nays.

6020. On March 3, 1881, [4] the House was considering the Senate bill for the relief of Hardie Hogan Helper, and on the question of ordering the bill to be read a third time there were 109 ayes, 2 noes.

Mr. James W. Singleton, of Illinois, made the point of no quorum.

Mr. Alexander H. Coffroth, of Pennsylvania, demanded the yeas and nays.

Mr. Charles E. Hooker, of Mississippi, made the point of order that he had moved a call of the House before the yeas and nays were ordered, and that a motion for a call or to adjourn was the only motion in order.

The Speaker[3] said:

The Chair overrules the point of order. The House has the right by a further proceeding to find out whether there be a quorum present. * * * The tellers' count did not show a quorum; but the House may desire a yea-and-nay vote, and the yeas and nays have been demanded to ascertain if there is a quorum. When a count by tellers does not show a quorum, it is in order for the House further to test the fact by a yea-and nay vote. The question is on ordering the yeas and nays.

6021. On January 11, 1889,[5] the House was dividing on the question of adopting a conference report, and Mr. Stephen V. White, of New York, demanded the yeas and nays.

Mr. J. B. Weaver, of Iowa, raised the point that a quorum must be present to order the yeas and nays.

The Speaker[6] ruled as follows:

The Chair is somewhat familiar with the question which was raised by the gentleman from Iowa to-day, and is aware of the fact that there have been two or three decisions in the House to the effect that under the Constitution it requires the-presence of a quorum to order the yeas and nays. That was upon the ground that the ordering of the yeas and nays was the transaction of business; and in one case at least the decision, as stated by the gentleman from Iowa, was appealed from and was sustained by the House. But for more than thirty-five years the decisions have been all the other way, and the uniform practice of the House has been constantly the reverse of that.

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] First session Forty-fifth Congress, Journal, p. 290; Record, pp. 811, 812.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Third session Forty-sixth Congress, Journal, p. 596; Record, p. 2446.

[5] Second session Fiftieth Congress, Record, pp. 679, 681.

[6] John G. Carlisle, of Kentucky, Speaker.

If the ordering of the yeas and nays is the transaction of business, of course the ordering of tellers is the transaction of business. In each case the proceeding relates merely to the manner of taking the vote of the House, the method by which the sense of the House shall be ascertained on a matter of business. * * * Under the rules of the House one-fifth of a quorum may order tellers, but it is easy to be seen that one-fifth of a quorum, which is 33 Members, may be all the Members present, and much less than a quorum; and if the point of the gentleman is well taken, that the yeas and nays can not be ordered without the presence of a quorum, manifestly neither of these methods of taking a vote of the House could be resorted to, nor could any other method of taking a vote upon any question, because they are all proceedings of the same character. The Chair is unable to see how the House could even divide on a question, because it is as much the transaction of business as taking a vote by tellers or the call of the roll on the vote by yeas and nays. The Chair thinks, therefore, that the later practice is the better practice, and that the three decisions alluded to, which seem to stand alone, are not now the law of the House.

The Chair overrules the point of order.[1]

6022. On July 29, 1890[2], Mr. Joseph G. Cannon, of Illinois, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the amendments of the Senate to the bill of the House (H. R. 10884) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1891, and for other purposes, and the question being put, there appeared on division, yeas 57, nays 40.

Mr. William D. Bynum, of Indiana, made the point of order that no quorum was present.

The Speaker thereupon proceeded to count the House, when Mr. Daniel Kerr, of Iowa, demanded the yeas and nays.

Mr. James D. Richardson, of Tennessee, made the point of order that the demand was not in order, for the reason that the last vote disclosed the fact that a quorum was not present.

The Speaker[3] overruled the point of order on the ground that a quorum was not required to order the yeas and nays, and also on the ground that the demand for the yeas and nays was a constitutional right, and that the ordering of the yeas and nays as stated in the ruling of Speaker Carlisle in the last Congress was "a proceeding relating merely to the method by which the sense of the House is ascertained on a matter of business." The yeas and nays is the final vote of the House on a pending question.

6023. On August 23, 1890,[4] Mr. William E. Mason, of Illinois, having appealed from a decision of the Speaker pro tempore, and the question having been put to the House, "Shall the decision of the Chair stand as the judgment of the House?" it was decided (on division) in the affirmative.

Mr. Mason demanded the yeas and nays, which were refused, one-fifth of the Members present not voting in favor thereof.

Mr. Mason made the point of order that no quorum had voted on ordering the yeas and nays.

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[1] Mr. Weaver on this occasion cited the precedent in the first session of the Thirty-second Congress, also a similar one in the second session of the same Congress, where Mr. Speaker Boyd reaffirmed his position.

[2] First session Fifty-first Congress, Journal, p. 903; Record, p. 7861.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-first Congress, Journal, p. 984.

The Speaker pro tempore[1] overruled the point of order on the ground that a quorum was not required to order the yeas and nays.

6024. On November 3, 1893,[2] Mr. James D. Richardson, of Tennessee, introduced a joint resolution (H. Res. 86) to pay session and other employees, and per diem employees, and that they be retained during the coming recess.

The question being put, Shall the joint resolution be engrossed and read a third time?

Mr. Joseph C. Hutcheson, of Texas, demanded that the yeas and nays of those voting be entered on the Journal.

Eleven Members concurred in the demand and 128 Members refused to concur. So the demand for the yeas and nays was refused.

Mr. Hutcheson thereupon made the point that, inasmuch as no quorum had voted on the demand for the yeas and nays, there was no quorum present to transact business.

The Speaker[3] held as follows:

The Constitution of the United States provides that one-fifth of the Members present may have a yea-and-nay or record vote. Even if there were not more than 20 or 25 Members present, one-fifth of them could order the yeas and nays upon any question, and there must always be a quorum voting for the transaction of business, The adoption of that resolution is business, and if the gentleman makes the point that no quorum votes upon the resolution, the Chair thinks the point is well taken. The ruling which the Chair has just made was upon the question of ordering the yeas and nays and not upon the question of agreeing to the joint resolution.

6025. On May 9, 1898,[4] the House was considering the conference report on the bill (S. 1316) to provide for organizing a naval battalion in the District of Columbia. The question being on agreeing to the conference report, there were, on a division, 71 ayes and 45 noes.

Mr. Joseph W. Bailey, of Texas, made the point of no quorum, and the Speaker pro tempore proceeded to count the House.

Before the count was completed Mr. William H. Moody, of Massachusetts, demanded the yeas and nays.

Mr. Bailey made the point of order that while the point of no quorum was pending it was not in order to demand the yeas and nays.

After debate, the Speaker pro tempore[5] held:

The Chair is ready to rule upon the question. When the suggestion is made that no quorum is prezent, the rule provides that the Chair shall count the House to ascertain whether a quorum is present or not; but, in addition to that, the Constitution provides that at any time one-fifth of those present may order the yeas and nays upon any subject. Now, the House has not yet ascertained that no quorum is present in this case. No quorum voted on the last vote, but it does not appear that no quorum is present. The House, under the constitutional right, may override the rule of simply counting to ascertain if a quorum is present and order the yeas and nays. On that vote it will appear whether a quorum votes upon that question. If it does not, of course then the point of order is still good that no quorum is present. Now, this matter has been ruled upon before.[6] The Chair overrules the point of order.

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[1] Lewis E. Payson, of Illinois, Speaker pro tempore.

[2] First session Fifty-third Congress, Journal, p. 172; Record, pp. 3120, 3121.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-fifth Congress, Record, p. 4744.

[5] Sereno E. Payne, of New York, Speaker pro tempore.

[6] Here the Speaker pro tempore cited the decision of the Fifty-first Congress.

6026. On March 2, 1903[1] (the legislative day of February 26), the House met after a recess. Previous to the recess the previous question had been ordered on the question of agreeing to the conference report on the bill (H. R. 12098) "extending the homestead laws and providing for a right of way for railroads in the district of Alaska."

When the House met after the recess Mr. James D. Richardson, of Tennessee, at once made the point of order that no quorum was present.

Mr. Sereno E. Payne, of New York, demanded the yeas and nays; on the pending question.

Mr. Richardson insisted that a quorum should be present.

The Speaker[2] said:

The gentleman must bear in mind that the thing that the gentleman from New York asks does not need a quorum. The Chair must overrule the point of order. * * * Speaker Randall and Speaker Carlisle both held that a quorum was not needed to order the yeas and nays. * * * And the present occupant of the Chair so holds, and overrules the point of order. The question is on ordering the yeas and nays.

6027. On March 3[3] (still the legislative day of February 26) the House again met after recess, the pending question being on agreeing to the conference report on the immigration bill (H. R. 12199), on which the previous question had been ordered previous to the recess.

Mr. Richardson again made the point of order that no quorum was present.

Mr. Payne demanded the yeas and nays on the pending question.

Mr. Richardson objected that the first thing in order was to ascertain whether or not a quorum was present.

The Speaker said:

The gentleman overlooks the fact that you can order the yeas and nays with or without a quorum. The yeas and nays have been demanded. If there turns out to be a quorum, that will be sufficient. If there are not sufficient here to make a quorum, we will have to get them in. That is all. The Chair overrules the point of order.

6028. On January 23, 1833,[4] Mr. Jesse Speight, of North Carolina, demanded the yeas and nays on a motion to adjourn.

Tellers were called for to ascertain whether one-fifth of the House demanded the yeas and nays. The ayes being 23, the noes 78, it appeared that no quorum had voted.

The Speaker[5] decided that the yeas and nays should be called.

Mr. Charles F. Mercer, of Virginia, appealed from this decision, but subsequently withdrew the appeal.

6029. The yeas and nays having been once refused may not be again demanded on the same question.

A motion to reconsider the vote ordering the yeas and nays is in order.

On February 28, 1849,[6] at an evening session, the House was considering a bill of the Senate (No. 343) entitled "An act to provide for carrying into effect the fifth

[1] Second session Fifty-seventh Congress, Record, p. 2912.

[2] David B. Henderson, of Iowa, Speaker.

[3] Record, pp. 3010–3011.

[4] Second session Twenty-second Congress, Debates, p. 1225.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] Second session Thirtieth Congress, Globe, p. 623.

article of the treaty between the United States and the Mexican Republic for establishing the boundary line between them." Mr. Robert C. Schenck, of Ohio, had offered an amendment, and after debate, when the question was put on its adoption, the yeas and nays were called for. Less than one-fifth voting in favor thereof, the yeas and nays were refused.

The question was then being taken by a division, when Mr. George Ashmun, of Massachusetts, asked the yeas and nays.

The Speaker[1] I stated that they had been refused and could not again be called for.

Mr. George W. Jones, of Tennessee, asked as a constitutional right that the vote be again taken on ordering the yeas and nays.

The Speaker said the Chair was of opinion that the yeas and nays could be demanded but once upon the same question; otherwise the call might be renewed every day during the session upon the same question. A motion might be made, however, to reconsider the vote by which the House refused to order the yeas and nays.

On motion of Mr. Jones, the vote was reconsidered, and the question recurring on ordering the yeas and nays, they were ordered.

6030. It is not in order during the various processes of a division to repeat a demand for the yeas and nays which has once been refused by the House.—On February 3, 1846[2] Mr. Jacob Collamer, of Vermont, presented a resolution requesting the President to communicate to the House correspondence between the Governments of the United States and Great Britain in relation to the country west of the Rocky Mountains, and moved a suspension of the rules to enable the resolution to be offered. Mr. George Ashmun, of Massachusetts, called for the yeas and nays, which the House refused to order.[3]

Tellers were then asked for and appointed on the motion to suspend the rules, and the affirmative side having been taken and declared, Mr. Collamer called for the yeas and nays.

The Speaker[4] said the demand was not in order, as the yeas and nays had already been refused.

The completion of the vote by tellers then occurred.

6031. On May 26, 1854,[5] the House resumed the consideration of the amendments of the Senate to the bill of the House (H. R. 271) to supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1854. The yeas and nays having been once refused on the question of agreeing to the forty-ninth amendment.

Mr. George W. Jones, of Tennessee, claimed as a constitutional privilege that it should again be submitted to the Members present to ascertain whether one-fifth desired the yeas and nays to be entered on the Journal.

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[1] Robert C. Winthrop, of Massachusetts, Speaker.

[2] First session Twenty-ninth Congress, Globe, p. 304.

[3] The Constitution specifies how the yeas and nays may be ordered.

[4] John W. Davis, of Indiana, Speaker.

[5] First session Thirty-third Congress, Journal, p. 939; Globe, p. 1323.

The Speaker[1] decided that less than one-fifth of the Members present having demanded the yeas and nays, it was not in order to repeat the demand upon the same question.

From this decision of the Chair Mr. Jones appealed. And the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

6032. 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 June 20, 1898,[3] Mr. Thaddeus M. Mahon, of Pennsylvania, moved that the rules be suspended and that the amendments of the Senate to the "omnibus claims bill "(H. R. 4936) be nonconcurred in and a committee of conference be asked.

Mr. Eugene F. Loud, of California, demanded a second.

The House divided and the tellers reported ayes 90, noes 2.

Mr. Loud made the point of no quorum.

Mr. Mahon demanded the yeas and nays.

The Speaker[4] said:

This can not be taken by yeas and nays. It is taken by tellers only. This is not a motion. It is the seconding of a motion, and the constitutional right to demand the yeas and nays does not exist as to a second.

6033. On May 21,1906,[5] Mr. De Alva S. Alexander, of New York, moved to suspend the rules and pass the bill (S. 5533) to appoint an additional judge for the southern district of New York.

A second being demanded, on a vote by tellers there appeared ayes 129, noes 0.

Mr. John S. Williams, of Mississippi, made the point of order that no quorum was present.

The Speaker, after counting, announced the presence of a quorum.

Mr. Williams then demanded the yeas and nays.

The Speaker[6] said:

The yeas and nays can not under the rule be had on ordering a second. That is expressly provided in the rules.

6034. On February 6, 1827,[7] Mr. John Woods, of Ohio, called for the previous question on a motion relating to the bill "for the alteration of acts imposing duties on imports."

When the Speaker put the question to ascertain whether the call was seconded by a majority of the House,[8] Mr. Forsyth, of Georgia, demanded that the question be taken by ayes and noes.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] See, however, sections 3053–3055 of Vol. IV of this work.

[3] Second session Fifty-fifth Congress, Record, p. 6172.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-ninth Congress, Record, p. 7186.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] Second session Nineteenth Congress, Journal, p. 493.

[8] The second is no longer required for the demand for the previous question.

The Speaker[1] decided that the motion of Mr. Forsyth was not in order.

Mr. Forsyth appealed, but subsequently withdrew his appeal, and the decision of the Chair was acquiesced in by the House.

6035. On July 16, 1840[2] when the rule provided that the previous question should only be admitted when demanded by a majority of the Members present, Mr. Speaker Hunter decided that, as the yeas and nays could not be taken in ascertaining whether the previous question were demanded by a majority of the Members present or not, the yeas and nays could not be taken on a motion to reconsider that demand.

6036. On May 27, 1856,[3] during consideration of the bill (H. R. 172) making a grant of public lands to the State of Michigan, the previous question was moved, and the motion was seconded on a vote by tellers, in accordance with the requirement of the rule as it was at that time.

Mr. George W. Jones, of Tennessee, moved to reconsider the vote whereby the second was ordered.

Thereupon Mr. Jones proposed to demand the yeas and nays on the motion to reconsider.

The Speaker[4] said:

The Chair decides that, inasmuch as it is the practice of the House to decide that question by tellers, the House should follow the same mode on a motion to reconsider the vote by which the previous question was seconded.

6037. During proceedings to secure a quorum it was held that the yeas and nays might not be demanded on a motion to lay on the table a motion to reconsider the vote whereby the yeas and nays were ordered.[5]

The House having reconsidered the vote whereby the yeas and nays were ordered, and having again ordered them, a second motion to reconsider was held out of order.

On May 15, 1896,[6] at a Friday evening session, a quorum not being present, Mr. John A. Pickler, of South Dakota, moved to reconsider the vote by which the yeas and nays were ordered.

Messrs. Roswell P. Bishop, of Michigan, and William L. Terry, of Arkansas, made the point of order that the order of the yeas and nays might not be reconsidered.

The Speaker pro tempore[7] held that the motion to reconsider was in order.

Mr. Alfred Milnes, of Michigan, moved to lay on the table the motion to reconsider the order of the yeas and nays.

On Mr. Milnes's motion Mr. H. Henry Powers, of Vermont, demanded the yeas and nays.

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[1] John W. Taylor, of New York, Speaker.

[2] First session Twenty-sixth Congress, Journal, p. 1288.

[3] First session Thirty-fourth Congress, Globe, p. 1314.

[4] Nathaniel P. Banks, of Massachusetts, Speaker.

[5] See, however, section 5689 of this volume.

[6] First session Fifty-fourth Congress. Record, p. 5318.

[7] John Dalzell, of Pennsylvania, Speaker pro tempore.

The Speaker pro tempore said:

The Chair will suggest to the gentleman from Vermont that this is a mere question of the method of taking a vote in the House in which there is no quorum, and the Chair is of the opinion that the yeas and nays are not properly demanded.

Mr. Powers thereupon withdrew the demand.

The question then being taken on the motion to reconsider the vote whereby the yeas and nays were ordered, it was decided in the affirmative-ayes 62, noes 48.

The question recurring on the demand for the yeas and nays, they were ordered by one-fifth of those present.

Thereupon Mr. Pickler moved to reconsider the vote whereby the yeas and nays were ordered.

The Speaker pro tempore said:

The Chair holds that motion to be out of order.

6038. The yeas and nays may be demanded while a vote by tellers is being taken.—On January 10, 1845,[1] the Speaker[2] announced that the first business in order was the resolution offered on a previous occasion by Mr. Jacob Thompson, of Mississippi, to change the hour of meeting to 11 o'clock; to which Mr. David L. Seymour, of New York, had submitted an amendment as a substitute providing for an evening session.

Mr. Richard Brodhead, of Pennsylvania, moved the previous question, and on the question, "Shall the main question be now put?" the vote was ordered to be taken by tellers. Messrs. John P. Hale, of New Hampshire, and Robert C. Winthrop, of Massachusetts, were appointed tellers, and they reported 61 in the affirmative.

Mr. George W. Hopkins, of Virginia, rose while the negative votes, which were evidently a minority, were being counted and demanded the yeas and nays.

The yeas and nays were ordered,[3] and being taken resulted, yeas 90, nays 86. So the main question was ordered to be now put.

6039. The yeas and nays may be demanded while the Speaker is announcing the result of a division.—On February 24, 1846[4] Mr. John W. Tibbatts, of Kentucky, moved that the House resolve itself into Committee of the Whole House on the state of the Union, his intention being to get consideration of the bill making appropriations for harbors and rivers.

The Speaker[5] put the question and there was clearly a majority voting against the motion, and the Speaker was so announcing, when Mr. Tibbatts demanded the yeas and nays, which were ordered.[6]

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[1] Second session Twenty-eighth Congress, Globe, p. 121.

[2] John W. Jones, of Virginia, Speaker.

[3] This is a proceeding and not a ruling, the Journal making no mention of it, but it was referred to for many years in the Digest and Manual, and is in accordance with the fixed practice of the House.

[4] First session Twenty-ninth Congress, Globe, p. 420.

[5] John W. Davis, of Indiana, Speaker.

[6] This is a proceeding and not a ruling, but it was referred to in the Digest and Manual for many years, and the practice of the House has conformed to it.

6040. The yeas and nays may be demanded even after the announcement of a vote if the House has not passed to other business.—On February 4, 1850,[1] Mr. Joshua R. Giddings, of Ohio, offered these resolutions:

Resolved, That we hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with the inalienable rights of life and liberty, and that all governments are instituted to maintain these rights.

Resolved, That in constituting government in any Territory of the United States it is the duty of Congress to secure to all people thereof, of whatsoever complexion, the enjoyment of the rights aforesaid.

Mr. Samuel W. Inge, of Alabama, moved that the resolutions be laid upon the table.

The question was taken, and was declared by the Speaker to have been rejected, when Mr. Joseph M. Root, of Ohio, demanded the yeas and nays.

Mr. Thomas L. Clingman, of North Carolina, submitted that after the House had acted on the motion to lay on the table, had rejected it, and after that decision had been announced by the Chair, it was not in order for a gentleman to insist upon a second vote being taken by a demand for the yeas and nays. Each Member had a constitutional right to call for the yeas and nays, but he must do so before the question had been determined. The House could not be compelled in this matter to vote a second time.

The Speaker[2] said that the practice adopted by his immediate predecessor, and in the propriety of which he concurred, drew a distinction between a demand for the yeas and nays and other cases. When a demand for the yeas and nays was made the question was entertained at any time before the House had passed to other business. The Chair entertained the motion.

On February 28, 1849,[3] Mr. Robert C. Schenck, of Ohio, moved a suspension of the rules to consider a bill for the relief of the captors of the frigate *Philadelphia*.

Two-thirds not voting in the affirmative, the rules were not suspended, and the Speaker announced that the bill would be committed to the Committee of the Whole House on the state of the Union, in accordance with the requirements of the rules.

Mr. Schenck at this point demanded the yeas and nays on his motion to suspend the rules.

Mr. Frederick P. Stanton, of Tennessee, made the point of order that, the decision having been announced, it was too late for the gentleman from Ohio to call for the yeas and nays.

The Speaker[4] said that it was the constitutional privilege of every Member, upon the vote of one-fifth of the Members, to have the yeas and nays. Nothing had intervened. If anything had intervened, the Chair would not entertain the motion.

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[1] First session Thirty-first Congress, Globe, p. 277.

[2] Howell Cobb, of Georgia, Speaker.

[3] Second session Thirtieth Congress, Globe, p. 615.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

6041. On February 15, 1901,[1] a motion was before the House to reconsider the vote whereby the bill (S. 2245) "directing the issue of a duplicate lost check drawn by William H. Comegys," etc., had been passed, and Mr. James D. Richardson, of Tennessee, moved to lay the motion on the table.

On a vote by tellers there were ayes 113, noes 117, and the Speaker announced the result.

Mr. William H. Moody, of Massachusetts, had then arisen and addressed these words to the Chair:

> Mr. Speaker, I understand that debate is now in order,

when Mr. Richardson arose and demanded the yeas and nays on his motion to lay on the table.

The Speaker[2] said:

> The Chair, while not clear upon the matter, think that the demand for recognition by the gentleman from Massachusetts to debate this question would probably cut off the demand for yeas and nays as coming too late; but on a question involving a great constitutional privilege like the yeas and nays, the Chair is very loth to make a ruling of that kind where the two demands come very close together. The Chair will therefore take the sense of the House on ordering the yeas and nays.

6042. After the Speaker has announced the result of a division on a motion, and is in the act of putting the question on another motion, it is too late to demand the yeas and nays on the first motion.—On January 23, 1852,[3] Mr. George S. Houston, of Alabama, moved that the House resolve itself into the Committee of the Whole House on the state of the Union.

Pending this, Mr. John R. Daniel, of North Carolina, moved that the House resolve itself into a Committee of the Whole House for the consideration of private bills, And the question being first put on the latter motion (this being private bill day), it was decided in the negative.

The Speaker had announced the result of the last vote, and was in the act of putting the question on the motion submitted by Mr. Houston, when Mr. Edward C. Cabell, of Florida, demanded the yeas and nays on the motion submitted by Mr. Daniel, claiming as a constitutional right that he have the opportunity to record his vote.

The Speaker[4] decided that the demand came too late, as the motion had passed from before the House, saying in response to Mr. Cabell's claim:

> Would it be in order to call the yeas and nays on a question passed on yesterday? If not, they can not be called upon a question that has passed from before the House to-day.

Mr. Cabell having appealed, the decision of the Chair was sustained.

6043. In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand.— On May 23, 1906,[6] Mr. Robert Adams, Jr., of Pennsylvania, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the diplomatic and consular appropriation bill. The question being taken, on division the Speaker announced, ayes 192, noes 3.

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[1] Second session Fifty-sixth Congress, Record, p. 2479.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Thirty-second Congress, Journal, p. 254; Globe, p. 371.

[4] Linn Boyd, of Kentucky, Speaker.

[5] First session Fifty-ninth Congress, Record, p. 7301.

Mr. John S. Williams, of Mississippi, having immediately demanded the yeas and nays, 35 Members voted to sustain the demand, and the Speaker announced that this was not a sufficient number.

Mr. Williams demanded that those opposed to ordering the yeas and nays should be required to stand and be counted, claiming that this course was prescribed by the rules.

The Speaker[1] held:

It requires one-fifth of those present to order the yeas and nays, and the House has just divided and been counted.

* * * All the Speaker has to find out, in the preservation of this constitutional right, is whether one-fifth of those present have demanded the yeas and nays. One-fifth have not demanded the yeas and nays.

* * * The Chair begs the gentleman's pardon. The rule is silent. The Constitution alone speaks, and it requires one-fifth of those present.

6044. The right to demand the yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House.—On January 26, 1906,[2] the House was considering a resolution reported from the Committee on Rules, when a division was had on a motion for the previous question, and the Speaker announced the vote.

Mr. John S. Williams, of Mississippi, made the point that no quorum was present.

The Speaker ascertained and announced the presence of a quorum.

Thereupon Mr. Williams called for the yeas and nays.

The Speaker[1] at first intimated that the demand came too late, but presently said:

The Chair finds on consulting the precedents that the demand is in time.

6045. After the House, on a vote by tellers, has refused to order the yeas and nays, it is too late to demand the count of the negative on an original rising vote.—On July 25, 1868,[3] the House was considering the bill (H. R. 1460) regulating the duties on copper, and a vote was taken viva voce on a motion to lay the bill on the table.

The Speaker stated that the noes had it, when the yeas and nays were demanded.

The Speaker announced that 20 Members had voted for the yeas and nays, and that not being one-fifth of the vote last taken, the yeas and nays were not ordered.

Mr. Charles A. Eldridge, of Wisconsin, then demanded, and the House refused to order tellers on the yeas and nays.

Mr. Nathaniel P. Banks, jr., of Massachusetts, then demanded a count of the negative on the original demand for the yeas and nays.

The Speaker[4] decided that, inasmuch as he had decided, on the original demand, that the yeas and nays were refused, and as the House had refused to revise by tellers the said count, it was not now in order to demand a count of the vote in the negative.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 1603, 1604.

[3] Second session Fortieth Congress, Journal, p. 1208; Globe, p. 4496.

[4] Schuyler Colfax, of Indiana, Speaker.

Mr. Banks having appealed, the decision of the Chair was sustained, yeas 121, nays, 1.

6046. On a roll call for a vote or a call of the House the names of the Members are called alphabetically by surname.

After the roll has been called through once the names of those not responding are called again.

After the roll call is completed the Speaker is forbidden to entertain a request to record a vote unless in a case wherein a Member's presence has been noted in ascertaining a quorum.

The Speaker is forbidden to entertain a request for the announcement of a pair at a time other than that in which such announcements are in order.

By practice founded on a former rule the names of those not voting on a roll call are recorded in the Record.

Present form and history of section I of Rule XV.

Section 1 of Rule XV provides:

Upon every roll call[1] the names of the Members shall be called alphabetically by surname,[2] 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[3] or announce a pair[4] unless the Member's name has been noted under clause 3 of this rule.[5]

This rule is in substantially the form adopted in the revision of 1880.[6] Since that date provision has been made for calling the whole name when Members from the same State have the same surname, and for designating other Members of the same name by their States. In 1890 also was added the provision which enables a Member's name to be recorded after the second roll call is finished, in case it has been noted among the names of those present and not voting.

The original form of the rule, as adopted on April 7, 1789[7] was:

Upon calls of the House, or in taking the yeas and nays on any question, the names of the Members shall be called alphabetically.

In 1880 the second call for those not answering on the first call was instituted.

On June 8, 1864,[8] on motion of Mr. Henry Winter Davis, of Maryland, a rule was adopted that on any call of the yeas and nays the names of the Members not voting should be recorded in the Journal and Globe immediately after the names of

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[1] The roll call at the organization of the House and at the beginning of subsequent sessions to ascertain the presence of a quorum is by States, and not alphabetically.

[2] On June 20, 1848 (first session Thirtieth Congress, Journal, p. 927; Globe, p. 856), the House considered, but laid on the table, a proposition to have the yeas and nays taken by machinery.

[3] When a member states that he was present and listening when his name should have been called and failed to hear it, the Speaker entertains his request that his vote be recorded, the supposition being that his name was not called.

[4] Pairs are announced at the conclusion of the roll call and before the announcement of the result.

[5] See section 2905 of Volume IV of this work.

[6] Second session Forty-sixth Congress, Record, p. 206.

[7] First session First Congress, Journal, p. 10.

[8] First session Thirty-eighth Congress, Globe, p. 2809.

those voting in the affirmative and negative. This rule disappeared in the revision of 1880, but the practice of recording in the Record those not voting has continued.[1]

In early years in the House a practice existed[2] whereby Members absent on a roll call might still have their votes recorded. On August 28, 1852,[3] Mr. Speaker Boyd, in a decision sustained by the House, held that a Member might not, as a matter of right, have his name recorded on a roll call taken during his absence on a committee of conference. On May 27, 1870,[4] the House adopted a rule that the Speaker should not entertain the request of a Member to record his vote after the announcement of the result, nor should a Member be allowed to record his vote on a question if he was not present when the vote was taken. In the revision of 1880 this rule was merged in the portion of the present rule, which forbids the Speaker to entertain a request of a Member to record his vote after the second call of the roll.

6047. Since 1879 the Clerk, in calling the roll, has called Members by the surnames, with the prefix "Mr.," instead of calling the full names.— On May 1, 1879,[5] the House, on report from the Committee on Rules, adopted a rule that on all roll calls the Clerk should call only the surname of Members, with the prefix of "Mr." Before this the Clerk had called the full name. The change was urged on the score of economy of time, while it was opposed on the ground that it would take from the minority a privilege of obstruction.

6048. The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal.—On April 18, 1906,[6] after the reading of the Journal, the Speaker[7] said:

The Chair desires to state to the House, pending the approval of the Journal, that on Monday's session, which was extended into the calendar day of Tuesday, the Chair held that 191 Members constituted a quorum of the House. Mr. Williamson, of Oregon, and Mr. Patterson, of Tennessee, Members-elect, under the certificates of the governors of their respective States, have not qualified, and the Chair held that they should not be counted to make a quorum. The Chair, in the preparation of the Journal, instructed the Journal clerk to leave their names from the roll that is called. Members understand that, under the statute, from necessity, until organization and qualification under oath, the House organizes itself from the Clerk's roll, but from Jefferson's Manual, as well as sound parliamentary precedents, in the judgment of the Chair, the name of the Member-elect, after the organization and until he has taken the oath, should not be upon the roll from which the yeas and nays are called. Therefore the Chair directed the correction of the roll as it appears in the Journal; and hereafter, in case this Journal shall be approved with the correction just described by the Chair, in calling the roll the names of Messrs. Patterson and Williamson will not be called until they shall have taken the oath, respectively.

* * * There is in the organization of the House what is known as the "Clerk's roll," and upon that roll the House organizes itself. No doubt it would have the power to organize itself even in the absence of statutory provision, but the whole proceeding is controlled by statutory provision. Now, the House being organized, the yeas and nays are called by virtue of the Constitution. The Chair holds that, the House being organized, the roll should contain the names only of those who have taken the oath.

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[1] As to recording in the Journal the names of those not voting, see sec. 2739 of Vol. IV.

[2] See section 6076–6079 of this chapter.

[3] First session Thirty-second Congress, Journal, p. 1110; Globe, p. 2412.

[4] Second session Forty-first Congress, Journal, p. 866; Globe, p. 3870.

[5] First session Forty-sixth Congress, Journal, pp. 191, 223; Record, pp. 741, 1017.

[6] First session Fifty-ninth Congress, Record, p. 5485.

[7] Joseph G. Cannon, of Illinois, Speaker.

The Journal [1] was thereupon approved.

6049. A Member may not, as a matter of right, demand a recapitulation of a yea-and-nay vote; but if the vote be close the Speaker usually orders it.—On January 26, 1891,[2] the question being on the approval of the Journal, Mr. William McKinley, jr., of Ohio, demanded the previous question. The yeas and nays, being ordered, were taken on this motion, and were, yeas 142, nays 108.

Mr. Richard P. Bland, of Missouri, having asked for a recapitulation of the vote by which the previous question was ordered, the Speaker [3] declined to order the recapitulation.

6050. On May 13, 1896,[4] during the consideration of the contested-election case of Rinaker *v.* Downing, from Illinois, the yeas and nays were taken on a motion to adjourn, and there were yeas 60, nays 162.

Mr. Albert J. Hopkins, of Illinois, demanded, as a matter of right, that the vote be recapitulated.

The Speaker [3] denied the right to demand it, and did not order it.

The question being next taken on a motion to recommit the case, there were on the roll call 139 yeas, 35 nays, answering "present" 2, a total of 176, 3 less than the quorum voting. In addition there were noted as present and not answering several gentlemen, who were recorded with those voting as the quorum present.

Mr. Hopkins having requested a recapitulation, the Speaker directed it to be made, as the vote was very close from the standpoint of the quorum.

6051. After the call of the yeas and nays has begun it may not be interrupted even for a question of personal privilege.

The Speaker has declined, during a call of the yeas and nays, to entertain an appeal from his decision that the roll call might not be interrupted.

On August 8, 1890,[5] Mr. Joseph G. Cannon, of Illinois, presented from the Committee on Rules a resolution relating to the consideration of the Senate amendments to the Indian appropriation bill.

The previous question was ordered, and the question being on agreeing to the resolution, the yeas and nays were ordered.

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[1] At the first session of the Fifty-sixth Congress (first session Fifty-sixth Congress, Record, pp. 1673, 1905; Journal, pp. 247, 269) the name of Mr. Joseph Wheeler, of Alabama, was on the Clerk's roll at the organization of the House. It was also carried for some time on the roll of Members called when the yeas and nays were ordered. Mr. Wheeler, who was absent in the Philippines, serving as an officer of the Army, did not appear in the House to take the oath, and about February 9, 1900, the Clerk, by advice of the Speaker (David B. Henderson, of Iowa, Speaker), omitted Mr. Wheeler's name from the list of Members. On the roll call of February 9 Mr. Wheeler's name appears in the list of Members not answering. On the next roll call, that of February 17, 1900, his name does not appear, having been stricken off. This action was taken on the theory that the oath is necessary to enable a Member to vote.

[2] Second session Fifty-first Congress, Journal, p. 182; Record, p. 1832.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, pp. 5206, 5207.

[5] First session Fifty-first Congress, Journal, pp. 936, 937; Record, pp. 8345, 8352, 8373.

On the roll call there were 94 yeas, 44 nays—not a quorum. The hour of 5 o'clock arriving the House took a recess under the special rule[1] providing for a special class of business on Friday evening.

On August 9 the Speaker announced as the regular order of business the question on agreeing to the resolution from the Committee on Rules, on which the yeas and nays had been ordered, and on which the roll call had begun on the previous day.

Thereupon Mr. Benjamin A. Enloe, of Tennessee, claimed the floor on a question of personal privilege, which the Speaker[2] declined to entertain on the ground that a roll call had been ordered and begun.

Mr. John H. Rogers, of Arkansas, appealed from the said decision of the Chair, which appeal the Speaker declined to entertain.

The roll call then proceeded.[3]

6052. On August 28, 1850,[4] the House was considering the bill of the Senate (No. 307) relating to the boundary of Texas, and a point of order arose as to an amendment proposed by Mr. Linn Boyd, of Kentucky. The Chair having rendered a decision, there was an appeal, on which the yeas and nays were ordered. The Clerk had commenced to call the roll when Mr. Robert C. Schenck, of Ohio, said he wished to say a few words on the appeal.

The Speaker[5] said that the gentleman was not in order, as the Clerk had commenced to call the roll and a gentleman had answered to his name.

Mr. Schenck said that he had addressed the Chair before the call commenced, but the Speaker said that the gentleman had not been recognized until after the call had commenced.

6053. A motion to adjourn may not interrupt a call of the yeas and nays.—On February 16, 1882,[6] during consideration of a bill relating to the apportionment of Representatives, the yeas and nays were ordered, and the call of the roll had begun, when Mr. Charles M. Shelley, of Alabama, moved that the House adjourn.

The Speaker[7] said:

> The roll call can not be interrupted by a motion to adjourn.[8]

6054. A roll call is not interrupted by the arrival of an hour fixed for a recess by rule or prior vote of the House.—On August 8, 1890,[9] a Friday, the hour of 5 o'clock arrived while a roll call was still in progress.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that, under the rule, the House must take a recess until 8 o'clock p. m.

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[1] See section 3281 of Vol. IV of this work for rule relating to Friday evenings.

[2] Thomas B. Reed, of Maine, Speaker.

[3] The roll call is interrupted, however, for messages from the President and the other House; and it is conceivable that a question of privilege might arise, such as an assault or an accident within the Hall which might justify an interruption.

[4] First session Thirty-first Congress, Globe, p. 1686.

[5] Howell Cobb, of Georgia, Speaker.

[6] First session Forty-seventh Congress, Journal, p. 597; Record, pp. 1238, 1245.

[7] J. Warren Keffer, of Ohio, Speaker.

[8] Roll calls have been interrupted in some instances by final adjournment.

[9] First session Fifty-first Congress, Journal, p. 934; Record, p. 8352.

The Speaker[1] overruled the point of order and held that the roll call must be concluded.[2]

6055. On Friday, January 21, 1898,[3] the yeas and nays had been ordered on the motion of Mr. John Dalzell, of Pennsylvania, that the House do adjourn.

Mr. Joseph W. Bailey, of Texas, rising to a parliamentary inquiry, asked:

If the hour of 5 o'clock should arrive during the roll call, will the roll call be completed or will the House, under the rule, take a recess until 8 o'clock?

The Speaker[1] said:

The roll call will be completed, and unless the House should by this vote determine to adjourn a recess will be taken upon the completion of the roll call until 8 o'clock this evening.

6056. A roll call may not be interrupted because of the arrival of the time fixed by the rules for another order of business.—On February 9, 1892,[4] the yeas and nays had been ordered on ordering the previous question on the engrossment and third reading of the bill (H. R. 566) to amend the internal-revenue laws, and for other purposes.

During the roll call, at 1 o'clock and 30 minutes p. m., Mr. William H. Hatch, of Missouri, made the point of order that the hour for the consideration of bills under clause 4, Rule XXIV,[5] having expired, it was not in order to further continue the call of the roll.

The Speaker[6] overruled the point of order on the following ground:

So far as the Chair is informed and believes, it has always been held that when the roll call has been commenced it can not be interrupted either by a standing order of the House that at a given hour the House shall adjourn, or by the expiration of the morning hour, or by any other similar case. The gentleman is aware of the fact that frequently it has happened that when, under the order of the House, the hour of 5 o'clock on Friday has arrived and the House should take a recess until 7.30, a roll call was in progress, and when the hour of 5 o'clock arrived the roll call would not be completed, but would be continued to completion, although it may have extended fifteen or twenty minutes beyond the hour of 5 o'clock.

The Chair will hold, therefore, that where a roll call has begun before the expiration of the morning hour it must be completed, although its completion extends beyond the hour.

6057. A roll call may not be interrupted even to admit the Senate to a joint meeting for counting the electoral vote.—On February 10, 1869,[7] during the proceedings incident to the electoral count, the House was in session considering objections to counting the electoral vote of the State of Georgia. A motion had been made to reconsider the action of the House in relation thereto; the yeas and nays were ordered. During the roll call a message was received from the Senate informing the House that that body had resolved that the objections to the electoral vote of Georgia were not in order.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] In 1879 (third session Forty-fifth Congress, Journal, p. 188) Mr. Speaker Randall declined to interrupt a roll call because of the arrival of the hour fixed for a recess, because the roll call was on a motion to adjourn, whereby the House might change its mind as to the recess. He intimated that had the roll call been on the pending bill he might have interrupted it to declare the House in recess.

[3] Second session Fifty-fifth Congress, Record, p. 847.

[4] First session Fifty-second Congress, Journal, pp. 61, 62; Record, p. 976.

[5] The morning hour at present does not necessarily expire in sixty minutes.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] Third session Fortieth Congress, Globe, p. 1062.

Mr. Fernando Wood, of New York, moved that the roll call be suspended for the purpose of admitting the body of the Senate.

The Speaker[1] said:

The House has ordered the roll to be called. Upon the entrance of the Senate the Speaker would be obliged to vacate the chair, but even that can not interrupt the roll call; nothing can interrupt it but the close of a session of Congress.

6058. The roll call may not be interrupted either for a parliamentary inquiry or a question of personal privilege.—On April 7, 1902,[2] a roll call was being taken on a bill (S. 176) to provide for the extension of the charters of national banks, when Mr. Thomas H. Ball, of Texas, asked recognition for a parliamentary inquiry.

The Speaker[3] declined to allow the roll call to be interrupted for a parliamentary, inquiry.

Then Mr. Ball asked recognition for a question of personal privilege.

The Speaker declined to allow the roll call to be interrupted.

6059. On February 6, 1844,[4] the roll had been called on a motion relating to the title of certain Members to their seats, and before the result had been announced, a question of order was raised as to whether or not the Members whose title to their seats was questioned were entitled to vote. The Speaker pro tempore[5] ruled on the question, an appeal was taken, and the Chair was sustained on a yea-and-nay vote. After the vote sustaining the Chair had been announced, the Speaker proceeded to announce the result on the previous roll call.

6060. A Member who has answered "present" on a roll call may change the answer to "yea" or "nay," but the Speaker may not entertain the request of a Member who has not answered at all to record his vote.—On May 13, 1897,[6] the question before the House was a motion by Mr. William L. Terry, of Arkansas, that Mr. Jerry Simpson, of Kansas, be allowed to proceed in order in his remarks upon the question of approving the Journal.

On a yea-and-nay vote the motion of Mr. Terry was defeated, yeas 83, nays 96, answering "present" 14.

Mr. Marriott Brosius, of Pennsylvania, who was one of those who had answered "present" when his name was called, asked, after the roll call had been completed but before the result was announced, that he be allowed to change his response of "present" to vote "no."

The Speaker[7] decided that he might do this, the proceeding being exactly the same as changing a vote from "aye" to "no," which had always been allowed.[8] In this connection the Speaker also said:

The Chair will take this opportunity to call the attention of the House to the terms of the rule with regard to voting. The rule does not permit the Speaker to even ask unanimous consent for the

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 3810.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Twenty-eighth Congress, Journal, pp. 353–356; Globe, pp. 240, 241.

[5] Samuel Beardsley, of New York, Speaker pro tempore.

[6] First session Fifty-fifth Congress, Record, pp. 1068–1069.

[7] Thomas B. Reed, of Maine, Speaker.

[8] It is not the practice, however, to allow a Member to be recorded "present" after the roll call is completed, unless proceedings are taking place for securing a quorum.

recording of a vote which has not been given in accordance with the rules. The object of that rule was to promote attention by Members and secure a more speedy calling of the roll, so that time might be saved. That is one of the improvements in the methods of voting which reduced the time of calling the roll nearly 30 per cent. The Chair desires that the House shall take notice of this matter, so that there may not be any misunderstanding hereafter.

6061. Where a vote actually given fails to be recorded it is the right of the Member to have the proper correction made before the approval of the Journal.

The duty of the Speaker to give a casting vote may be exercised after the intervention of other business when a correction of the roll call reveals a tie not before ascertained.

On January 8, 1849,[1] as soon as the Journal of the preceding session had been read, the Speaker[2] said:

The House will remember that the vote on the passage of the bill for the relief of the representatives of Antonio Pacheco was originally made up by the Clerk, yeas 90, noes 89, and this record having been handed to the Speaker and by him announced to the House, the Speaker proceeded to make some remarks upon the bill, preparatory to giving the vote contemplated in such cases by the rules[3] of the House. While in the act of explanation, the Speaker was interrupted by the Clerk, who stated that, on a more careful count, the vote was found to be, ayes 91, noes 89. The intervention of the Speaker was therefore no longer allowable, and the bill was declared to have passed the House.[4]

The Chair takes the earliest opportunity to state to the House this morning that, upon a reexamination of the yeas and nays, the Clerk has ascertained that in error still existed in the announcement of the vote on Saturday. The vote actually stood, ayes 89, noes 89. The correction will now accordingly be made in the Journal; and a case is immediately presented, agreeably to the twelfth rule of the House, for the interposition of the Speaker's vote.

At this stage of the proceedings the Speaker was interrupted by Mr. John W. Farrelly, of Pennsylvania, who rose and called for a further correction of the Journal, stating that he voted in the negative on Saturday last, and his vote appeared not to have been recorded.

The Speaker decided that it was the right of the gentleman from Pennsylvania to have his vote recorded, if he voted on Saturday last, and the correction was accordingly made.

The vote was then finally announced, yeas 89, nays 90.

The Speaker stated that he came into the House with the full expectation of giving his vote upon this bill, and prepared to give his reasons for the vote. But as the question now stood, although it might be in his power to vote agreeably to the letter of the twelfth rule, it was, in his opinion, not within the contemplation or intention of the rule that he should vote. The rule contemplated that the Speaker should be allowed to vote whenever he could make a difference in the result, by passing or preventing the passage of the proposition before the House. Under present circumstances the Speaker's vote could not in any way affect the decision of the House. The bill was already lost by the vote as it stood. A vote

[1] Second session Thirtieth Congress, Journal, p. 211; Globe, p. 172.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] For rule at that time relating to vote of the Speaker, see section 5964 of this work.

[4] The Globe (p. 187) quotes from the debate a statement that the first vote ever given by a Speaker in the House was under these circumstances. Apparently the first tie on which a Speaker voted was September 28, 1789, and the Journal of that date does not indicate the conditions referred to.

against the bill would only increase the majority by which it was defeated, while a vote in favor of the bill would only make a tie, and the bill would still be lost. The Speaker therefore did not consider himself called upon to give any vote on the subject.

6062. The Journal of Wednesday, December 22, 1847,[1] has the following entry:

The Journal of yesterday having been read, Mr. Ligon arose and stated that he was present yesterday and voted in the affirmative upon the question of laying upon the table the petition presented by Mr. Giddings in regard to slavery in the District of Columbia, and asked that the Journal be amended by recording his vote thereon in the affirmative.

The Journal was amended accordingly.

The record of debates quotes the Speaker[2] as saying that under repeated precedents in similar cases, the gentleman had a right to have his name recorded. It does not appear that the question of amending the Journal in this case was put to the House at all. The record of debate shows that the vote before the addition of Mr. Ligon's name, stood yeas 97, nays 97. The addition of his vote made it 98 to 97, and so changed the result, but the Speaker voted in the negative, thus restoring the tie. The Journal of December 22 does not record these facts, but the Journal of the 21st, as corrected, shows the Speaker voting, and the motion disagreed to.

6063. On March 4, 1862,[3] Mr. James A. Cravens, of Indiana, stated that he had voted in the negative and not the affirmative, as recorded, on the question of laying on the table the resolution submitted on the previous day by Mr. Holman, in regard to the "present unfortunate, civil war," and by unanimous consent the Journal was corrected accordingly.

The Speaker[4] then announced that the vote should have been declared yeas 59, nays 59, and as this presented a case where by the rules he was required to vote, he should vote in the affirmative. So the resolution was laid on the table.

6064. The vote of a Member having failed to be recorded, he may insist that it be recorded even after the Chair has declared the result, and the Chair then makes a new declaration.

There being a dispute among Members as to whether or not a Member whose name was recorded was present when his name was called, the Speaker held that in the absence of the Member the Clerk's record must stand.[5]

The usage as to the recapitulation of a yea and nay vote does not permit it to be done after the announcement of the result, except by unanimous consent.

On March 24, 1892,[6] while the House had under consideration the bill (H. R. 4426) for the free coinage of silver, for the issue of coin notes, and for other purposes, and the question was on a motion to reconsider the vote whereby the House had refused to lay the bill on the table.

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[1] First session Thirtieth Congress, Journal, pp. 139, 140, 144; Globe, p. 63.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Thirty-seventh Congress, Journal, p. 399; Globe, p. 1061.

[4] Galusha A. Grow, of Pennsylvania, Speaker.

[5] See also sections 6095–6099 of this chapter.

[6] First session Fifty-second Congress, Journal, pp. 113–115; Record, pp. 2548, 2549.

The yeas and nays having been taken, the Speaker announced the result as yeas 148, nays 148, and that the motion to reconsider was disagreed to.

A recapitulation of the vote having been demanded, and objection being made thereto, the Speaker[1] held that it was too late after the announcement of the result to insist on a recapitulation of the vote just taken.

By unanimous consent it was then ordered that the vote be recapitulated.

Then Mr. Adolph Meyer, of Louisiana, and Mr. George F. Huff, of Pennsylvania, stated that they had voted in the affirmative.

By direction of the Speaker, their votes were recorded in the affirmative.

There were then yeas, 150; nays, 148; not voting, 32. So the motion to reconsider the vote by which the House refused to lay the bill on the table was agreed to.

The question recurring on the motion to lay the bill on the table, and being put, there were yeas, 145; nays, 148.

The vote being recapitulated, objection was made to recording the vote of Mr. Donovan, who appeared as voting in the negative, it being asserted on the one part that he was not in the Hall during the roll call or when his name was called, and on the other that he was present during a portion of the roll call.

The Speaker held that in the absence of the gentleman whose vote was in dispute the vote as recorded by the Clerk must stand.

On March 28, in accordance with a communication from Mr. Donovan, the Journal was corrected by striking his name from the list of those voting in the negative.

6065. On April 28, 1864,[2] the House was considering the amendments to the bill (H. R. 405) to provide internal revenue to support the Government and to pay interest on the public debt.

The vote having been taken by yeas and nays on an amendment, the Speaker announced the vote 71 yeas, 72 nays.

Then Mr. Charles Upson, of Michigan, stated that he had voted in the affirmative and that his vote was erroneously omitted from the count.

The Speaker then announced the vote on the said amendment—yeas, 72; nays, 72—when Mr. Philip Johnson, of Pennsylvania, made the point of order that it was too late to correct the former announcement of the vote.

The Speaker[3] overruled the point of order, causing to be read the following from the Digest:

> All proceedings of the House subsequent to the erroneous announcement of a vote, which would have been irregular if such vote had been correctly announced, are to be treated as a nullity and are not to be entered on the Journal.

And saying—

> The Chair thinks that when a gentleman is present and votes he has a right to have his vote recorded.

Mr. Samuel J. Randall, of Pennsylvania, suggested that an amendment had been voted on after the announcement of the vote. The Speaker said:

> The Chair thinks that it is not too late for the gentleman to have his vote recorded. If the motion to reconsider had been made and it had been laid upon the table the Chair might have doubt, but at present he has no doubt that the gentleman has the right to record his vote.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Thirty-eighth Congress, Journal, pp. 586, 587; Globe, p. 1941.

[3] Schuyler Colfax, of Indiana, Speaker.

Mr. Johnson having appealed, the decision of the Chair was sustained.

6066. A Member who has failed to respond when his name was called, may not, as a constitutional right, demand that his vote be recorded before the announcement of the result.—On April 13, 1874,[1] when a roll call had been completed, but before the announcement of the result, Mr. James Monroe, of Ohio, stated that he had stepped out of the House a few moments, and found on his return that the roll call had been completed. He asked if his vote might be recorded.

The Speaker[2] held that the rule prohibited the Member from voting.

Mr. James A. Garfield, of Ohio, made the point of order that before the announcement of the vote, and while the measure was still pending, a gentleman had a right, under the Constitution, to vote, and that the rule was unconstitutional.

The Speaker said:

The Chair does not think this rule violates the constitutional right of any Member. * * * This rule operates equally and impartially upon every Member. There in no selection of one Member and placing a disability on him. The roll call must cease at some time, and the House has determined it shall cease at a particular point. But if the House should say by rule that the Representative of the Third District of Maine should not vote, or the Representative of any other district who happened to be a Member of the House and elected Speaker, that presents a different case, because that attempts to disfranchise a single Member from a right enjoyed by all other Members, and therefore operates without equal and exact justice. This does not, in the opinion of the Chair, present that point. * * * The question presented rests on two constitutional points. The yeas and nays are to be called on the demand of one-fifth of the Members present, and the House has the right to determine the rule under which they shall be called. If the House should decide that the roll should be called through, and when called through that the vote shall be announced and the absentees on the roll call should not have the right to vote, the Chair thinks it would be an entire compliance with the Constitution in every respect.

6067. On February 8, 1878,[3] at the conclusion of the roll call, but before the announcement of the result, Mr. Thomas T. Crittenden, of Missouri, stated that he had been engaged in committee work while the roll was being called, and demanded his right to vote under the Constitution and the rules.

The Speaker[4] said:

There is a clause of the Constitution giving Members the right to vote; but another clause provides that "each House may determine the rules of its proceeding;" and that rule-making power has been exercised with reference to this question of voting. * * * The Constitution gives to every Member the right to vote; but it also provides that each House may make such rules for its government as it may see fit. Under the rules and under the practice the gentleman from Missouri, not having been in the House during the roll call, has not the right to vote.

6068. On December 19, 1883,[5] at the conclusion of a roll call, Mr. Melvin C. George, of Oregon, stated that he had been giving attention but did not hear his name called. Therefore he asked that he might vote.

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[1] First session Forty-third Congress, Record, pp. 3046, 3047.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Forty-fifth Congress, Record, p. 871.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] First session Forty-eighth Congress, Record, p. 189.

The Speaker[1] said:

It has been the practice of the House to allow a gentleman to have his vote recorded after the second roll call if he states he did actually vote or that he was giving attention but did not hear his name called.

Mr. Samuel J. Randall, of Pennsylvania, objected to allowing the name to be recorded.

There was debate as to the constitutional right of a Member to vote under such circumstances, but the Speaker held to a rigid construction of the rule, and, unanimous consent being refused, Mr. George was not allowed to vote.

6069. The Speaker may not entertain the request of a Member to answer "present" at the conclusion of the roll call provided for by section 1 of Rule XV.—On May 16, 1900,[2] there had been a yea-and-nay vote on a motion for the previous question on the bill (S. 2931) to incorporate the American National Red Cross Association, etc., when Mr. Phanor D. Breazeale, of Louisiana, who had not been in the Hall when his name was called asked that he be recorded as "present."

The Speaker[3] said:

That is the same as voting, and it is not within the Chair's power to admit the request.

6070. It is not permissible to entertain the request of a Member to record his vote after he has failed to respond because his attention was distracted when his name was called.—On March 10, 1902,[4] the yeas and nays had been taken on a motion to recommit the bill (H. R. 11728) relating to the free rural delivery service.

Mr. Joseph T. Johnson, of South Carolina, stated that just as the Clerk called his name a gentleman spoke to him, distracting his attention so that he did not respond to his name.

The Speaker[3] said:

The gentleman was listening to the gentleman who spoke to him and not to the Clerk, and the Chair thinks he can not be allowed to vote on the question.

6071. A Member who is listening when his name should be called and fails to hear it, is permitted to vote at the end of the roll call; but under no other circumstances may the Speaker entertain a Member's request to be recorded.—On June 6, 1896,[5] at the conclusion of a call of the yeas and nays, Mr. Farish C. Tate, of Georgia, requested that his vote might be recorded. He said he had been present in his seat and did not hear his name.

The Speaker having asked if he was listening when his name should have been called, and failed to hear it, Mr. Tate did not respond in the affirmative, except to say that he was "present and failed to hear."

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-sixth Congress, Record, p. 5620.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Fifty-seventh Congress, Record, p. 2605.

[5] First session Fifty-fourth Congress, Record, p. 6220.

The Speaker[1] said:

The Chair desires to say that in matters of this kind he simply enforces the rule of the House. The exception under which gentlemen are allowed to have their votes recorded after the roll call rests upon the idea that by some mistake the name was not called. The object of the rule is to command the attention of Members during the vote. * * * The Chair thinks that the gentleman can not vote under the rule.

6072. On March 24, 1896,[2] at the conclusion of a roll call, Mr. Loren Fletcher, of Minnesota, announced that he desired to vote.

The Speaker having interrogated him as to whether or not he was listening when his name should have been called, and failed to hear it, Mr. Fletcher could not say further than that he did not hear his name.

Thereupon the Speaker[1] said:

The Chair ought to say to the House that attention has been called to the rule[3] in regard to the recording of names after the roll call. * * * The practice in the Fifty-first Congress, when the same rule prevailed, was to ask a Member if he was listening at the time his name should have been called, and failed to hear it, so as to meet the possible contingency that the calling of the name had been omitted. That is the condition of the rule as it stands at present.

6073. The fact that a Member was absent on the service of the House does not justify the Speaker in submitting a request that his name be recorded after the yea-and-nay call is finished.—On February 20, 1889,[4] after a yea-and-nay vote had been concluded, Mr. Joseph G. Cannon, of Illinois, announced that he had been absent at the session of a conference committee until after his name had been called for the last time and requested that his vote might be recorded.

The Speaker[5] said:

According to the letter of the rule no Member can vote, nor can the Speaker entertain a request for unanimous consent that the Member be allowed to vote, after the completion of the second roll call; but inasmuch as there is at all times more or less noise on the floor, and it frequently happens that a gentleman fails to hear his name called or the Clerk fails to hear his response, it was thought to be manifestly unjust that a Member should be deprived of his vote under inch circumstances. * * * Inasmuch as it might lead to a very great inconvenience if there should be a still further relaxation of the rule, the Chair thinks the gentleman had better content himself with stating how he would have voted.

6074. In the earlier practice of the House Members were allowed often to record their votes after the close of the roll call, sometimes on the next day, even.—On March 1, 1845,[6] by the unanimous consent of the House, Mr. John Campbell, of South Carolina, was permitted to have his name recorded on the question taken on the preceding day,

Will the House agree with the Senate in their amendment to the resolution of the House (No. 46) entitled, "A joint resolution for annexing Texas to the United States?"

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 3140.

[3] Section 1 of Rule XV. (See section 6046 of this chapter.)

[4] Second session Fiftieth Congress, Record, p. 2106.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] Second session Twenty-eighth Congress, Journal, p. 532; Globe, p. 383.

6075. On February 3, 1863,[1] several Members were permitted by unanimous consent to have their votes recorded on the bill passed the day previous relative to the enlistment of negro soldiers. The Journal has no reference to this.

6076. On May 12, 1834,[2] after the list of yeas and nays had been called, and before the decision had been pronounced, Mr. William Allen, of Ohio, asked to have his vote taken, having been out of the House when his name was called, attending to his duties as a member of the Committee on Indian Affairs, which committee had leave to sit during the sitting of the House. The request of Mr. Allen, under the circumstances of his case, was granted by a vote of the House.

6077. On December 23, 1836,[3] the House suspended the rules in order to give permission to Mr. George N. Briggs, of Massachusetts, to record his vote on the roll call just taken, he having stated that he had been absent on the service of his committee, which had leave to sit during the sessions of the House.

6078. On July 28, 1854,[4] the House made an order that members of the Committees on Ways and Means and Enrolled Bills, who should find their duties keeping them away from the sitting of the House, should be allowed to record their names on roll calls taken during their absence, provided such recordings would not change any announced results.

6079. On March 16, 1864,[5] the Committee on Rules made a futile attempt to break up the practice of allowing Members to vote who did not respond on the call, if they could respond to the Speaker's interrogatory as to their presence within the bar when the name was called. It was proposed to take away from the Speaker the power to submit request for leave to vote. Mr. Speaker Colfax said at this time that it was the practice of the House to allow Members to be recorded who were away on business of the House.

6080. The fact that a Member responded under an erroneous belief as to a pair does not justify the Speaker in entertaining a request to change the record after a vote is declared.—On April 9, 1904,[6] Mr. George G. Gilbert, of Kentucky, asked that his name on a roll call of the preceding day be changed from "present" to "aye." It appeared that he had refrained from voting "aye" because he erroneously supposed himself to have been paired.

The Speaker[7] after having read section 1 of Rule XV, said:

> The rule absolutely prevents the Speaker from even entertaining a request for unanimous consent. The matter of pairs is a matter for gentlemen to regulate among themselves. * * * The Chair declines, under the rule, to entertain the request, the rule prohibiting him from submitting the request.

6081. It is not permissible to entertain the request of a Member to record his vote after he has, on the call of his name, refrained from voting because of a misunderstanding as to a pair.—On February 23, 1901,[8] the

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[1] Third session Thirty-seventh Congress, Globe, p. 695.

[2] First session Twenty-third Congress, Journal, p. 616.

[3] Second session Twenty-fourth Congress, Journal, p. 114.

[4] First session Thirty-third Congress, Journal, p. 1233; Globe, p. 1996.

[5] First session Thirty-eighth Congress, Globe, p. 1143.

[6] Second session Fifty-eighth Congress, Record, p. 4574.

[7] Joseph G. Cannon, of Illinois, Speaker.

[8] Second session, Fifty-sixth Congress, Record, p. 2915.

yeas and nays had been taken on a motion to concur in a Senate amendment to the Agricultural appropriation bill.

Before the announcement of the vote, Mr. Charles H. Grosvenor, of Ohio, stated that he had refrained from voting on a misunderstanding. When his name was called he had erroneously supposed himself paired. He therefore asked that his name be called, and that he be permitted to vote.

The Speaker,[1] after quoting Rule XV, said that it was impossible to recognize the gentleman to vote.

6082. A Member may not have the record of his vote changed on the statement that he voted on a misapprehension of the question, and a motion relating thereto is not a matter of privilege.[2]—On August 14, 1850,[3] Mr. Isaac E. Morse, of Louisiana, rose and stated that he had risen to a question of privilege; that on the question just taken upon agreeing to the amendment to the thirty-fourth rule he had voted under a total misapprehension of the question; that he believed be was voting on a motion to lay the amendment upon the table. He therefore moved that the Journal be amended, so that his name should appear in the negative upon agreeing to the said amendment.

Objection being made, the Speaker[4] decided that, inasmuch as the Journal was correctly made up, it was not a question of privilege or a privileged question to move an amendment of the record. When the Journal was incorrectly made up, and the vote of a Member was recorded differently from the fact, a motion to correct the Journal was in order; but the Chair knew no instance wherein the Journal had been amended upon the statement of a Member that he had voted upon a misapprehension of the question.

From this decision of the Chair Mr. Morse appealed. The decision of the Chair was sustained.

6083. On December 17, 1898,[5] after the approval of the Journal Mr. John W. Gaines, of Tennessee, announced that on a roll call on the preceding day he had voted under a misapprehension, and asked that his vote might be withdrawn and that the Journal might be corrected in accordance therewith.

The Speaker[6] expressed the opinion that the Record could not be changed.

6084. In 1835 it was recognized that an error in a vote might be corrected after the announcement, or proceedings might be at the mercy of a clerk.—On February 27, 1835,[7] the House was considering a special order providing for the consideration of a report of the Committee on Foreign Affairs dealing with the relations of the United States with France. A motion to amend the order so as to provide for consideration in the House instead of in the Committee of the Whole was voted on, and there appeared in the affirmative 111 and in the negative 110, the vote being taken by yeas and nays.

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[1] David B. Henderson, of Iowa, Speaker.

[2] See also sections 5931–5933 of this volume.

[3] First session Thirty-first Congress, Journal, p. 1266; Globe, p. 1577.

[4] Howell Cobb, of Georgia, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 270.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Twenty-third Congress, Debates, p. 1522.

The amendment was then declared adopted, and the resolution as amended was agreed to.

Then Mr. Phineas Miner, of Connecticut, stated that there had been an error in recording his vote on the amendment, and that he was recorded in the affirmative, whereas he had voted in the negative. A motion was made that the error be corrected, but Mr. Joseph B. Anthony, of Pennsylvania, objected that the intervention of the other vote would prevent the correction. To this it was replied that such a doctrine would put the proceedings of the House at the mercy of the errors of a clerk. So, by general consent, the error was corrected, the amendment was declared to be disagreed to, and the resolution was then voted on again.

6085. 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.—On July 26, 1886,[1] Mr. William C. Oates, of Alabama, rising immediately after the reading of the Journal, said:

Mr. Speaker, I desire to correct the Journal wherein it states that on the last bill under consideration at the evening session on Saturday, on the motion of the gentleman from Indiana [Mr. Cobb] for the previous question on the bill and pending amendments, it was announced that no quorum voted thereon. That point was made, and the House, under a misapprehension, supposed it was so. In fact, a quorum had voted, and the previous question was ordered. The Record shows there were 128 yeas and 37 nays, making 165 votes. That was the fact; but the House, on the suggestion of the gentleman from Pennsylvania [Mr. Boyle] that no quorum had voted, accepted that as correct, although, in fact, a quorum had voted and the previous question was ordered.

The Speaker[2] said:

The Journal will be corrected in accordance with the statement of the gentleman from Alabama. 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; 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.

6086. A vote having been erroneously announced in such a way as to change the true result, subsequent proceedings in connection therewith fall, and the Journal is amended accordingly.—On September 10, 1850,[3] the Speaker stated that the result of the vote of the House on the preceding day on the passage of the bill of the House (No. 387) to supply a deficiency in the appropriation for pay and mileage of Members of Congress for the present session had been erroneously announced and that the subsequent proceedings upon the bill would consequently fall.

The Speaker[4] then announced the vote to be yeas 78, nays 76.

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[1] First session Forty-ninth Congress, Record, pp. 7545, 7546.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Thirty-first Congress, Journal, p. 1436; Globe, pp. 782, 783.

[4] Howell Cobb, of Georgia, Speaker.

So the bill was passed, and the Journal of the preceding day was ordered to be amended accordingly.

The vote was announced on September 9 as 78 yeas and 77 nays, whereupon the Speaker voted in the negative, and the announcement was made that the House refused to pass the bill. A motion to reconsider was made, and proceedings thereon were pending when the House adjourned. On the next day, the true vote having been found to be 78 yeas to 76 nays, the action recorded in the Journal took place.

6087. On May 26, 1902,[1] the question was on the passage of the bill (H. R. 11879) to correct the military record of Michael Mullet, and the roll having been called, the Speaker announced yeas 73, nays 73, and that the bill had failed to pass.

Later, on the same day, the Speaker[2] announced that an error had been discovered in the footings, and that, in fact, the yeas had been 74 and the nays 73. Therefore the bill had passed.

6088. On December 18, 1903,[3] the House was considering the following resolution:

> *Resolved,* That the Committee on Expenditures in the Post-Office Department is hereby authorized to request the Postmaster-General to send to the committee all papers connected with the recent investigation of his Department the publication of which is consistent with the welfare of the public service.

when the previous question was moved, and on a yea-and-nay vote there appeared, as announced by the Chair, yeas 108, nays 107, and the previous question was considered as ordered.

The question recurring on agreeing to the resolution, there were yeas 109, nays 100, and the Speaker declared the resolution agreed to.

On December 19,[4] after the reading of the Journal, but before its approval, the Speaker[5] said:

> It is the duty of the Chair to call the attention of the House to the fact that the vote yesterday on ordering the previous question upon the resolution reported by the gentleman from Pennsylvania [Mr. Wanger] was incorrectly reported. The yeas were reported as being 108 and the nays 107. A correct count afterwards shows that the yeas were 107 and the nays 107—a tie vote. Therefore the motion upon ordering the previous question was lost. Without objection the Journal will be amended in accordance with the facts, and all proceedings touching this resolution had subsequent to that erroneous announcement will be vacated. [After a pause.] The Chair hears no objection. The question now is upon the approval of the Journal as amended. Is there objection? [After a pause.] The Chair hears none, and the Journal is so approved.

Then, the resolution being taken up as unfinished business, the Speaker recognized Mr. John S. Williams, of Mississippi, who on the preceding day had opposed the motion for the previous question. Mr. Williams proposed an amendment, which was agreed to after debate, and then the resolution as amended was agreed to.

6089. A wrong result having been announced on a vote on an amendment to a bill, it was held on the next day that the question recurred to that point with all rights intact, although the bill had actually been passed.

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[1] First session Fifty-seventh Congress, Record, pp. 5928–5930.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fifty-eighth Congress, Journal, p. 75; Record, pp. 385, 386.

[4] Journal, p. 80; Record, p. 403.

[5] Joseph G. Cannon, of Illinois, Speaker.

All related proceedings subsequent to the announcement of an erroneous result fall, the votes to reconsider and lay on the table not excepted.

On July 18, 1848,[1] the bill (H. R. 298) making appropriations for the civil and diplomatic expenses of the Government was reported from the Committee of the Whole House on the state of the Union with certain amendments, among them the following:

Strike out this paragraph: "For removal of obstructions in Savannah River and the naval anchorage near Fort Pulaski, under the direction of the Secretary of War, fifty thousand dollars."

The question being put on agreeing to this amendment, it was announced that there were yeas 86, nays 83. So the amendment was agreed to, and the paragraph was stricken out.

The bill was then passed to be engrossed and read a third time, and a motion to reconsider the vote whereby this was done was made and laid on the table.

On July 19, 1848, Mr. Alexander H. Stephens, of Georgia, rose and stated that he voted in the negative on the amendment and asked that his vote be corrected. This being done, the Speaker[2] announced the vote on the amendment to be yeas 85, nays 84.

Thereupon the Speaker voted in the negative, and there being yeas 85, nays 85, the question on the amendment was lost, and the paragraph was not stricken from the bill.

Later in this day Mr. Charles E. Stuart, of Michigan, moved to reconsider this vote.

On the following day, July 20, the Speaker gave his decision, he having on the preceding day questioned the propriety of the motion. He said that it was well known to the House that the item in the civil and diplomatic appropriation bill which provided for the removal of obstructions in the Savannah River had been struck out in Committee of the Whole on the state of the Union, and that the vote in the House upon concurring in that amendment was reported on the record yeas 86, nays 83. Of course the amendment was adopted and the appropriation struck out. Yesterday, however, the gentleman from Georgia [Mr. Stephens] rose and stated that his vote was wrongly entered, that he voted "aye" instead of "no," and called for a correction, which was accorded to him as his right. The vote was then reported, yeas 85, nays 84. A case then arose under the rule[3] in which it was the duty of the Speaker to settle the question; the Speaker voted in the negative, making the vote, yeas 85, nays 85, whereby the amendment was rejected and the original item as contained in the bill reported by the Committee of Ways and Means was retained. In the meantime, however, the bill had been ordered to be engrossed; a motion had been made to reconsider the vote ordering the engrossment, and that motion had been laid on the table. The gentleman from Michigan [Mr. Stuart] had then raised the question of reconsideration, and moved that the vote by which the House had rejected the amendment of the Committee of the Whole, upon the correction of the Journal and by the casting vote of the Speaker,

[1] First session Thirtieth Congress, Journal, pp. 1057, 1064, 1066, 1067, 1078–1083; Globe, pp. 953, 954.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] For the rule at that time relating to the Speaker's vote, see section 5964 of this volume.

be reconsidered. A question was then made whether the motion to reconsider could be received.

The Chair now decided that, inasmuch as when the House ordered the bill to be engrossed a provision was not in it which was afterwards put in by the casting vote of the Speaker, the House was entitled to a new vote upon the engrossment. The question then arose upon the motion to reconsider the vote by which the amendment was rejected.

Thereupon Mr. Franklin Clark, of Maine, moved that the vote whereby the amendment had been rejected be reconsidered.

Mr. Armistead Burt, of South Carolina, rose to inquire whether, in order to get at the question of reconsideration, it was not necessary that the House, by its vote, should refuse to order the bill to be engrossed.

The Speaker said that the question of engrossment, owing to these mistakes, was now open; and after the reconsideration should have been disposed of, the question would recur on the engrossment of the bill.

The motion to reconsider was then, on motion put and carried, laid on the table.

The question then recurred on ordering the bill to be engrossed.

6090. On January 16, 1849,[1] the Journal of the preceding day was read, when the Speaker stated that a resolution had been offered on the preceding day in the following words:

Resolved, That the bills reported by the Committee on Territories to establish Territorial governments in upper California and New Mexico, be made the special order for Tuesday, the twenty-third day of January, instant.

The vote (the Speaker[2] continued) as handed to the Chair by one of the clerks, was 114 in favor to 51 against the resolution. There being two-thirds in its favor, the resolution was declared to have been adopted. It appeared that there had been a misreading of one of the figures on the part of one of the clerks, and that the true state of the vote was—yeas 114, nays 71. The correction would be made in the Journal this morning, and the resolution would be declared not to have passed. The vote to reconsider and to lay on the table would of course be a nullity.[3]

6091. On September 9, 1850,[4] the question was taken on the passage of the bill (H. R. 387) and there were announced—yeas 78, nays 77. The Speaker voted in the negative, and thereupon announced that the House had refused to pass the bill.

Mr. Jacob Thompson, of Mississippi, moved to reconsider the vote by which the House refused to pass the bill and to lay the motion to reconsider on the table.

Pending this motion the House adjourned.

On the next day the Speaker,[5] stated that the result of the vote had been erroneously announced, and that the consequent proceedings on the bill would consequently fall. He then announced the vote to be—yeas 78, nays 76. So the bill was passed, and the Journal of the preceding day was ordered to be amended accordingly.

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[1] Second session Thirtieth Congress, Journal, p. 256; Globe, p. 267.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] The motion to reconsider is not now admitted under such circumstances.

[4] First session Thirty-first Congress, Journal, p. 1436; Globe, pp. 1782, 1783, 1786.

[5] Howell Cobb, of Georgia, Speaker.

6092. On January 22, 1851,[1] after the reading of the Journal, the Speaker[2] stated that it had been ascertained, on a reexamination of the vote on the motion submitted by Mr. George W. Jones, of Tennessee, on the previous day, to lay on the table the bill of the Senate (No. 19) "to amend the several acts establishing district courts of the United States in the State of Florida, and to provide for writs of error and appeals from said courts," that the actual result of the vote was—yeas 93, nays 91, and not—yeas 92, nays 91, as had been announced in the House immediately after the vote was taken. Consequently the vote of the Speaker, which had been given in the negative, would not defeat the said motion. It was therefore ordered that the said bill be laid on the table.

6093. Before the decision of the Chair on a vote has been pronounced finally and conclusively, a Member may change his vote.[3]—On April 3, 1810,[4] the yeas and nays were ordered on a question relating to a resolution of inquiry into the conduct of Brig. Gen. James Wilkinson.

The Clerk having called over the roll, but the result not having been announced, it was suggested by a Member in his place, Mr. Alexander McKim, of Maryland, that he had committed a mistake in giving his vote on the question last taken, and that he had intended to vote in the negative, and not in the affirmative, side of the said question, as the same had been recorded by the Clerk.

The Speaker then directed the Clerk to call the name of Mr. McKim again, and being so called, Mr. McKim answered in the negative.

Mr. John Randolph, of Virginia, objected to the right to change a vote except by the unanimous consent of the House.

The Speaker[5] decided that, in accordance with the practice, the gentleman had a right to change his vote.

Mr. Randolph having appealed, on April 4 the decision of the Chair was sustained—yeas 76, nays 19.

6094. On February 28, 1829,[6] the yeas and nays were taken on a motion to order the previous question on the bill to compensate Susan Decatur.

The Members on each side of the question being communicated by the Clerk to the Speaker, the Speaker announced to the House that there were—yeas 79, nays 81.

At this stage of the proceedings, and before the Speaker had pronounced the decision of the question to the House, Mr. Mark Alexander, of Virginia, announced his desire to change his vote and was permitted to do so.

Thereupon he changed his vote from the negative to the affirmative, thus producing an equal division, which was broken by the Speaker voting in the affirmative.

Thereupon Mr. Joel B. Sutherland, of Pennsylvania, raised a question of order as to the power of the Speaker to permit a Member to change his vote after the numbers of votes on each side of a question had been announced from the Chair.

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[1] Second session Thirty-first Congress, Journal, p. 171.

[2] Howell Cobb, of Georgia, Speaker.

[3] See also sections 5931–5933 of this volume for additional precedents on this point.

[4] Second session Eleventh Congress, Journal, pp. 342, 343 (Gales & Seaton ed.); Annals, pp. 1762, 1754.

[5] Joseph B. Varnum, of Massachusetts, Speaker.

[6] Second session Twentieth Congress, Journal, pp. 500, 501.

The Speaker[1] decided that it was the right of a Member to change his vote at any stage of proceeding before the decision of the House thereon should have been finally and conclusively pronounced from the Chair.

Mr. Burwell Bassett, of Virginia, having appealed, the decision of the Chair was sustained—yeas 122, nays 49.

6095. The record of a yea-and-nay vote may not be impeached by showing that Members voted who were recorded as paired.—On April 11, 1904,[2] Mr. John S. Williams, of Mississippi, claiming the floor to suggest a correction of the Record, said:

I find from that vote, on page 4767 of the Record, that the gentleman from Ohio [Mr. Morgan] is recorded as having voted "yea," and I find that the gentleman from West Virginia [Mr. Dovener] is also recorded as having voted "yea." I find upon the same page that the gentleman from Ohio [Mr. Morgan] is recorded as having been paired with his colleague from Ohio [Mr. Snook], and I find on the next page that the gentleman from West Virginia [Mr. Dovener], who voted, is recorded as having been paired with the gentleman from Kentucky [Mr. Trimble]. I furthermore find, upon page 4767, that neither Mr. Snook nor Mr. Trimble voted, and, as a matter of fact, neither one of them was here, The vote as announced was yeas 103, nays 100.

I ask a correction in the Record, and that the names of Mr. Morgan and Mr. Dovener be taken from the list of yeas and put among the list of those answering "present" and paired. That will leave the vote 101 to 100.

Objection being made that votes should not be stricken out for such a reason, the Speaker[3] said:

The Chair will state to the gentleman from Mississippi that the statement of pairs in the Record is purely an unofficial statement. The statement of a vote is official. The gentleman can see at once that where pairs are made, not infrequently—* * * The Chair was about to state that the statement of the pairs in the Record is purely nonofficial matter, and it does not, in the opinion of the Chair, lie in the mouth of any Member upon either side to criticize the vote of any other Member. * * * The record is made up as the memoranda were given, and a nonofficial statement can not avail to affect the official statement.

6096. The statement that a Member who is alleged to be absent has been recorded as voting should be sustained by undoubted evidence to justify the Chair in ordering the vote stricken off.[4]—On January 9, 1902,[5] the vote had been taken by yeas and nays on the bill (H. R. 3110) to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, when Mr. John S. Williams, of Mississippi, stated that he was satisfied that Mr. Frank A. McLain, of Mississippi, had not been present during the roll call, and that his name had been improperly recorded.

The Speaker[6] said:

All Members will, of course, appreciate the delicacy involved in the question of erasing a name from the record after it has been once placed thereon by an officer of the House. Of course, in the present instance it could make no possible change in the result, but in a close vote it might lead to very serious consequences. Unless a Member himself calls attention to the error, the Chair thinks that to

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] Second session Fifty-eighth Congress, Record, p. 4664.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] See also section 6064 of this chapter.

[5] First session Fifty-seventh Congress, Record, p. 558.

[6] David B. Henderson, of Iowa, Speaker.

undertake to erase a name under such circumstances would be setting a precedent for very dangerous legislation. The Chair therefore, although he felt it his duty to call attention to the matter, would decline to order the name erased.

On January 10,[1] on a statement made by Mr. McLain that he had not in fact been present, the Speaker directed the correction to be made.

6097. On an uncontradicted assertion that, a Member recorded as voting had not been present and had not voted, the Chair directed the name to be stricken from the list of those voting.

Instance wherein the Speaker debated a point of order while a Speaker pro tempore occupied the chair, and was about to rule.

On January 27, 1875,[2] during prolonged dilatory proceedings on the civil rights bill, the Chair announced that on a motion to adjourn over to Saturday there were yeas 63, nays 131.

Thereupon Mr. John B. Storm, of Pennsylvania, rising to a question of privilege, stated that Mr. James A. Garfield, of Ohio, was recorded as voting when in fact he had not been present.

At first the Speaker pro tempore[3] was inclined to hold that he could not intervene in the matter. But Mr. E. Rockwood Hoar, of Massachusetts, said:

Suppose a vote was taken on a motion to adjourn, and declared to be carried in consequence of the vote of a Member who was known to all of us not to have been here in the House, and whose name had been recorded by mistake by the Clerk; is it not the privilege of the body, and not merely of the Member, that an erroneous entry of the vote shall not be made?

Mr. James G. Blaine, of Maine, the Speaker, who was temporarily out of the Chair, said:

This, I think, will govern the case. The testimony is all on one side. It is not disputed that there was evidently a mistake. There are no two points in the controversy before the Chair. There is an allegation here that the gentleman from Ohio did not vote; there is no allegation that he did. If there were a disputed point, it must of course be determined by testimony, but there is no disputed point. The fact stated is uncontradicted, and therefore, with all due respect to the Chair, I think the error should be corrected.

The Speaker pro tempore held:

It having been asserted that Mr. Garfield was not present and did not vote, and nobody asserting to the contrary, the roll will be corrected accordingly, and his name will be stricken from it.

6098. On April 8, 1902,[4] a roll call had been completed on the motion that the House resolve itself into the Committee of the Whole House on the state of the Union to consider the bill (H. R. 12765) to provide for reciprocal trade relations with Cuba, when Mr. Michael E. Driscoll, of New York, said:

Mr. Speaker, when the name of the gentleman from New York [Mr. Bristow] was called, I, in the confusion, mistook it for my own name and answered "aye." Subsequently, when my own name was called, having discovered my mistake, I voted. I wish now to have the error corrected by which Mr. Bristow is recorded as voting. I understand he is not present.

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[1] Record, p. 564.

[2] Second session Forty-third Congress, Record, pp. 795, 796.

[3] John Cessna, of Pennsylvania, Speaker pro tempore.

[4] First session Fifty-seventh Congress, Record, p. 3848.

The Speaker[1] said:

Upon the statement of fact just made by the gentleman from New York [Mr. Driscoll], it seems clear that the vote of Mr. Bristow, as recorded, should be stricken out, as he seems not to have been present, but by mistake his name was answered to by the gentleman from New York [Mr. Driscoll]. In the absence of objection, the vote standing in the name of Mr. Bristow will be stricken out.

6099. A Member having stated on his responsibility that another Member recorded as voting on a preceding day was not then present, the Speaker ordered the correction of the Journal before its approval.—On April 14, 1906,[2] the Journal of the preceding day's session had been read but not approved when Mr. Halvor Steenerson, of Minnesota, said:

Mr. Speaker, I desire to say that in regard to the vote on the motion to recommit the post-office appropriation bill the Record shows that the gentleman from Iowa, Mr. Hedge, voted "no," when, as a matter of fact, the gentleman from Iowa was not here. * * * I know Mr. Hedge was not here.

The Speaker[3] said:

The gentleman stating on his responsibility as a Member that he has personal knowledge that the gentleman from Iowa, Mr. Hedge, was not here and did not vote, and there being nothing that contradicts the gentleman's statement, it seems to the Chair it is his duty to direct that Mr. Hedge's name be stricken out.[4]

6100. It was held in the Senate that when the yeas and nays were ordered and taken, and a quorum failed to respond, debate was not in order when a quorum appeared.

Reference to instances in the Senate wherein debate was had after the yeas and nays were ordered, but not after the calling of the roll had been begun.

On February 27, 1904,[5] the Senate were considering the bill (S. 2263) "to require the employment of vessels of the United States for public purposes," the pending question being on a motion to recommit. On the preceding day the yeas and nays had been ordered on the motion, but a quorum failing to answer on the call, a call of the Senate was had and a quorum appeared. Thereupon the Senate adjourned.

On this day Mr. Stephen R. Mallory, of Florida, rising to a parliamentary inquiry, asked if debate was in order on the motion to recommit.

After debate as to the custom of the Senate, the President pro tempore[6] held—

The Chair is of the opinion that where there has been a roll call ordered, and on the call no quorum is developed, and the same day a call of the House is had, and a quorum is developed, the first thing immediately to be done, then, is to proceed with a new roll call.

Mr. James H. Berry, of Arkansas, insisted that such had not been the practice of the Senate; but Mr. Eugene Hale, of Maine, insisted that it had been the practice.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 5258.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] The permanent Record has omitted the above, which appeared in the daily Record. The permanent Record indicates that the corrections were made, but omits the statement of them.

[5] Second session Fifty-eighth Congress, Record, p. 2457.

[6] William P. Frye, of Maine, President pro tempore.

The President pro tempore said:

The Chair is entirely clear about it. The presence of a quorum has been developed. The Secretary will call the roll.

But it is a frequent custom for the Senate to debate a question after the yeas and nays are ordered. An instance occurred on December 10, 1877,[1] also another in 1890,[2] and another on March 24, 1868.[3] These, however, were cases where the yeas and nays were merely ordered, without any effort to take them.

6101. In the general, although not universal, practice, debate has not been closed by the ordering of the yeas and nays until one Member has responded to the call.—On January 5, 1809,[4] the House was considering a bill "to enforce and make more effectual an act entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto.'"

A question being taken by the yeas and nays, Mr. John Randolph, of Virginia, proposed the following question of order:

When a question, by yeas and nays, has been put by the Speaker, and the Clerk has proceeded to the call, in consequence of which a vote is given by any one of the Members, and at the same time a Member rises in his place to address the Chair, does it preclude further debate on the said question?

The Speaker[5] decided, as the opinion of the Chair, that in all such cases further debate on the question then depending before the House ought to be precluded.

Mr. Randolph having appealed, the decision of the Chair was sustained—yeas 99, nays 10.

6102. On February 1, 1822,[6] the House was considering the bill for the apportionment of Representatives among the several States, according to the Fourth Census, and, the question being on an amendment, the yeas and nays were ordered.

The Speaker thereupon put the question, by saying that those who were in favor of the amendment would, when their names were called, answer in the affirmative, and those of a contrary opinion would, when their names were called, answer in the negative.[7]

No Member having answered, Mr. Rollin C. Mallary, of Vermont, rose and presented himself to the House for the purpose of discussing the amendment.

The Speaker[8] thereupon decided that at this stage debate was inadmissible.

Mr. Weldon N. Edwards, of North Carolina, appealed from this decision, and after debate the decision of the Chair was reversed—114 to 51.

6103. On April 22, 1828,[9] the House had ordered the yeas and nays on a resolution relating to the adjournment of Congress.

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[1] Second session Forty-fifth Congress, Record, p. 86.

[2] First session Fifty-first Congress, Record, p. 3197.

[3] Second session Fortieth Congress, Globe, p. 2076.

[4] Second session Tenth Congress, Journal, p. 446 (Gales & Seaton ed.); Annals, p. 994.

[5] Joseph B. Varnum, of Massachusetts, Speaker.

[6] First session Seventeenth Congress, Journal, pp. 216, 217; Annals, p. 873.

[7] The formula for putting the question is somewhat different now.

[8] Philip P. Barbour, of Virginia, Speaker.

[9] First session Twentieth Congress, Debates, p. 2479.

The yeas and nays had been ordered and the first name had been called by the Clerk, but not responded to, when Mr. Charles F. Mercer, of Virginia, claimed the floor.

Mr. William Drayton, of South Carolina, asked if it would be in order for the gentleman to proceed.

The Speaker[1] replied that the gentleman from Virginia was in time, as no response had been given by the Member whose name had been called.

6104. On April 14, 1874,[2] the Speaker put the pending question to the House, and on division there appeared in the affirmative 64, in the negative 145.

Mr. James A. Garfield, of Ohio, demanded the yeas and nays, and while the question on ordering the yeas and nays was being put, sought recognition for debate.

The Speaker[3] said:

The House is now dividing, and the Chair thinks that in consenting to a division the gentleman waived the right of discussion.

The yeas and nays were then ordered.

Thereupon Mr. Garfield sought recognition on the ground that debate was in order, the previous question not being ordered.

The Speaker said:

The gentleman from Ohio will not contend that, during a division of the House, he can debate the question. The House is now engaged in perfecting the process of that division. The gentleman from Ohio made his point, debated it, and took his seat. The Chair put the question, and the House not being satisfied with the viva voce vote, the division was called for. Now, a further process of certification of the division, by calling the yeas and nays, has been ordered. All these steps are certifications of the vote, and there is no point between them where the gentleman can stop the process and initiate debate. The result is the same as if the previous question had been ordered.

6105. On June 8, 1876,[4] the House had passed to be engrossed the bill (H.R. 1442) to repeal section 821 of the Revised Statutes of the United States, and to provide an oath for grand and petit jurors in the courts of the United States.

Mr. J. Proctor Knott, of Kentucky, moved to reconsider the vote by which the bill was ordered to be engrossed and read a third time, and demanded the yeas and nays thereon.

The Speaker pro tempore put the question upon ordering the yeas and nays; and those in the affirmative having voted, announced that the yeas and nays were ordered.

Pending which, Mr. George F. Hoar, of Massachusetts, rose to speak on the motion to reconsider.

Mr. William J. O'Brien, of Maryland, made the point of order that debate was not now in order, the yeas and nays having been ordered on the motion to reconsider.

The Speaker pro tempore[5] overruled the point of order, holding that the previous question did not operate upon the motion to reconsider, and that Mr. Hoar, claiming the floor upon that motion, was entitled to the same.

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] First session Forty-third Congress, Record, p. 3076.

[3] James G. Blaine, of Maine, Speaker.

[4] First session Forty-fourth Congress, Journal, p. 1069; Record, p. 3692.

[5] Samuel S. Cox, of New York, Speaker pro tempore.

Chapter CXXX.

DIVISION OF THE QUESTION FOR VOTING.

1. **The parliamentary law. Section 6106.**
2. **Rule of the House. Section 6107.**
3. **Principles governing division. Sections 6108–6122.[1]**
4. **Motions to strike out and insert not divisible. Sections 6123–6128.**
5. **On vote to insert division in order. Sections 6129–6133.**
6. **In order on vote to refer with instructions. Sections 6134–6137.**
7. **Not in order on vote to lay on the table. Sections 6138–6140.**
8. **Not in order on vote to suspend the rules. Sections 6141, 6143.**
9. **Not in order on votes on the stages of a bill. Sections 6144–6146.**
10. **Not in order on passage of bill with preamble. Sections 6147–6148.**
11. **After previous question is ordered. Sections 6149, 6150.**
12. **Not in order on a vote on Senate amendments. Sections 6151–6156.**
13. **General decisions. Sections 6157–6159.[2]**
14. **When division is to be demanded. Sections 6160–6162.**

6106. The parliamentary law relating to the division of the question.— Section XXXVI of Jefferson's Manual, which has been largely superseded by the rule and practice of the House, provides:

If a question contain more parts than one it may be divided into two or more questions. (Mem. in Hakew., 29.) But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. (2 Hats., 85, 86.) So, wherever there are several names in a question, they may be divided and put one by one. (9 Grey, 444.) So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. (2 Hats., 79.)

The soundness of these observations will be evident from the embarrassments produced by the XVIII rule of the Senate,[3] which says, "if the question in debate contains several points, any Member may have the same divided."

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[1] Example of difficulties where a proposition does not embody two substantive propositions. (Sec. 1725 of Vol. III.)

As to division of a resolution affecting several claimants to a seat. (Sec. 623 of Vol. I.)

Division granted on questions of removal and disqualification in voting in final judgment in Humphreys impeachment trial. (Sec. 2397 of Vol. III.)

[2] As to reconsideration of a question that has been divided for the vote. (Sec. 5609 of this volume.)

[3] This rule is as follows:

"If the question in debate contains several propositions, any Senator may have the same divided, except a motion to strike out and insert, which shall not be divided; but the rejection of a motion to strike out and insert one proposition shall not prevent a motion to strike out and insert a different proposition; nor shall it prevent a motion simply to strike out; nor shall the rejection of a motion to strike out prevent a motion to strike out and insert. But pending a motion to strike out and insert, the part to be stricken out and the part to be inserted shall each be regarded for the purpose of amendment as a question; and motions to amend the part to be stricken out shall have precedence."

1798, May 30, the alien bill in quasi committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they can not be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—(1) to any foreign minister; nor (2) to any person to whom the President should give a passport; nor (3) to any alien merchant conforming himself to such regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It was divided into four parts, the fourth taking in the words "conforming himself," etc. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," etc., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

When a question is divided, after the question on the first member, the second is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half of the question, both affirmative and negative, remains still to be put. (See Execut. Jour., June 25, 1795.) The same decision by President Adams.

6107. A question may be divided for the vote if it contain more than one substantive proposition.

A question that is divisible may be divided for the vote on the demand of any Member.

Present form and history of section 6 of Rule XVI.

Section 6 of Rule XVI provides:

On the demand of any Member, before the question is put, a question shall be divided if it include propositions so distinct in substance that one being taken away a substantive proposition shall remain.

This is the form agreed to in the revision of 1880.[1] It was taken with no material change from the old rule, No. 46, which existed at that time.

The rule for the division of the question is older than the House itself. The Continental Congress had this rule:[2]

If a question in debate contain several points, any Member may have the same divided.

When the first rules of the House were adopted, on April 7, 1789,[3] the rule took this form:

Any Member may call for a division of the question where the sense will admit of it.

As this rule was construed, its working was not wholly satisfactory, as a division of the question would be made in cases where, if the first portion should be

[1] Second session Forty-sixth Congress, Record, p. 206.

[2] See Journal of Continental Congress, May 26, 1778.

[3] First session First Congress, Journal, p. 9.

decided in the negative, the second portion would have to be abandoned because it would not be, alone, a substantive proposition. Thus on March 27, 1792,[1] on a resolution calling for an inquiry into the defeat of General St. Clair, a division of the question was called for, and it was put first on the first clause, which was—

Resolved, That the President of the United States be requested to institute an inquiry into the causes of the late defeat of the Army under the command of Major-General St. Clair.

This was decided in the negative. Then of course there could be no object in voting on the remainder: "and also into the causes of the detentions or delays which are suggested to have attended," etc.; and the House simply abandoned the latter portion.

Undoubtedly to remedy this awkward practice, the House on March 13, 1822,[2] adopted this rule:

Any Member may call for a division of the question, which shall be divided if it comprehends questions so distinct that one being taken away the rest may stand entire for the decision of the House.

On September 15, 1837,[3] the House discarded this rule and adopted the form which, with no material change, became, in 1880, the present rule.

6108. A resolution may not be divided when one of the portions, if required to stand alone, would not make a substantive proposition.—On July 4, 1836,[4] the House was considering a resolution relating to the suspension of one of the then existing joint rules, and Mr. John Quincy Adams, of Massachusetts, called for a division of the question, so as to vote separately on the two parts of the resolution, to wit:

To vote, first, on so much of the resolution as follows:

Resolved, That the seventeenth joint rule of the two Houses, which declares that no bill or resolution that shall have passed the House of Representatives and the Senate shall be presented to the President of the United States for his approbation on the last day of the session, be suspended until the hour of 12 o'clock this day, so far as to embrace those bills which have passed the two Houses.

And to vote, secondly, on the remainder of the resolution, which was as follows:

And so far as regards the bill (H. R. 258) to extend the jurisdiction of the corporation of the city of Washington, etc.; and so far as relates to the resolution of the Senate respecting certain acts of the Territorial legislature of Florida; and so far as relates to an act supplementary, etc., to the act to amend the judicial system of the United States; and the bill (No. 108) entitled "An act to alter and amend the several acts imposing duties on imports, approved the 14th day of July, 1832."

The Speaker[5] I decided that according to the thirty-eighth rule of the House the question was not divisible in the manner proposed, because if the first member of the question was not adopted by the House the other and latter member did not comprehend a question so distinct that, the first being taken away, the other would stand entire for the decision of the House.

Mr. George Evans, of Maine, having appealed, the decision of the Chair was sustained.

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[1] First session Second Congress, Journal, p. 551.

[2] First session Seventeenth Congress, Journal, p. 350.

[3] First session Twenty-fifth Congress, Cong. Globe, p. 34.

[4] First session Twenty-fourth Congress, Journal, p. 1215; Debates, p. 4620.

[5] James K. Polk, of Tennessee, Speaker.

6109. On February 17, 1860,[1] Mr. W. Porcher Miles, of South Carolina, submitted as a question of privilege the following resolution:

Resolved, That a select committee, consisting of three members, be appointed by the Speaker to inquire into the expediency of removing the benches or seats from the Hall and replacing the chairs and desks, and also the length of time and cost that it will require to make such change, and that said committee have leave to report at any time, and that in the meantime the Doorkeeper be directed to enforce the order of the House at the last Congress in regard to said chairs and desks.

Mr. John McQueen, of South Carolina, called for a division of the question, as the first portion provided for the appointment of a committee and the latter portion gave directions to the Doorkeeper.

The Speaker[2] decided that the resolution was not divisible.

6110. On December 19, 1864,[3] the House was considering the following resolution:

Resolved, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of new powers as in other matters; and it is the constitutional duty of the Executive Department to respect that policy, not less in diplomatic negotiations than in the use of national force when authorized by law; and the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it; and such proposition, while pending and undetermined, is not a fit topic of diplomatic explanation with any foreign power.

Mr. John V. L. Pruyn, of New York, proposed a division, so as to vote separately on the last clause—"and such proposition, while pending," etc.

The Speaker[4] held such division inadmissible, because if the first portion should be decided in the negative the last clause would not constitute a substantive proposition.

But on the demand of Mr. James F. Wilson, of Iowa, the Speaker allowed a division on the first portion down to the first semicolon, and then a vote on the remainder, holding that these two Portions constituted two substantive propositions.

6111. On August 18, 1842,[5] Mr. Millard Fillmore, of New York, from the Committee on Ways and Means, reported the following resolution:

Resolved, That it is expedient to pass another revenue bill, the same as that which recently passed both Houses of Congress and has been returned by the President of the United States, with his objections, to this House and, on reconsideration, lost for want of a constitutional majority, entitled "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes," with the exception of the twenty-seventh section of said bill, which repeals the proviso to the land distribution act, and so modified as to make tea imported in American vessels from beyond the Cape of Good Hope, and coffee, free from duty; and that the Committee on Ways and Means be, and they are hereby, instructed to report such a bill to this House with all convenient dispatch.

A division of the question was called for, so as to take the question, first, on reporting the bill and, secondly, on the details or provisions of the bill.

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[1] First session Thirty-sixth Congress, Journal, pp. 331, 332; Globe, pp. 829, 830.

[2] William Pennington, of New Jersey, Speaker.

[3] Second session Thirty-eighth Congress, Globe, p. 66.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Twenty-seventh Congress, Journal, p. 1358; Globe, p. 912.

The Speaker[1] decided that the resolution was not susceptible of such division, since, should the first portion be rejected, there would be no sense in the remainder.

Mr. Samuel L. Hays, of Virginia, having appealed, the appeal was laid on the table.

6112. On April 5, 1852,[2] the House was considering the following resolution:

Resolved, That we recognize the binding efficacy of the compromises of the Constitution, and believe it to be the intention of the people generally, as we hereby declare it to be ours individually, to abide such compromises and to sustain the laws necessary to carry them out—the provision for the delivery of fugitive slaves and the act of the last Congress for that purpose included—and that we deprecate all further agitations of questions growing out of that provision, of the questions embraced in the acts of the last Congress known as the compromise, and of questions generally connected with the institution of slavery as unnecessary, useless, and dangerous.

Mr. Edward Stanly, of North Carolina, demanded a division of the question, so as to vote first on that portion of the resolution down to and including the word "included."

The Speaker[3] admitted that the first portion would be a substantive proposition, but asked how the second portion would be if the first should be disagreed to. It would read:

Resolved, And that we deprecate all further agitation of questions growing out of that provision, etc.

Mr. Stanly thereupon withdrew his demand, admitting that the second proposition could not stand alone.

Thereupon Mr. Humphrey Marshall, of Kentucky, demanded a division, so as to vote first on that portion down to and including the words "carry them out."

The Speaker ruled such a division out of order, since, if the first portion should be disagreed to the remainder would read:

Resolved, The provision for the delivery of fugitive slaves and the act of the last Congress for that purpose included—and that we deprecate all further agitation of questions growing out of that provision, etc.

Mr. Marshall suggested that if the Speaker could supply the word "Resolved," he might supply other words to perfect the sense; but the suggestion was overruled.

Mr. Marshall having appealed, the appeal was laid on the table.

6113. On May 28, 1830,[4] the House was considering a resolution:

Resolved by the Senate and House of Representatives of the United States of America Congress assembled, That the sixteenth joint rule of the two Houses be suspended for the purpose of enabling the House of Representatives to send this day to the Senate, for their concurrence, bills of the titles contained in the schedule hereunto annexed, which passed the House yesterday, too late to be sent to the Senate for concurrence before the adjournment of that body, viz: [here follow the titles of eight bills, one of which was the bill (H. R. 474) "to reduce the duty on salt"].

Mr. John W. Taylor, of New York, called for a division of the question, so that a separate vote might be taken on the salt bill.

The Speaker[5] decided that the question was not divisible.

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[1] John White, of Kentucky, Speaker.

[2] First session Thirty-second Congress, Journal, P. 553; Globe, p. 981.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Twenty-first Congress, Journal, p. 758.

[5] Andrew Stevenson, of Virginia, Speaker.

Mr. Taylor having appealed from this decision, the Chair was sustained, yeas 97, nays 67.

6114. A resolution may be divided if it contain two substantive propositions, even though action according to such division may necessitate the supplying of formal words, such as "resolved."—On February 3, 1848,[1] the House was considering a series of resolutions reported from the Committee of the Whole House on the state of the Union providing for the reference of the various portions of the President's annual message to committees. When the eighth of these resolutions had been read, Mr. Alexander H. Stephens, of Georgia, demanded a division of the question, and the Speaker[2] granted it. So the question was taken first on so much of the resolution as follows:

Eighth. That so much of said message as relates to the revenue; to the public debt—to the increase thereof; to the creation of a sinking fund; to a duty on tea and coffee; to the collection, safe-keeping, and disbursement of the public moneys; to the coinage and the establishment of a branch mint at the city of New York; to the amendment of the subtreasury act; to the estimated expenditures of the Government, be referred to the Committee on Ways and Means.

This portion having been agreed to, the question was next taken on the second branch, as follows:

And that said committee be instructed to inquire into the expediency of raising annually, during the continuance of the war with Mexico, and until the payment of the public debt, the sum of five millions of dollars, to be assessed on personal and other property, stocks, and money at interest, and apportioned among the several States, as provided by the Constitution.

The question being taken, this resolution was disagreed to, yeas 47, nays 139.

6115. On January 6, 1868,[3] Mr. Cadwallader C. Washburn, of Wisconsin, offered the following resolution, which, under the operation of the previous question, was agreed to, yeas 80, nays 27, on the vote on the first portion, and yeas 82, days 24, on the second portion:

Resolved, That this House utterly condemns the conduct of Andrew Johnson, Acting President of the United States, for his action in removing that gallant soldier, Major-General P. H. Sheridan, from the command of the fifth military district; and that the thanks of this House are due to General U. S. Grant, commanding the armies of the United States, for his letter of August last, addressed to the said Acting President, in relation to the removal of Hon. E. M. Stanton and of General Sheridan, as well as for his endorsement on a letter of General Sheridan, dated January 25, 1867, in relation to matters in Texas.

When this resolution was offered, Mr. John W. Chanler, of New York, asked if the resolution was divisible.

The Speaker[4] said:

The resolution is divisible.

Thereupon the vote was taken first on the portion beginning with the resolving clause and extending to the semicolon. Then the vote was taken on that portion following the semicolon.

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[1] First session Thirtieth Congress, Journal, p. 347; Globe, p. 298.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Fortieth Congress, Journal, pp. 145–146; Globe, p. 332.

[4] Schuyler Colfax, of Indiana, Speaker.

6116. On June 11, 1870,[1] Mr. William B. Allison, of Iowa, submitted the following:

Resolved, That the matter of privilege, being an assault upon Hon. Charles H. Porter, be referred to the Judiciary Committee of this House for examination, and report what action this House should take in the premises; that the committee have power to send for persons, and papers, and that in the meantime the person at the bar be retained in the control of the Sergeant-at-Arms.

Mr. Samuel J. Randall, of Pennsylvania, demanded a division of the resolution, so as to vote separately on the words:

And that in the meantime the person at the bar be retained in the custody of the Sergeant-at-Arms.

The Speaker[2] I permitted such a division, and the question was taken, first on the first portion, and then on the words above quoted.

6117. On March 4, 1871,[3] during the consideration of the credentials of the Members-elect from the State of Mississippi, Mr. John A. Bingham, of Ohio, moved:

That the credentials of the Members-elect from the State of Mississippi be referred to the Committee on Elections, and that they now be sworn in.

Mr. Michael C. Kerr, of Ohio, rising to a parliamentary inquiry, asked if the motion could be divided.

The Speaker[2] said:

It presents two substantive propositions, and is divisible.

Accordingly the question was taken on the portion referring the credentials, and then on the portion providing for the swearing in of the Members-elect.

6118. On December 5, 1881,[4] the House was considering the following resolution:

Resolved, That George W. Hooker, of the State of Vermont, be, and he is hereby, elected Sergeant-at-Arms of the House of Representatives of the Forty-seventh Congress; that Walter P. Brownlow, of the State of Tennessee, be, and he is hereby, elected Doorkeeper of the House of Representatives of the Forty-seventh Congress; that Henry Sherwood, of the State of Michigan, be, and he is hereby, elected Postmaster of the House of Representatives of the Forty-seventh Congress, and that Rev. Fred D. Power, of the State of Virginia, be, and he is hereby, elected Chaplain of the House of Representatives of the Forty-seventh Congress.

Mr. William M. Springer, of Illinois, demanded a division of the question, so that a separate vote might be taken on the election of Chaplain.

The Speaker[5] said:

The Chair is of opinion that a division of the question may be bad on a resolution of this kind.[6]

6119. A Senate decision that a resolution, on demand for a division, should be divided according to its verbal construction rather than according to its legislative proposition.

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[1] Second session Forty-first Congress, Journal, pp. 965, 966; Globe, p. 4352.

[2] James G. Blaine, of Maine, Speaker.

[3] First session Forty-second Congress, Journal, p. 10; Globe, p. 10.

[4] First session Forty-seventh Congress, Record, p. 16; Journal, pp. 14, 16.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] A ruling illustrating the old system of dividing the question may be found in the proceedings of February 8, 1836. (First session Twenty-fourth Congress, Journal, pp. 1402, 1403.)

A resolution need not necessarily be divided because it affects the titles of the seats of two Senators from different States, with different questions involved.

On April 6, 1871,[1] the Senate were considering a single resolution providing that two persons bearing credentials, one from the State of Alabama and the other from the State of Georgia, should be admitted to seats.

Mr. Allen G. Thurman, of Ohio, had raised a question of order that the resolution should be divided, since it was contrary to parliamentary usage to embody in one resolution the cases of two persons from different States. He had therefore demanded a division of the resolution.

The Vice-President[2] ruled:

The Chair rules that, in his opinion, this resolution is susceptible of division, but not, perhaps, in the way the Senator from Ohio desires. It has in it two distinct substantive propositions, divided by a semicolon.

"*Resolved,* That George Goldthwaite and Foster Blodgett be permitted to take seats in this body upon taking the proper oath;"—

That clearly could stand by itself; and then the resolution proceeds with a second proposition:

"and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which their rights to seats respectively are contested, and hereafter make reports to the Senate thereon."

This alone is a substantive proposition which could stand by itself if the other were rejected, though it might require more precision in language before its final adoption.

The Chair concurs with the Senator from Ohio in his remarks sometime since, that it does not need that either part of a resolution sought to be divided on the demand of any Member shall be strictly grammatical: but it must be substantive, so as to stand by itself, the other being taken away or rejected; and therefore the conjunctive and disjunctive words "and" and "or" are always excluded from the consideration of presiding officers in determining whether resolutions can be divided, as they are used simply to connect together the various substantial parts of a sentence which may be divided. The Senator from Ohio, however, as the Chair understands, desires this resolution to be divided by separating the cases of Goldthwaite and Blodgett. The Chair must, therefore, to carry out the idea of the Senator, ask him to divide this resolution as it stands into two distinct and substantive propositions, either of which being rejected the other can stand by itself. Jefferson's Manual lays down the rule in regard to this matter in much terser and more precise language than the Chair could use:

"A question to be divisible must comprehend points so distinct and entire that one of them being taken away the other may stand entire."

This has always been the ruling with regard to a division sought to be made by the demand of a single Member. Of course it does not exclude the power of amending by a majority of the Senate; and it is rather a striking fact that there have been two cases in the British Parliament, one about a hundred years ago and the other two hundred and thirty years ago, involving almost exactly the same question that is involved in the present instance. On the 2d of December, 1640, a question arose in the British House of Commons as to the case of two persons elected to represent the county of Worcester. A single member demanded that the resolution reported in regard to them should be divided so that each case should be voted upon separately; but it was ruled that it required the order of the House of Commons to divide the resolution, that the division could not be made by the demand of a single member. That case is thus referred to in a note to 2 Hatsell, page 86:

"On the 2d of December, 1640, on the question for making void the election of the knights of the shire for the county of Worcester, a question was made whether there should be two questions made of it or one. Resolved there should be two. This instance is referred to in Lex Parliamentaria, page 291, where it is said: 'If a question upon debate contain more parts than one, and the members seem to be for one part and not for the other, it may be moved that the same may be divided into two or more questions.'"

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[1] First session Forty-second Congress, Globe, pp. 494, 495.

[2] Schuyler Colfax, of Indiana, Vice-President.

One hundred and thirty years afterwards the question again came up, in regard to the election of persons from another shire in England; and Hatsell, in the second volume of his precedents, page 85, * * * states, as the ruling of that case, upon a demand made such as is now made by the Senator from Ohio in regard to the persons named in this resolution as follows:

"When a question is complicated, that is, consists of two or more propositions, it has been often said that it is the 'right' of any one member to have it divided, that he may give his opinion upon each proposition separately. This is a very favorite topic with Mr. Grenville, and often repeated by him, and at last insisted upon so much, in the question about the Middlesex election, on the 16th of February, 1770, that it was thought necessary to take the sense of the house upon it, which was done by a question, and carried in the negative on the 19th of February; so that this matter is now at rest. Upon this occasion everything was urged that could be said in favor of the doctrine as laid down by Mr. Grenville."

And the proceedings, which the Chair will not read, show that there was an election of more than one person from a county, as to which undoubtedly, although the Chair is not advised upon that, there was some difference as to their votes or as to the circumstances of the election. Mr. Grenville demanded that the cases should be separated, that all the points involved should not be put together in the resolution, but that the House of Commons should vote upon each point separately.

Hatsell, in a note, page 86, gives another precedent, as follows:

"See a debate upon this point in the House of Lords, on the 21st of February, 1734, in which Lord Bathurst insists upon the right of every lord to have the question separated, but is compelled by the house to move it as an amendment." [1]

It was thus decided in 1770, after a thorough debate, as it had been decided previously with regard to the election of the two members in the county of Worcester, and in the House of Lords in 1734, that it was not the right of a single member to have a resolution of this kind separated, but that it required an order of the house to have it separated. These cases are referred to in section 36 of Jefferson's Manual, which the Chair has already read; and Mr. Jefferson concludes with this summing up of the matter:

"A question to be divisible must comprehend points so distinct and entire that one of them being taken away the other may stand entire."

And that has been, so far as the Chair is informed, the ruling of all presiding officers in Congress throughout its entire history. Of course the end desired can be reached by amendment.

Thereupon Mr. Joshua Hill, of Georgia, moved to strike out the words "and Foster Blodgett," and by this means the Senate ultimately arrived at an expression of its opinions on the two cases.

6120. The latest ruling is that a resolution affecting two individuals may be divided, although such division may demand a reconstruction of the text.—On July 15, 1856,[2] the House was considering this resolution; reported from the committee that investigated the assault on Senator Charles Sumner:

Resolved, That this House hereby declares its disapprobation of the said acts of Henry A. Edmundson and Lawrence M. Keitt in regard to said assault.

Mr. Benjamin Stanton, of Ohio, called for a division of the question, quoting in support of his demand the precedent of the knights of Worcester, in 1640, referred to in the Manual (Jefferson's).

The Speaker [3] said:

The Chair decides that the resolution is not divisible, inasmuch as it does not contain two propositions, one of which will stand when the judgment of the House is passed upon the other.

Mr. Stanton having appealed, the decision of the Chair was sustained, yeas 162, nays 25.

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[1] Lords' Debates, vol. 4, p. 392.

[2] First session Thirty-fourth Congress, Journal, pp. 1206, 1207; Globe, p. 1639.

[3] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

6121. On December 2, 1873,[1] the House was considering the following resolution:

Resolved, That J. H. Sypher, of the first district of Louisiana, L. A. Sheldon, of the second district, and P. B. S. Pinchback, Representative at large of the said State, having the prima facie evidence of the right to seats in this House, be admitted to take the oath, respectively.

Mr. James B. Beck, of Kentucky, asked for a division of the question.

The Speaker[2] ruled that such division might be demanded of right, saying:

The fate of one gentleman claiming a seat can not be linked with that of another in a resolution of this kind.

Thereupon the question was taken first on the first branch. That the oath be administered to J. Hale Sypher, and this was agreed to. Then the second branch, relating to L. A. Sheldon, was agreed to. The third branch, relating to P. B. S. Pinchback, was laid on the table.

6122. In deciding as to dividing a question, the Chair considers only the existence of substantive propositions, and not the merits of the questions presented.—On March 2, 1907,[3] the House was considering the bill (S. 6147) authorizing changes in certain street railway tracks within the District of Columbia, when Mr. Ollie M. James, of Kentucky, offered this amendment:

Add a new section as follows:

"That from and after the passage of this act the rate of fare that may be charged for the transportation of passengers over any and all street railway lines in the District of Columbia shall not exceed 3 cents, good for one continuous transportation of one passenger over the whole or any part of the line of said street railway company over which tickets are sold; and all conductors or other persons are hereby prohibited from demanding or receiving a fare or ticket from any passenger who is not provided with a seat.

"For a violation of any of the provisions of this section such company or other person violating the same shall be subject to a fine of $500 for each offense."

Mr. James B. Perkins, of New York, demanded a division of the proposition so as to vote separately on the portion relating to 3-cent fares.

Mr. William P. Hepburn, of Iowa, urged that the question was not divisible, since the penalty provision, which was intended to apply to both propositions, might, if a division were made, not so apply.

The Speaker[4] said:

It seems to the Chair, after examining the amendment with some care, that there are two propositions. * * * The Chair will state to the gentleman from Iowa that the consistency or wisdom of either or both propositions is not with the Chair. The only question is, Are there two propositions to be separated? and the Chair finds that there are. * * * After all, the continuity or the wisdom of the proposition is not to be passed upon by the Chair. The only question is whether there are two propositions, so that if one is taken away there would remain a substantive proposition, and the Chair finds there are two.

Thereupon the Speaker directed the Clerk to report the first proposition, as follows:

That from and after the passage of this act the rate of fare that may be charged for the transportation of passengers over any and all street railway lines in the District of Columbia shall not exceed 3 cents, good for one continuous transportation of one passenger over the whole or any part of the line of said street railway company over which tickets are sold.

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[1] First session Forty-third Congress, Journal, pp. 36, 38, 39; Record, pp. 27, 28, 34.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Fifty-ninth Congress, Record, p. 4509.

[4] Joseph G. Cannon, of Illinois, Speaker.

The motion to insert this was agreed to by the House—yeas 141, nays 102.

Then the question was taken on inserting the remainder of the proposed section, and it was disagreed to.

6123. A rule provides that the motion to strike out and insert shall not be divided.—Section 7 of the Rule XVI [1] provides:

A motion to strike out and insert is indivisible. * * *

6124. On a motion to strike out a resolution and insert a division of the question so as to vote separately on each substantive proposition of the matter to be inserted was decided not to be in order (Speaker overruled).—On June 28, 1850,[2] the House had under consideration a resolution reported from the Committee on Elections, as follows:

Resolved, That William Thompson is entitled to the seat which he now holds as the Representative from the First Congressional district of Iowa.

Mr. John Van Dyke, of New Jersey, moved as an amendment to this, to strike out all after the word "Resolved" an insert the following:

1. *Resolved,* That the seven votes cast at Pleasant Grove with the middle letter of the contestant's name omitted be allowed and counted for him.

And so on through six similar resolutions relating to the votes at different places, and concluding with the following:

8. *Resolved,* That Daniel F. Miller is entitled to a seat in this House as the Representative from the First Congressional district of Iowa.

Mr. William S. Ashe, of North Carolina, called for a division of the amendment, and the Speaker announced that the question would be first taken on the first resolution.

Mr. Robert C. Winthrop, of Massachusetts, made the point of order that upon a motion to strike out a resolution and insert several resolutions connected together the question was not divisible.

The Speaker [3] stated that his attention having been called to the point of order made by the gentleman from Massachusetts, he had examined it and referred to a precedent in the Twenty-ninth Congress, and expressed the opinion that the motion to strike out and insert was divisible to the extent of inserting any substantive part of the resolutions. It would not be in order to vote first on the motion to strike out and then on the motion to insert.[4]

Mr. Samuel W. Inge, of Alabama, appealed, and the decision was reversed—92 nays to 75 yeas.

6125. On June 2, 1858,[5] the House was considering a resolution in five parts relating to the sale of Fort Snelling military reservation.

Mr. Charles J. Faulkner moved to amend by striking out all after the word "Resolved" and inserting substitute resolutions, two in number, the first beginning with the word "that" and the second beginning with the word "Resolved."

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[1] See section 5767 of this volume for full form and history of this rule.

[2] First session Thirty-first Congress, Globe, p. 1310.

[3] Howell Cobb, of Georgia, Speaker.

[4] The motion to strike out and insert is not divisible because of a rule. (see sec. 6123).

[5] First session Thirty-fifth Congress, Globe, pp. 2646, 2655; Journal, p. 992.

Thereupon Mr. Horace F. Clark, of New York, moved to amend the substitute proposed by Mr. Faulkner by striking out all after the word "that" and inserting a series of four resolutions, all but the first beginning with the word "Resolved."

Mr. John Letcher, of Virginia, asked for a separate vote on the several branches of Mr. Clark's amendment.

The Speaker [1] said:

> The Chair doubts whether a division can be had of such an amendment. It must be taken as an entirety. If not, the effect of it practically would be to allow a gentleman, instead of offering one amendment, to offer two or three, and instead of there being an amendment, an amendment to an amendment pending, it might result in there being five or ten amendments pending.

By unanimous consent, however, the division was allowed.

After the amendments proposed by Messrs. Faulkner and Lewis had been disposed of, and the question recurred on agreeing to the original proposition, a division of that was allowed on the demand of a Member.[2]

6126. On February 27, 1845,[3] the House was considering the bill (H.R. 541) for improving the navigation of certain rivers, and a motion was pending to strike out all of the bill after the word "that" next the enacting clause, and insert a new text, i.e., an amendment in the nature of a substitute. A motion was made to divide the proposed substitute so as to take a vote first on a portion relating to certain canals. The point of order was made that on a motion to strike out and insert it was not in order to divide the amendment. But the Speaker pro tempore [4] ruled the demand in order. On appeal this decision was sustained. The House then voted on the portion relating to the canals and rejected it. The remainder of the amendment was then agreed to.[5]

6127. Substitute resolutions offered as an amendment are not divisible; but when agreed to a division of the original as amended may be demanded.—On February 10, 1904,[6] the House was considering the Pennsylvania contested election case of Connell *v.* Howell, and the question was on agreeing to a motion submitted by Mr. Frank A. McLain, of Mississippi, that all of the resolutions proposed by the elections committee be stricken out after the word "*Resolved*," and that there be inserted two resolutions, one declaring contestant not elected and the other declaring sitting Member elected and entitled to the seat.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if the amendment might be divided.

The Speaker [7] replied that the amendment must be voted on as a whole.

The amendment being rejected, the question recurred on the resolutions of the committee, and the Speaker permitted a division so that a separate vote might be taken on each.

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[1] James L. Orr, of South Carolina, Speaker.

[2] Globe, p. 2657.

[3] Second session Twenty-eighth Congress, Journal, p. 508; Globe, p. 365.

[4] George W. Hopkins, of Virginia, Speaker pro tempore.

[5] Where it is proposed to amend by striking out from the text and inserting, and also by adding to the end of the text, a division of the amendment, if indeed it really be one amendment, has been allowed. See instance February 22, 1845. (Second session Twenty-eighth Congress, Journal, p. 436.)

[6] Second session Fifty-eighth Congress, Record, pp. 1865, 1866.

[7] Joseph G. Cannon, of Illinois, Speaker.

6128. On February 26, 1903,[1] the House was considering the following resolutions:

Resolved, That James J. Butler was not elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is not entitled to a seat therein.

Resolved, That George C. R. Wagoner was elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is entitled to a seat therein.

And the pending question was on the following amendment:

Strike out all after the word "*Resolved*" and insert:

"That George C. Wagoner was not elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is not entitled to a seat therein.

"*Resolved,* That James J. Butler was elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is entitled to a seat therein."

Mr. Oscar W. Underwood, of Alabama, made the point of order that this was a substitute for the original resolutions and not an amendment.

The Speaker pro tempore[2] said:

It has no standing in a parliamentary way except as an amendment.

Mr. James D. Richardson, of Tennessee, demanded a division of the amendment.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that the question was not divisible.

The Speaker pro tempore said:

The Chair will say to the gentleman from Tennessee that under the rules of the House, as the gentleman from Tennessee is aware, a motion to strike out and insert is not divisible. * * * The gentleman will be entitled to a division on the main proposition, but on the motion to strike out a resolution and insert it is not divisible.[3]

6129. When it is proposed to amend by inserting or adding, the matter is divisible if it contain more than one substantive proposition.—On January 30, 1847[4] the House was considering a joint resolution thanking General Taylor and the officers and soldiers of his command for their conduct in storming the city of Monterey.

Mr. James J. Faran, of Ohio, moved to amend by inserting the following:

Engaged, as it was and still is, in a war commended and forced upon us by Mexico, and continued by us in defense of the honor and in vindication of the just rights of the United States, assailed as both have been by repeated and flagrant acts, on the part of Mexico, of insult, outrages, and, finally, of invasion of one of the States of this Union: *Provided,* That nothing herein contained shall be construed into an approbation of the terms of the capitulation of Monterey.

The previous question was moved and ordered on this amendment, when Mr. Richard Brodhead, of Pennsylvania, asked for a division of the question so as to vote separately on the proviso.

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[1] Second session Fifty-seventh Congress, Record, p. 2726; Journal, p. 291.

[2] John Dalzell, of Pennsylvania, Speaker pro tempore.

[3] In one instance, however, a division was permitted under these circumstances. On April 22, 1892, during consideration of the election case of Noyes *v. Rockwell, the minority of the Committee on Elections moved to substitute two resolutions for the two resolutions proposed by the majority. A division of the proposed amendment was demanded and granted. (First session Fifty-second Congress, Record, p. 2538.)*

[4] Second session Twenty-ninth Congress, Journal, pp. 275, 276; Globe, pp. 295, 296.

The Speaker[1] decided that the amendment was not divisible.

An appeal being taken, the decision of the Chair was sustained.

6130. On September 5, 1850,[2] while the House was considering the bill of the Senate (No. 307) proposing to the State of Texas the establishment of her northern and eastern boundaries, Mr. Robert Toombs, of Georgia, offered as an amendment to a pending amendment a proposition which, being put to vote, was divided, on the demand of Mr. Preston King, of New York.

The first part of the proposition, which was decided in the affirmative, was as follows:

And no citizen of the United States shall be deprived of his life, liberty, or property in said Territory, except by the judgment of his peers and the law of the land.

The question was then stated on agreeing to the second part, as follows:

And that the Constitution of the United States, and such statutes thereof as may be locally applicable, and the common law, as it existed in the British colonies of America until the 4th day of July, 1776, shall be the exclusive laws of said Territory, upon the subject of African slavery, until altered by the proper authority.

It was decided in the negative, yeas 65, nays 132.

6131. On July 6, 1850,[3] the House resumed consideration of the report of the select committee appointed to investigate the conduct and relation of the Hon. George W. Crawford to the claim of the representatives of George Galphin.

For the resolution reported by the committee Mr. Robert C. Schenck, of Ohio, had offered the following substitute:

That there is no evidence submitted by the committee to whom was referred the letter of George W. Crawford, asking "an investigation" into his conduct in reference to the claim of the representatives of George Galpin, which impugns his personal or official conduct in relation to the settlement of the claim by the proper officers of the Government.

Provided, however, That this House is not to be understood as approving his relation to that claim, in continuing to be interested in the prosecution of it when it was to be examined, adjusted, and paid by one of the Departments of the Government, he himself being at the same time at the head of another of those Departments; but the House considers that such connection and interest of a member of the Cabinet with a claim pending and prosecuted before another Department would be dangerous as a precedent, and ought not to be sanctioned.

To this substitute Mr. Jacob Thompson, of Mississippi, moved to amend by adding at the end thereof the following:

And consequently that the House also totally dissents from the correctness of the opinion expressed by the President of the United States to the said Secretary of War, "that his (the said Crawford) being at the head of the War Department and the agent of the claimants did not take from him any rights he may have had as such agent, or would have justified him in having the examination and decision of the claim by the Secretary of the Treasury suspended."

Resolved further, That this House decidedly disapproves of and dissents from the opinion given by the Attorney-General in favor of an allowance of interest on said claim, and from the action of the Secretary of the Treasury in payment of the same.

The question being on the amendment of Mr. Thompson to the substitute of Mr. Schenck, Mr. Humphrey Marshall, of Kentucky, asked a division of the question.

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[1] John W. Davis, of Indiana, Speaker.

[2] First session Thirty-first Congress, Journal, pp. 1398, 1399; Globe, p. 1757.

[3] First session Thirty-first Congress, Journal, pp. 1079, 1083, 1091; Globe, p. 1346.

Mr. William A. Richardson, of Illinois, made the point of order that it was not divisible, an amendment to an amendment not being divisible.

The Speaker[1] decided that, inasmuch as the amendment to the substitute contained two substantive, distinct propositions, it was clearly divisible, and ruled accordingly.

Mr. Richardson having appealed, the decision of the Chair was sustained.

6132. On April 24, 1902[2] while the bill (H. R. 9206) relating to the sale and manufacture of oleomargarine was under consideration in Committee of the Whole House on the state of the Union, Mr. Charles F. Scott, of Kansas, moved to insert in the bill the following:

Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

Wholesale dealers in process or renovated butter shall pay a tax of fifty dollars per annum and retail dealers in process or renovated butter shall pay a tax of six dollars per annum. Every person who sells or offers for sale renovated or process butter in the original manufacturer's package shall be deemed a wholesale dealer in process or renovated butter, but any manufacturer of renovated or process butter who has given the required bond and paid the required tax and who sells only renovated or process butter of his own production at his place of manufacture in the original packages to which the tax-paid stamps are affixed shall not be required to pay the special tax of the wholesale dealer in renovated or process butter on account of such sale. Every person who sells renovated or process butter in less quantities than 10 pounds at one time shall be regarded as a retail dealer in process or renovated butter.

Mr. James A. Tawney, of Minnesota, asked for a division of the amendment, so as to vote first on the motion to insert the following portion:

Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

The Chairman[3] said:

The Chair will state that this, not being a motion to strike out and insert, but a motion to amend by adding new matter, it is properly divisible provided it contains more than one substantive proposition. The Chair is of the opinion that it does contain at least two, and therefore sustains the demand of the gentleman from Minnesota, and will put the question upon the first proposition.

The question was then taken on the motion to insert the above portion of the amendment, and it was agreed to.

Then the question was taken on the motion to insert the remaining portion, and it was disagreed to.

6133. On March 17, 1902[4] while the bill (S. 1348) to provide for the ocean mail service, etc., was under consideration in the Senate a motion was made to insert the following:

No vessel shall be entitled to the full compensation under this title unless she shall have cleared from a port of the United States with cargo to the amount of 50 per cent of her capacity for carrying commercial cargo; and any shortage in the amount of cargo required and defined as aforesaid shall diminish the amount of the compensation in this paragraph provided for in the proportion that such shortage bears to the total cargo or its equivalent so required. All vessels receiving compensation under this section shall be at least of class Al or its equivalent, as defined in paragraph C of section 7 of this act, during the whole period for which payment is authorized under the provisions of this title.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Fifty-seventh Congress, Record, pp. 4629–4634.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

[4] First session Fifty-seventh Congress, Record, p. 2902.

A division being demanded, the President pro tempore[1] ruled that it might be divided so as to vote on the first sentence and then on the second, each being a substantive proposition.

6134. A division of the question is not in order on a motion to commit with instructions or on the different branches of the instructions.—On April 27, 1822,[2] the House had under consideration a bill changing the compensation of Members of Congress, etc. Various motions to recommit with instructions had been made, when Mr. Walter Patterson, of New York, renewed the motion to recommit, with the instructions to make the pay of Congressmen $4 a day with $4 for every 20 miles of travel.

And the question being stated thereon, Mr. John Long, of North Carolina, moved to amend the instructions by striking out "four dollars" and in lieu thereof inserting "seven dollars."

And the question being stated thereon, Mr. Burwell Bassett, of Virginia, moved to amend the motion to recommit, by expunging all the instructions.

The Speaker[3] declared this motion not to be in order, it being in effect a call for a division of a question declared indivisible by the rules of the House.[4]

From this decision Mr. Bassett appealed to the House. The Chair was sustained.

6135. On September 5, 1850,[5] the bill of the Senate (No. 307) entitled "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States," was under consideration, when Mr. John Wentworth, of Illinois, moved that the bill and pending amendments be committed to the Committee of the Whole House on the state of the Union, with the following instructions:

> With instructions to amend the amendment so as to exclude slavery from all the territory acquired from Mexico by the treaty of Guadalupe-Hidalgo lying eastward of California. Also to strike out the words, in the first section of the proposed amendment to the bill, "thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with the said degree to its intersection with the one hundred and third degree of longitude west of Greenwich:" and insert the words "thence down the main channel of the river Rio Grande to the point where said river crosses the one hundred and second degree of longitude west of Greenwich." Also to strike out from the words "*Provided, also,*" in the eighth line of the fifth section of the bill, to the words "United States," in the nineteenth line of the same.

Mr. Samuel W. Inge, of Alabama, demanded a division of the question on the different branches of the instructions.

The Speaker[6] decided that the question was indivisible, on the ground that two substantive and distinct propositions could not be made out of them, either of which, the other failing, could stand of itself; and this was the test by which the division of a question must be determined.

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[1] William P. Frye, of Maine, President pro tempore.

[2] First session Seventeenth Congress, Journal, p. 507.

[3] Philip P. Barbour, of Virginia, Speaker,

[4] This was the first ruling after an important change in the rule. See section 6107 of this chapter.

[5] First session Thirty-first Congress, Journal, pp. 1395–1397; Globe, p. 1756.

[6] Howell Cobb, of Georgia, Speaker.

From this decision of the Chair Mr. Inge appealed. And the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative, yeas 101, nays 86.

Mr. Thomas L. Clingman, of North Carolina, demanded a division of the question upon the motion of Mr. Wentworth, so that a separate vote might be taken upon the commitment and the instructions.

The Speaker decided that the question was indivisible, on the ground that if the motion to commit failed, the instructions must necessarily fall; and, consequently, that the motion did not present such a case as, under the rule, would admit of a division of the question.

The Speaker said:

The rule is that a motion to be divided must contain two or more separate and distinct propositions. If the motion to commit and the motion to instruct the committee be divided, and the question be taken first on the motion to commit, and the House refuse to commit, the motion to instruct does not constitute a substantive proposition which can stand by itself. If, on the other hand, the vote be taken first on the motion to instruct, and that is adopted, the question would recur upon the motion to commit; and if the House should refuse to commit, what becomes of the instructions? They must necessarily fall. This shows that the commitment and instructions are not two distinct and substantive propositions.

If the instructions had been offered separately as an amendment, the House would thereby have been brought to a vote separately upon them, and, if they were agreed to, the question would recur upon committing with the instructions. The Chair thinks the point a very clear and distinct one. He intimated the opinion, however, to the gentleman from Illinois, Mr. Wentworth, that a separate vote might be taken upon each branch of the instructions after the first. But the House, upon reflection, will perceive that this ruling would involve the House in the same difficulty. Suppose the vote was taken first upon the motion to commit with the first instructions, and the House refused to commit with those instructions, the remaining instructions would fall, as a matter of course; or suppose the House voted first upon the several branches of the instructions, except the first, and they were agreed to, and then refused to commit the bill with the first instructions, what would become of the subsequent instructions which had been agreed to? Hence the Chair must rule that the only vote to be taken is upon the motion to commit with instructions, and that the motion is indivisible.

Mr. Clingman having appealed, the decision of the Chair was sustained.

6136. On April 19, 1852,[1] Mr. James L. Orr, of South Carolina, moved to recommit a report of the Committee on Printing with instructions to report on the whole subject and to recommend for the adoption of Congress such a system for the execution of the public printing as they might deem most expedient, and that they especially take into consideration the plan for a printing bureau for the execution of the work under the supervision of a Government officer.

Mr. Charles E. Stuart, of Michigan, demanded a division of the question, so that a separate vote might be had; first, on the recommitment, and second, on the instructions.

The Speaker[2] decided that the motion to recommit with instructions was indivisible, on the ground that it did not contain propositions so distinct that one failing, the other could stand; if the House should refuse to commit there would be nothing left with which to connect the instructions.

On appeal the Chair was sustained.

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[1] First session Thirty-second Congress, Journal, p. 611; Globe, p. 1124.

[2] Linn Boyd, of Kentucky, Speaker.

Mr. Alexander H. Stephens, of Georgia, then called for a division of the question so that separate votes might be had on the two branches of the instructions, the latter branch being as follows, viz, "that they especially take into consideration the plan for a printing bureau for the execution of the work under the supervision of a Government officer."

The Speaker decided that the question was indivisible for the same reason that he had just decided the proposition of Mr. Stuart to be out of order. If, as the House had just sustained him in deciding, the question of recommitment with instructions could not be divided, the instructions themselves could not be divided, as a division would separate the commitment from a part of the instructions, which could no more stand alone than the entire instructions.

On an appeal by Mr. Stephens, the Chair was sustained.

6137. On February 26, 1904,[1] pending the passage of the naval appropriation bill, a motion was made to recommit with instructions to incorporate in the bill a series of propositions.

Mr. John S. Williams, of Mississippi, called for a division of the instructions.

The Speaker[2] said:

The Chair is furnished with the precedent or precedents that a motion to recommit is not divisible in its different branches of instruction.

6138. A division of the question may not be demanded on a motion to lay a series of resolutions on the table. (Speaker overruled.)-On December 20, 1847—,[3] Mr. John Pettit, of Indiana, offered the following resolutions:

Resolved, That if, in the judgment of Congress, it be necessary to improve the navigation of a river, to expedite and render secure the movements of our Army, and save from delay and loss our arms and munitions of war, then Congress has the power to improve such river.

Resolved, That if it be necessary for the preservation of the lives of our seamen, repairs, safety, or maintenance of our vessels of war, to improve a harbor or inlet, either on our Atlantic or lake coast, Congress has the power to make such appropriations.

Mr. Alexander D. Sims, of South Carolina, moved to lay the resolutions on the table.

Mr. Charles J. Ingersoll, of Pennsylvania, called for a division of the question on the resolutions.

The Speaker[4] decided that the resolutions were distinct and separate propositions, and that, under the express rule of the House, any Member might call for a division of them. He thought that it was not too late for such a call, and that, the resolutions being divided, the motion to lie on the table would apply to them separately.

Mr. Sims appealed from the decision, there seeming to be a question as to whether the motion to lay on the table would permit of such a division. And the question being taken, the decision of the Chair was reversed, and the question was decided not to be divisible.

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[1] Second session Fifty-eighth Congress, Record, p. 2449.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Thirtieth Congress, Journal, p. 129; Globe, p. 58.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

6139. A motion to lay a resolution and pending amendment on the table may not be divided.—On May 16, 1834,[1] the House was considering the following resolution, offered by Mr. Samuel W. Mardis, of Alabama:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reporting a bill requiring the Secretary of the Treasury to deposit the public moneys of the United States in the State banks; and also to the expediency of defining, by law, all contracts hereafter to be made with the Secretary for the safe-keeping, management, and disbursement of the same.

To this Mr. Thomas Corwin, of Ohio, offered the following amendment in the nature of a substitute:

That the reasons of the Secretary of the Treasury for the removal of the public deposits from the Bank of the United States are insufficient; and that it is inexpedient to enact a law requiring the Secretary of the Treasury to deposit the public money in the State banks.

A motion having been made to lay the resolution and amendment on the table,

Mr. Thomas M. T. McKennan, of Pennsylvania, demanded that the question be divided, so as to be taken first on laying the resolution on the table and then on laying the amendment on the table.

The Speaker[2] pronounced such a motion to be out of order.

6140. On February 28, 1879[3] the House was considering the bill (H. R. 805) providing for the repeal of the resumption act. It had passed the Senate with amendments, and the House Committee on Banking and Currency had recommended concurrence in the Senate amendments with certain amendments.

Mr. James A. Garfield, of Ohio, moved to lay the bill and pending amendments on the table.

Mr. John Hanna, of Indiana, rising to a parliamentary inquiry, asked if a division of the question might be had, so as to vote separately on laying on the table the amendments reported by the Committee on Banking and Currency.

The Speaker[4] said:

The motion to lay on the table is a summary motion, the object being to kill the bill, and it is not divisible.

6141. A division of the question may not be demanded on a vote on suspension of the rules.—On May 7, 1906,[1] Mr. William P. Hepburn, of Iowa, moved that the rules be suspended and that the following order be agreed to:

Ordered, That the privilege granted to bills reported from committees having the right to report at any time, be, and is hereby, granted to the following bills:

S. 88: "For preventing the adulteration or misbranding of foods or drugs, and for regulating traffic therein, and for other purposes."

H. R. 18673: "To regulate the immigration of aliens into the United States."

Ordered further, That the bill (H. R. 17984) to provide a code of penal laws for the United States, be, and hereby is, made a special continuing order for consideration at evening sessions of the House, whenever the House shall by vote take a recess from the usual hour of adjournment until 8 p. m., the said evening sessions not to continue after 10.30 p. m.

A second having been ordered and debate having been concluded, the question was about to be put when Mr. John S. Williams, of Mississippi, demanded a division of the question.

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[1] First Session Twenty-third Congress, Debates, p. 4136.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] Third session Forty-fifth Congress, p. 1794.

[4] Samuel J. Randall, of Pennsylvania.

[5] First session Fifty-ninth Congress, Record, p. 6466.

The Speaker[1] held that under the uniform rulings of the past a division of the question might not be demanded on a vote on suspension of the rules.

6142. On March 22, 1869,[1] the House was considering a motion to suspend the rules and agree to a resolution relating to the disposal of contested election cases.

Mr. John F. Farnsworth, of Illinois, rising to a parliamentary inquiry, asked if the resolution could not be divided so as to take a separate vote on a certain part of it.

The Speaker[3] said:

The motion to suspend the rules and adopt the resolution precludes the call for a division.

6143. On December 14, 1868,[4] Mr. William Lawrence, of Ohio, moved to suspend the rules and agree to a resolution which he presented in relation to the investigation of certain alleged election frauds in New York.

Mr. William E. Robinson, of New York, asked if it would be in order to demand a division of the resolution.

The Speaker[5] held:

The motion to suspend the rules suspends that rule with all others. Under the rule the gentleman can ask for a division of the resolution, but if two-thirds vote to suspend the rules that rule is suspended with all the others.

6144. In voting on the engrossment and third reading and passage of a bill, a separate vote on the various propositions of the bill may not be demanded.—On August 28, 1893,[6] the Speaker announced the question to be on the engrossment and third reading of the bill under consideration.

Mr. Joseph W. Bailey, of Texas, thereupon demanded that there be a division of the question on the engrossment and third reading of the bill and that the question of engrossment and third reading of each of the two propositions contained in the bill be taken separately.

Mr. W. Bourke Cockran, of New York, made the point of order that the question was not divisible and that such vote could not be taken separately.

The Speaker sustained the point of order.

The bill was thereupon ordered to be engrossed and was read the third time.

The question being put, Shall the bill pass?

Mr. Bailey demanded that the vote be taken separately on each of the two propositions contained in the bill.

The Speaker[7] held that the question on the passage of the bill could not be divided and that the rule and practice of the House in respect to division of questions did not apply to the question on the passage of a bill.[8]

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Forty-first Congress, Globe, p. 197.

[3] James G. Blaine, of Maine, Speaker.

[4] Third session Fortieth Congress, Globe, p. 73.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] First session Fifty-third Congress, Journal, pp. 21, 22.

[7] Charles F. Crisp, of Georgia, Speaker.

[8] On February 25, 1846, the House adopted a rule providing that on the engrossment of any bill appropriating money for internal improvements it should be in the power of any Member to call for a division so as to take the vote separately on each item or any item of appropriation. On March 19 this rule was invoked when the river and harbor bill was passed to be engrossed. (First session Twenty-ninth Congress, Journal, pp. 454, 543; Globe, p. 427.) This rule long since ceased to exist.

6145. A division of the question may not be demanded on the passage of a joint resolution.—On April 16, 1856,[1] the House had ordered to be engrossed and read a third time the joint resolution (H. Res. 11) for the purchase of Doctor Kane's forthcoming work on Arctic explorations, etc. This resolution contained two branches, one relating to the book and the other relating to the presentation of certain medals to Doctor Kane and his officers and men. There was also with the second branch a distinct resolving clause.

The previous question on the passage of the resolution was ordered.

Thereupon a division of the question was called for.

The Speaker[2] decided that the question was indivisible, the resolution having been engrossed and read a third time.

Mr. Thomas L. Clingman, of North Carolina, having appealed, the appeal was laid on the table.

6146. On February 27, 1861,[3] the House was considering a joint resolution (H. Res. 64) reported from the select committee of thirty-three appointed to consider so much of the President's message as related to the perilous state of the Union. This resolution[4] was in reality a series of resolutions expressing the opinion of Congress in regard to the status of slavery and making certain recommendations to the several States in regard to legislation by their legislatures for the purpose of allaying the feelings of the two sections of the country.

The joint resolution had been engrossed and read a third time, and the question was on the passage, when Mr. Jacob M. Kunkel, of Maryland, asked a division of the question.

The Speaker[5] pro tempore decided that on the passage of a joint resolution, unlike the case of simple resolutions of the House, a division of the question was not in order .

Mr. Kunkel having appealed, the appeal was laid on the table.

6147. On the passage of a bill with a preamble, a division of the question may not be demanded.—On January 25, 1837,[6] the House was considering the bill "to provide for the admission of the State of Michigan into the Union on an equal footing with the original States."

The pending question was a demand for the previous question, made on a preceding day.

Mr. Charles F. Mercer, of Virginia, rising to a parliamentary inquiry, asked whether, if the demand for the previous question should be seconded,[7] the question could not be separately taken on the preamble and bill.

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[1] First session Thirty-fourth Congress, Journal, p. 837; Globe, p. 936.

[2] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

[3] Second session Thirty-sixth Congress, Journal, p. 415; Globe, p. 1262.

[4] This resolution did not pass the Senate, so there was no opportunity for the President to sign it. As it merely expressed the opinion of Congress there might be a question as to whether he would have been required to sign it.

[5] Henry L. Dawes, of Massachusetts, Speaker pro tempore.

[6] Second session Twenty-fourth Congress, Debates, p. 1479.

[7] The second is no longer required.

The Speaker[1] replied that there was no precedent for such a division.[2]

6148. On the passage of a joint resolution with a preamble, a separate vote may not be demanded on the preamble.—On July 20, 1866,[3] the House was considering the joint resolution declaring Tennessee again entitled to Senators and Representatives in Congress. The resolution had been ordered to be engrossed, and the pending question was on ordering the preamble to be engrossed.

Mr. Henry J. Raymond, of New York, rising to a parliamentary inquiry, asked whether or not, after the preamble should have been ordered to be engrossed and read a third time, there could be separate votes on the resolution and preamble.

The Speaker[4] said:

> The only way in which a separate vote can be had on the preamble is by calling for it now. * * * There is no precedent known to any gentleman here which sanctions the idea that, after a bill has been engrossed and the question recurs upon its passage, a part of the bill can be passed and a part rejected. According to uniform parliamentary usage that is impossible.[5]

6149. The previous question being ordered on a series of resolutions, a division was permitted so as to vote separately on each resolution.—On April 4, 1834,[6] the House was considering a series of resolutions reported from the Committee of Ways and Means, relating to the removal of the public deposits from the United States Bank.

The House ordered the previous question on the resolutions, yeas 114, nays 106.

Thereupon a division of the question was demanded by Mr. Richard H. Wilde, of Georgia.

Mr. John Quincy Adams, of Massachusetts, rising to a parliamentary inquiry, asked whether or not the previous question applied to all the resolutions, or only to the first.

The Speaker[7] held that, as the House had decided that the main question should be put, the main question itself was susceptible to division so as to get a separate vote on each resolution.

Thereupon the House voted on each resolution separately.

6150. On May 15, 1858,[8] Mr. Speaker Orr held that a demand for a division of the main question was not in order after the ordering of the previous question.

6151. On the question of agreeing or disagreeing to a Senate amendment it is not in order according to the weight of authority to demand a

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[1] James K. Polk, of Tennessee, Speaker.

[2] Of course the question on a preamble may always be taken separately until after the engrossment, since it is impossible to determine what the preamble should be until the period of amendment is passed.

[3] First session Thirty-ninth Congress, Globe, pp. 3975, 3976.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] On April 5, 1860, occurred an instance, during the consideration of the bill (H. R. 7) to punish and prevent the practice of polygamy in the Territories of the United States, etc., where, after the bill had been ordered to be engrossed and read a third time, the preamble was considered and disagreed to. (First session Thirty-sixth Congress, Journal, p. 662.)

[6] First session Twenty-third Congress, Journal, pp. 482, 483; Debates, p. 3473.

[7] Andrew Stevenson, of Virginia, Speaker.

[8] First session, Thirty-fifth Congress, Globe, p. 2243.

division so as to vote separately on different portions of the amendment.— On March 3, 1853,[1] the naval appropriation bill had returned from the Senate with amendments, and had been considered in Committee of the Whole House on the state of the Union. That committee had risen, recommending agreement to certain amendments and disagreement to others.

Mr. Alexander H. Stephens, of Georgia, demanded a division of the forty-second amendment, relating to a plan for reorganizing the Navy, so that separate votes might be taken on the different sections.

The Speaker[2] decided that the question was indivisible and that the vote must be taken upon the entire amendment.

On an appeal the decision of the Chair was sustained.

6152. On April 28, 1826,[3] the House was considering a Senate amendment to the bill further to amend the judicial system of the United States.

Mr. John Forsyth, of Georgia, called attention to the fact that the amendment contained two distinct matters, and he wished to obtain two distinct votes of the House on these two parts.

The Speaker[4] replied that the Senate had returned the bill with but one amendment, and that, by the rules of the House, it was not divisible. It might, however, be amended by striking out part of it, or otherwise, before the question was put on agreeing or disagreeing to it.

Thereupon two amendments were offered and agreed to, one striking out a portion and the other inserting certain words.

These amendments being adopted, Mr. Daniel Webster moved that the House disagree to the amendment of the Senate, and this motion prevailed—yeas 110, nays 160.

6153. On August 4, 1789,[5] the House considered the amendments proposed by the Senate to a bill entitled "An act to establish the Treasury Department," and agreed to this resolution:

Resolved, That this House do agree to so much of the eighth amendment as proposes to strike out the following words in the seventh clause of the bill, to wit: "The assistant to the Secretary of the Treasury shall be appointed by the President and "and do disagree to such other part of the said amendment as proposes to strike out the residue of the said clause.

6154. On February 25, 1861,[6] occurs an instance wherein a division of a Senate amendment was allowed, and the House agreed to the first portion and disagreed to the second portion. But when it came to notifying the Senate of this action, the matter was treated as an amendment to the Senate amendment, which it in fact was, although it had been arrived at by a separate vote instead of by a motion to amend.

6155. On December 11, 1877,[7] Mr. Speaker Randall permitted the division of a Senate amendment to a House bill, the vote being taken first on agreeing to

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[1] Second session Thirty-second Congress, Journal, p. 401; Globe, p. 1149.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Nineteenth Congress, Journal, p. 485; Debates, p. 2579.

[4] John W. Taylor, of New York, Speaker.

[5] First session First Congress, Journal, p. 90 (old ed.), 71 (Gales & Seaton ed.); Annals, p. 702.

[6] Second session Thirty-sixth Congress, Journal, pp. 372, 384.

[7] Second session Forty-fifth Congress, Journal, p. 94; Record, pp. 129, 130.

the first portion and then on agreeing to the second portion. Both portions were disagreed to.

6156. On the Calendar day of March 3, 1901,[1] but the legislative day of March 1, the House was considering Senate amendments to the sundry civil appropriation bill, and the Clerk had reached the amendment numbered 151. This was a single amendment, occupying thirty pages of the bill, and making appropriations and provisions for three expositions, one at St. Louis, another at Charleston, and a third at Buffalo.

Mr. De Alva S. Alexander, of New York, moved that the House recede and concur in this amendment of the Senate.

Mr. H. Henry Powers, of Vermont, rising to a parliamentary inquiry, asked if the question might be divided, so as to vote separately on the three different propositions:

The Speaker[2] said:

The Chair regrets to say that he does not know of any way in which that can be done. This is one amendment of the Senate.

6157. A decision of the Speaker involving two distinct questions, he permitted the question on appeal to be divided.—On March 19, 1802,[3] the Speaker having, in one decision, decided two distinct questions of order, although relating to one subject and raised on one question, on appeal a demand was made for a division of the question.

The Speaker[4] allowed the division, putting the question on one part of his decision and then on the other.

6158. A single proposition with modifications may not be divided for the vote—On December 2, 1901,[5] the question was on agreeing to the following resolutions:

Resolved, That the rules of the House of Representatives of the Fifty-sixth Congress be adopted as the rules of the House of Representatives of the Fifty-seventh Congress, with the following modifications:

1. That the special orders adopted March 8 and March 14, 1900, providing a method for the consideration of pension bills, claim bills, and other private bills shall be continued during the Fifty-seventh Congress.

2. That the place of the Select Committee on the Twelfth Census in the rules of the Fifty-sixth Oongress shall be filled in the rules of the Fifty-seventh Congress by a standing committee on the census, to consist of 13 members, and have jurisdiction of all proposed legislation concerning the census and the apportionment of Representatives.

Resolved further, That there shall be appointed to serve during the Fifty-seventh Congress a select committee on industrial arts and expositions, to consist of 9 members, which shall have jurisdiction of all matters (excepting those relating to the revenue and appropriations) referring to the centennial of the Louisiana purchase and to proposed expositions.

Mr. Claude A. Swanson, of Virginia, demanded a division of the question.

Mr. John Dalzell, of Pennsylvania, urged that the first resolution with its modifications was not divisible.

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[1] Second session Fifty-sixth Congress, Record, p. 3575.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Seventh Congress, Journal, p. 148 (Gales & Seaton ed.).

[4] Nathaniel Macon, of North Carolina, Speaker.

[5] First session Fifty-seventh Congress, Journal, p. 8; Record, p. 48.

The Speaker[1] said:

The first branch of the resolution, as just recited by the gentleman from Pennsylvania, is not capable of division; the Chair so holds; but the Chair is of opinion that each resolve is a separate proposition, and a separate vote may be demanded upon it.

6159. On a resolution for the adoption of a series of rules, which were not presented as a part of the resolution, it was held not in order to demand a separate vote on each rule.—On December 2, 1901,[2] at the time of the organization of the House, the question was on agreeing to the following resolution:

Resolved, That the rules of the House of Representatives of the Fifty-sixth Congress be adopted as the rules of the House of Representatives of the Fifty-seventh Congress, etc.

Mr. Claude A. Swanson, of Virginia, said:

The resolution contains a proposition that we adopt all the rules of the last House, and therefore each rule is made a part of it.

So he demanded a vote on each rule.

The Speaker[1] said:

The Chair is clearly of the opinion that such a demand can not be entertained.

6160. A division of the question may not be demanded after the yeas and nays have been ordered.—On May 29, 1896,[3] the House was considering the South Carolina contested election case of Johnston *v.* Stokes, and the previous question had been ordered on the resolutions reported by the Elections Committee and on a substitute which had been offered therefor. This substitute consisted of two resolutions, declaring, in the usual form, the first that Mr. Stokes was not elected, and the second that Mr. Johnston was elected.

The Speaker first put the question on the substitute, and, a rising vote having been had, announced ayes 78, noes 84.

Mr. Jesse Overstreet, of Indiana, asked for the yeas and nays, which were ordered.

At this point Mr. Henry R. Gibson, of Tennessee, asked for a division of the resolutions.

The Speaker[4] held that the request was too late, the resolutions already having been voted on together and the yeas and nays having been ordered.

6161. On January 21, 1897,[5] the question was upon the two resolutions in the contested election case of Yost *v.* Tucker, from Virginia. The division on the adoption of the resolutions resulted in ayes 115, noes 7.

The point of no quorum being made by Mr. William P. Hepburn, of Iowa, and the count of the Speaker having disclosed only 150 Members present, a call of the House was considered as ordered under section 4 of Rule XV, and as a consequence the yeas and nays on the pending question were at the same time considered as ordered.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 48.

[3] First session Fifty-fourth Congress, Record, p. 5914.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-fourth Congress, Record, p. 1042.

Mr. Hepburn demanded a division of the question, there being two questions to be voted upon.

The Speaker[1] ruled that the demand came too late, as the yeas and nays had been ordered.

6162. A division of the question may not be demanded after it has been put by the Chair.—On February 7, 1894,[2] the House resumed consideration of the resolutions relating to Hawaiian affairs. The question was put, Will the House agree thereto?

Mr. Thomas B. Reed, of Maine, demanded that the question on agreeing to the resolutions be divided, so as to enable the House to vote separately on each of the propositions therein contained.

The Speaker[3] held that it was too late after the question was put to demand a division of the question on agreeing to the resolutions.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 143; Record, p. 2001.

[3] Charles F. Crisp, of Georgia, Speaker.

Chapter CXXXI.

AMENDMENTS BETWEEN THE HOUSES.[1]

1. **Principles of the parliamentary law. Sections 6163–6165.[2]**
2. **The motion to agree or concur. Sections 6166–6168.[3]**
3. **Motions to amend or refer amendments of the other House. Sections 6169–6178.**
4. **Text to which both Houses have agreed not to be changed. Sections 6179–6185.**
5. **General decisions as to amending amendments of the other House. Sections 6186–6191.[4]**
6. **Amendments of other House considered in Committee of the Whole. Sections 6192–6196.[5]**
7. **General decisions as to consideration in the House. Sections 6197–6203.**
8. **The motions to recede and concur. Sections 6204–6215.[6]**
9. **The motion to recede and concur with amendment. Sections 6216–6223.**
10. **The motion to insist. Sections 6224–6228.**
11. **The motion to adhere. Sections 6229–6253.[7]**

6163. Either House may amend a bill of the other before passing it. A bill of one House being passed in the other with amendment, the originating House may concur with an amendment, whereupon the other House may concur with still another amendment; but here the process stops.

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[1] The six succeeding chapters of this volume relate also to this subject:

Chapter CXXXII.—General principles of conferences. (Secs. 6254–6325.)

Chapter CXXXIII.—Appointment of managers of a conference. (Secs. 6326–6378.)

Chapter CXXXIV.—Instruction of managers of a conference. (Secs. 6379–6406.)

Chapter CXXXV.—Manager to consider only matters in disagreement. (Secs. 6407–6442.)

Chapter CXXXVI.—Privilege and form of conference reports. (Secs. 6443–6515.)

Chapter CXXXVII—Consideration of conference reports. (Secs. 6576–6589.)

[2] Respective duties of each House to recede from amendments objected to by the other. (Secs. 3904–3908 of Vol. IV.)

[3] Division of Senate amendment on vote relating to it not in order. (Secs. 6150–6156 of this volume.)

[4] Precedence of various motions. (Sec. 6324 of this volume.)

Amending Senate amendments proposing legislation. (Secs. 3909–3916 of Vol. IV.)

[5] See also sections 4795–4808 of Volume IV. The motion to recede has precedence of the motion to insist. (Sec. 6308 of this volume.)

[6] The motion to recede is not in order after the previous question is moved on the motion to adhere. (Sec. 6310 of this volume.) But the motion to recede is in order after the previous question is moved on a motion to insist. (Sec. 6321a of this volume.)

[7] See also sections 6308, 6401 of this volume.

One House may agree outright in an amendment of the other, may agree with an amendment, or may disagree outright.

When the originating House disagrees to the amendment of the other House, the latter may recede from or insist on its own amendment but may not couple an amendment with this action.

When both Houses have insisted, neither inclining to recede, it is in order to adhere, but in Parliament adherence is not usually voted until there have been at least two conferences.

An adherence by both Houses to disagreement over amendments causes a bill to fail.

Jefferson's Manual, in Section XLV, gives the parliamentary law governing amendments between the Houses:

When either House, e.g., the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall.[1] (10 Grey, 148.) Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. (3 Hats., 268, 270.) The term of insisting, we are told by Sir John Trevor, was then (1679) newly introduced into parliamentary usage by the Lords. (7 Grey, 94.) It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance (10 Grey, 146); but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence. (10 Grey, 147.)

Either House may recede from its amendment and agree to the bill; 2 or recede from their disagreement to the amendment, and agree to the same absolutely or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. (Elysnge, 23, 27; 9 Grey, 476.)

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. (9 Grey, 363; 10 Grey, 240.) (In Senate, March 29, 1798.) Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lords' proposed amendments became, by delay, confessedly necessary. The Commons, however, refused them, as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable and irremediable in any other way. (3 Hats., 256, 266, 270, 271.) But the Lords refused, and the bill was lost. (1 Chand., 288.) A like case. (1 Chand., 311.) So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses.[3] (6 Grey, 274; 1 Chand., 312.)

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

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[1] A former joint rule of the two Houses of Congress, dating from June 10, 1780, but suffered to lapse with the other joint rules in 1876, provided: "After each House shall have adhered to their disagreement, a bill or resolution shall be lost."

[1] Agreeing to the amendment of the other House passes the bill without a vote on the bill itself.

[1] See also sections 6417–6420 of this volume.

A bill originating in one House is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the second and not the third degree; for, as to the amending House, the first amendment with which they passed the bill is a part of its text; it is the only text they have agreed to. The amendment to that text by the originating House, therefore, is only in the first degree, and the amendment to that again by the amending House is only in the second, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other at its second reading makes an amendment, on the third reading this amendment is become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the second degree.

6164. The parliamentary law governing the precedence and effect of the motions to agree, disagree, recede, insist, and adhere.

As to the motions to agree or disagree, the affirmative of one is equivalent to the negative of the other.

The negative of the motion to recede is not equivalent to the affirmative of the motion to insist.

The motion to amend an amendment of the other House has precedence of the motion to agree or disagree.

In Section XXXVIII of Jefferson's Manual the parliamentary law is laid down in reference to the precedence and effect of the motions to agree, disagree, recede, insist, and adhere:

A motion to recede being negatived does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

A bill originating in one House is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The questions respecting amendments from another House are: First, to agree; second, disagree; third, recede; fourth, insist; fifth, adhere.

First. To agree. Either of these concludes the other necessarily, for the positive of

Second. To disagree. either is exactly the equivalent to the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; e.g., if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

Third. To recede. You may then either insist or adhere.

Fourth. To insist. You may then either recede or adhere.

Fifth. To adhere. You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the Secretary, by inference, to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

6165. Illustration of disposition of amendments between the Houses without intervention of a committee of conference.—On February 24, 1903,[1] the House considered the Senate amendments to the bill (H. R. 15520) "to establish a standard of value and to provide for a coinage system in the Philippine Islands," the same having been reported from the Committee on Insular Affairs with the recommendation that the Senate amendment be amended, and agreed to as amended.

The question was taken on the first amendment recommended by the Committee on Insular Affairs, and it was agreed to. Then the second amendment was agreed to.

Then the question was taken on agreeing to the Senate amendment as amended, and it was agreed to.

[1] Second session Fifty-seventh Congress, Journal, p. 281; Record, p. 2580.

The Senate later, on February 25,[1] agreed to the House amendments, and so the bill was passed without resort to a conference.

6166. The motion to agree, or concur, should be put in the affirmative, and not the negative, form.—On January 14, 1868,[2] Mr. Speaker Colfax construed the practice of the House to be that, on a question of agreeing or disagreeing to Senate amendments, the question should be put on the motion to agree or concur, even although the motion had been to disagree or nonconcur.

6167. A negative vote on a motion to disagree was held equivalent to an affirmative vote to agree.—On March 2, 1829,[3] the House was considering a Senate amendment to the bill (H. R. 42) "for the preservation and repair of the Cumberland road."

Mr. Charles F. Mercer, of Virginia, moved that the House disagree to the Senate amendment.

On this question there were, yeas 54, nays; 79.

And the Speaker[4] then decided that the said amendment was thereby concurred in by the House.

6168. The Committee of the Whole having recommended disagreement to a Senate amendment, and the House having negatived a motion to concur in the recommendation, it was held that the House had agreed to the amendment.—On March 1, 1823,[5] the House was considering a Senate amendment to the bill entitled "An act making appropriations for the public buildings," and the pending question was taken, "Will the House concur with the Committee of the Whole on the state of the Union in their disagreement to said amendment?"

And it was determined in the negative.

The nonconcurrence with the Committee of the Whole in their disagreement to the said amendment was decided by the Speaker[6] equivalent to the affirmative of a question to concur therein.

And so the said amendment was concurred in.

6169. A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

When the House disagrees to a Senate amendment after amending it the adopted amendment is of no effect.

On April 22, 1902,[7] the Committee of the Whole House was considering the Senate amendment to the bill (H. R. 8587) for the allowance of certain claims for stores and supplies, etc.

Mr. Oscar W. Underwood, of Alabama, having proposed a motion, which gave rise to a question of order, the Chairman[8] said:

The Chair understands the motion of the gentleman from Alabama to be simply a motion to amend the Senate amendment, and after that amendment and all other amendments have been passed upon

[1] Record, pp. 2605–2607.

[2] Second session Fortieth Congress, Globe, p. 506.

[3] Second session Twentieth Congress, Journal, pp. 377–379.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] Second session Seventeenth Congress, Journal, p. 300.

[6] Philip P. Barbour, of Virginia, Speaker.

[7] First session Fifty-seventh Congress, Record, pp. 4531, 4541, 4542.

[8] Marlin E. Olmsted, of Pennsylvania, Chairman.

the motion to concur will be in order. * * * The Chair is of the opinion that it would not be in order to move to concur until the Senate amendment has been perfected by the committee by making such amendments as it is desired to make.

Thereupon the committee agreed to the amendment of Mr. Underwood, striking out a portion of the Senate amendment, and also another amendment proposed by Mr. Edward Robb, of Missouri, inserting the following:

To the heirs and legal representatives of John W. Hancock, deceased, of Iron County, Mo., the sum of $1,160.

These amendments having been agreed to, and no further motion to amend being made, a motion was entertained to recommend nonconcurrence in the Senate amendment, and the said motion was agreed to.

Mr. Joseph G. Cannon, of Illinois, rising to a parliamentary inquiry, asked the effect of the recommendation to nonconcur after amendments had been agreed to.

The Chairman said:

In the opinion of the Chair the situation is the same as if in Committee of the Whole an amendment had been offered and carried to the bill, and then the bill itself had been negatively reported. * * * Therefore it has no particular significance at this time.

The committee having voted to rise, the Chairman reported "that that committee had had under consideration the Senate amendment to the bill H. R. 8587, and, having made two amendments thereto, had instructed him to report the bill back to the House, with the recommendation that the House do nonconcur in the Senate amendment and ask for a conference."

The question being put in the House, Mr. Robb, rising to a parliamentary inquiry, asked as to the amendment adopted on his motion.

The Speaker pro tempore[1] said:

The gentleman's motion is not in, because there is a motion to nonconcur. If there had been a concurrence the gentleman's amendment would be in.

Thereupon the House voted to nonconcur and ask a conference.

On April 23 and 24[2] the Committee of the Whole House on the state of the Union considered the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other dairy products. The committee recommended concurrence with all amendments except No. 9. This amendment, which extended over several pages, was first amended, and then the committee recommended concurrence.

The House, following the report of the committee, agreed to the amendments to No. 9, concurred in it as amended, and concurred in the other amendments.

In the Senate, on April 28,[3] the said amendments of the House to amendment No. 9 were considered. The President pro tempore,[4] quoting Jefferson's Manual that—

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] Record, pp. 4593–4601, 4629–4642; Journal, pp. 639, 640.

[3] Record, pp. 4746–4749.

[4] William P. Frye, of Maine, President pro tempore.

admitted motions to amend before the question was put on concurrence. The motions to amend being decided in the negative, the motion to concur was agreed to.

So the bill was finally passed.

6170. On March 27, 1867,[1] the House was considering an amendment of the Senate to a concurrent resolution of the House providing for the adjournment of Congress.

Mr. Robert C. Schenck, of Ohio, had moved to concur in the Senate amendment with an amendment.

Mr. Rufus P. Spalding, of Ohio, proposed a simple motion to concur.

The Speaker[2] said:

A motion to concur is always in order as tending to bring the two Houses together in their action; but a motion to amend an amendment of the Senate has priority of a motion to concur.

6171. On January 21, 1898,[3] the House was in Committee of the Whole House on the state of the Union, considering the Senate amendments to the urgent deficiency appropriation bill.

The Senate amendment numbered 5 having been read, Mr. John C. Bell, of Colorado, moved to concur in it.

Mr. Joseph G. Cannon, of Illinois, moved to concur with an amendment.

The Chairman having announced that the vote would be taken first on the latter motion, Mr. Joseph W. Bailey, of Texas, made the point of order that the question should be taken first on concurrence.

After debate the Chairman[4] overruled the point of order.[5]

6172. Before the stage of disagreement has been reached the motion to refer to a committee Senate amendments returned with a House bill has precedence of a motion to agree to the amendments.—On May 17, 1884,[6] the bill of the House for the relief of Fitz John Porter was returned from the Senate with an amendment.

Mr. J. Warren Keifer, of Ohio, moved that the bill be referred to the Committee on Military Affairs. Mr. Samuel J. Randall, of Pennsylvania, raised the point that the motion to concur or nonconcur had precedence.

At first the Speaker said that the purpose of all parliamentary law was to bring the two Houses together if possible, and in the absence of positive rule to the contrary such practice should be adopted as would tend to produce that result at the earliest possible moment.

Later the Speaker[7] reversed the ruling, saying:

The effect of such a ruling would of course be to prevent under any circumstances the reference of a Senate amendment to a committee of the House, because it is well established that a refusal to

[1] First session Fortieth Congress, Journal, pp. 123, 124; Globe, p. 388.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Second session Fifty-fifth Congress, Record, pp. 839, 840.

[4] Sereno E. Payne, of New York, Chairman.

[5] This is also the rule of Jefferson's Manual (see sec. 6163 of this volume). The motion to agree with an amendment is divisible, but it is not necessary to require a division unless it is desirable to amend an amendment of the other House in several particulars.

[6] First session Forty-eighth Congress, Record, p. 3942; Journal, p. 1199.

[7] John G. Carlisle, of Kentucky, Speaker.

concur is equivalent to nonconcurrence, while a refusal to nonconcur is equivalent to concurrence. Therefore, in either event the matter would be finally concluded * * * and there could be no reference to a committee. The Chair thinks that inasmuch as a refusal to refer to a committee does not prevent a vote afterwards on the other motions, the Chair was wrong in his ruling, and now holds that the vote should be first taken on the motion to commit. It does not appear that the precise question now decided has heretofore been decided in the House. It is unquestionably true * * * that the first question is upon concurrence—that is, as between the motion to concur and the motion to nonconcur—but so far as the Chair can ascertain it has never been decided that a motion to concur or nonconcur has precedence over a motion to commit or postpone the consideration of the amendment. In the absence of any positive rule upon the subject, and in view of the fact that if the motion to commit is not put to the House before the motion to concur or nonconcur it can not be voted on at all, the Chair thinks his former ruling ought not to be adhered to.

6173. On February 21, 1893,[1] the House proceeded to the consideration of the Senate amendments to the bill (H.R. 9350) to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

Mr. George D. Wise, of Virginia, having submitted a motion that the House concur in the amendments of the Senate, pending which motion Mr. James D. Richardson, of Tennessee, had submitted a motion that the bill and amendments be committed to the Committee on Interstate and Foreign Commerce, and the question of order being submitted as to the relative precedence of the motions to commit and to concur—

The Speaker[2] held that, the previous question not having been moved on the motion to concur, and the amendments of the Senate never having been considered by a committee of the House, the motion of Mr. Richardson to commit was in order, and took precedence of the motion to concur.

6174. On December 21, 1896,[3] the House was considering the Senate amendments to the immigration bill, when Mr. Richard Bartholdt, of Missouri, moved that the bill be recommitted to the Committee on Immigration and Naturalization.

Mr. Lorenzo Danford, of Ohio, rising to a parliamentary inquiry, asked if a motion to nonconcur in the Senate amendments and agree to the conference asked would be in order as a substitute for the motion of the gentleman from Missouri.

The Speaker[4] replied that the vote would have to be taken first on the motion to refer to the committee.

6175. A motion being made to agree to an amendment of the other House with an amendment, it is in order to perfect that amendment by another amendment and a substitute.—On April 22, 1897,[5] the House was in Committee of the Whole House on the state of the Union, considering the Senate amendments to the Indian appropriation bill, and the Clerk had read this amendment:

That the Secretary of the Interior shall, within sixty days after the passage of this act, establish and thereafter maintain at the city of Omaha, in the State of Nebraska, a warehouse for Indian supplies, from which distributions shall be made to such Indian tribes of the West and Northwest as the Secretary of the Interior may direct.

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[1] Second session Fifty-second Congress, Journal, p. 101; Record, p. 1954.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-fourth Congress, Record, p. 372.

[4] Thomas B. Reed, of Maine. Speaker.

[5] First session Fifty-fifth Congress, Record, pp. 810–812.

Mr. Jonathan P. Dolliver, of Iowa, moved to recommend concurrence in this amendment, with an amendment striking out "Omaha," etc., and inserting "Sioux City," etc.

Mr. John F. Shafroth, of Colorado, moved an amendment to Mr. Dolliver's amendment, striking out "Sioux City" and inserting "Denver."

Mr. James S. Sherman raised a point of order against this amendment.

The Chairman [1] said:

> The Chair is of the opinion that the amendment of the Senate must be treated as a part of the text of the bill, and that a second amendment would be admissible under the rules and practice of the House. * * * The Chair is under the impression that the amendment of the gentleman from Iowa [Mr. Dolliver] was the first proposition to concur with an amendment, and to that an amendment is offered by the gentleman from Colorado [Mr. Shafroth].

Thereupon Mr. Richard Bartholdt moved a substitute for Mr. Dolliver's amendment, providing for "St. Louis" instead of "Omaha."

This substitute was entertained.[2]

6176. An amendment of one House being amended by the other, the first House may amend the last amendment, but further amendment is not permissible.—On April 28, 1902,[3] the Senate was considering House amendments to an amendment of the Senate to the bill (H.R. 9206) relating to oleomargarine and other dairy products.

To an amendment of the House, Mr. Henry M. Teller, of Colorado, proposed an amendment.

Thereupon Mr. Stephen B. Elkins, of West Virginia, proposed an amendment to the amendment of Mr. Teller.

The President pro tempore [4] said:

> A further amendment is not now in order, as it would be an amendment in the third degree.

6177. On the legislative day of June 5, 1900,[5] but the calendar day of June 6, the conferees of the House on the disagreeing votes of the two Houses on the naval appropriation bill reported that they had been unable to agree as to several amendments, one of which related to the purchase of armor plate.

In the Senate amendment relating to this subject the House concurred with an amendment.

In this House amendment to the original Senate amendment the Senate concurred with an amendment.

The House agreed to this last amendment, thus closing the disagreement.[6]

6178. An instance of substitute amendments between the Houses carried to the furthest degree.—On March 25, 1867.[7] the House adopted a con-

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Where extensive amendment is proposed it is better, by division of the question, to separate the motion to agree from the amendment. Then the pending Senate amendment may be perfected freely, after which the question may be taken on agreeing.

[3] First session Fifty-seventh Congress, Record, p. 4749.

[4] William P. Frye, of Maine, President pro tempore.

[5] First session Fifty-sixth Congress, Record, pp. 6840, 6841.

[6] See Jefferson's Manual, p. 175. In this case the process of agreeing with an amendment has evidently been carried to its uttermost limit. The House must have either agreed or disagreed to the last amendment of the Senate.

[7] First session Fortieth Congress, Journal, p. 110; Globe, p. 334.

current resolution providing for an adjournment of the two Houses of Congress until the first Wednesday of May, and then for other adjournments after recesses until the first Wednesday of November.

On March 27[1] this resolution was returned from the Senate with an amendment striking out all after the resolving clause and inserting a new text providing for a simple adjournment on the 28th instant. The House voted to concur in the amendment of the Senate with an amendment striking out the text of the Senate amendment after the word "That" (the first word) and inserting a new text providing for a modification of the original House proposition.

On March 28[2] the House received from the Senate a message announcing that the Senate had agreed to the amendment of the House to the amendment of the Senate to the concurrent resolution with an amendment striking out all after the word "That" (first word after the resolving clause) and inserting a new text providing a modified proposition. The House thereupon disagreed to the amendment of the Senate and asked a conference, which was agreed to by the Senate. This conference did not report, another resolution having been adopted.

6179. The House may not even by unanimous consent change the text to which both Houses have agreed.—On May 1, 1902,[3] the Speaker laid before the House the bill (H.R. 11535) for the protection of game in Alaska, returned from the Senate with the following amendment:

Page 6, line 2, after "act," insert: "*: Provided further*, That nothing contained in the foregoing sections of this act shall be construed or held to prohibit or limit the right of the Smithsonian Institution to collect in or ship from the district of Alaska animals or birds for the use of the Zoological Park in Washington, D.C."

Mr. Francis W. Cushman, of Washington, moved that the House concur in the Senate amendments with the following amendments:

Amend in line 16, page 4, by inserting after the word "publish" the following:

"*Provided further*, That hides, heads, and parts of game animals and birds taken prior to the passage of this act may be shipped out of Alaska at any time prior to July 15, 1902."

Also in line 12, page 4, after the word "collection," insert "and shipment."

The Speaker[4] said:

The Chair will call the attention of the gentleman from Washington to the fact that his proposed amendments apply to a section of the bill upon which both Houses have agreed, and not to the amendment of the Senate. The gentleman's amendments, therefore, are out of order.

Mr. John F. Lacey, of Iowa, asked unanimous consent that the amendments be considered. Thereupon the Speaker said:

The Chair believes that even the proceeding by unanimous consent can not be used to change the text of a bill upon which the two Houses have agreed.

6180. In considering in the House Senate amendments to a House bill, it is not in order to change the text to which both Houses have agreed.— On February 28, 1885,[5] the House was considering the post-office appro

[1] Journal, pp. 122–124; Globe, pp. 388–391.

[2] Journal, pp. 135, 137, 140; Globe, pp. 425.

[3] First session Fifty-seventh Congress, Record, p. 4956.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Forty-eighth Congress, Journal, p. 719; Record, p. 2304.

priation. bill, which had already passed the House and had been passed by the Senate with amendments.

An amendment having been proposed by Mr. Hernando D. Money, of Mississippi, relating to the free transmission of certain publications of the second class through the mails, Mr. William S. Holman, of Indiana, made the point of order that the amendment related to a portion of the bill that had been agreed to by both Houses, and therefore was not in order.

The Speaker[1] sustained the point of order, holding that it was not in order to change the original text of a bill which had passed both Houses.

6181. The text to which both Houses have agreed may not be changed in the slightest particular.—On April 23, 1902,[2] while the House in Committee of the Whole House on the state of the Union was considering the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other dairy products, the following Senate amendment was read:

In line 25, page 2, and line 1, page 3, strike out the words "ingredient or" and insert the word "artificial."

The original text of the House bill contained the words "ingredient or coloration," the Senate striking out "ingredient or," but leaving the last word, "coloration," in the text and agreeing to it.

Mr. James W. Wadsworth, of New York, moved to insert after the word "coloration" the words "except colored butter."

Over this motion a debate arose, it being urged that, although technically it changed the text to which both Houses had agreed to insert an amendment after "coloration," yet one substantive proposition was involved in the change proposed by the Senate amendment, and the House might modify that substantive proposition by any germane amendment.

The Chairman[3] said:

If the Chair may be permitted to state the parliamentary situation, it is this: The gentleman from New York made a motion to concur in Senate amendment No. 4, which simply strikes out the words "ingredient or" and inserts in place thereof the word "artificial." Then the gentleman from New York rose to offer an amendment which the Chair understood to be an amendment to the Senate amendment, and therefore ruled that it had precedence of the motion of the gentleman from Connecticut; but when the amendment of the gentleman from New York came to be read it was found to be a proposition to insert in the text of the bill, as agreed to by both Houses, after the word "coloration," line 1, page 3, being a part of the text of the bill not amended by the Senate—to insert at that point certain other matter, which the Chair thereupon ruled out of order. * * * The word "coloration" is not a part of the Senate amendment, but a part of the text of the bill. It would be in order to offer an amendment to the word "artificial"—adding another word, possibly, thereto. * * * But the Chair is still of opinion that the amendment, coming as it does in the text of the bill after the word "coloration," although it is only one word beyond the Senate amendment, the effect is just the same as if it were ten words or ten lines, and the Chair therefore adheres to the ruling that the text of the bill, which has been agreed to by both Houses, is sacred and can not be amended in Committee of the Whole. * * * It is not within the province of the Chair to construe the meaning of words which have been agreed to by both branches of Congress.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-seventh Congress, Record, pp. 4593–4595, 4597.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

Later, on the same day, another Senate amendment was considered, as follows:

In line 1, page 4, strike out before the word "that" the words "or ingredient."

To this Mr. James W. Wadsworth, of New York, proposed the following amendment:

Amend Senate amendment No. 8 by inserting after the word "ingredient," line 1, page 4, the words "but colored butter shall not be construed as artificial coloration."

Mr. James A. Tawney, of Minnesota, made the point of order that this amendment proposed to change the text as agreed to by both Houses.

The Chairman said:

If the Chair correctly understands the motion of the gentleman from New York, it is to insert at the place where the Senate strikes out the words "or ingredient" the words which the Clerk has read. The Chair thinks the amendment is in order and overrules the point of order.

6182. The text to which both Houses have agreed may not be amended, even by adding a new section to the bill.—On April 24, 1902,[1] the House in Committee of the Whole House on the state of the Union was considering the Senate amendments to the bill (H.R. 9206) relating to oleomargarine and other dairy products.

The Senate amendments had been considered, when Mr. Thomas C. McRae, of Arkansas, proposed an amendment in the form of a new section to come in at the end of the bill.

Mr. James A. Tawney, of Minnesota, made the point of order that it was not in order to amend the original text to which both Houses had agreed.

The Chairman[2] said:

Upon a motion made yesterday to amend a portion of the text of the bill, the Chair ruled, following a decision made by Speaker Carlisle, that it was not within the power of the House, and consequently not within its power while in Committee of the Whole House, to amend any portion of the bill which had been agreed upon by both the House and Senate. This amendment proposes to amend the text of the bill which has so been agreed upon by both Houses by adding entirely new matter thereto. The Chair sustains the point of order.

6183. The fact that an amendment proposed to a Senate amendment would in effect change a provision of the text to which both Houses have agreed does not constitute a reason why the Speaker should rule it out.— On February 26, 1902,[3] while the Committee of the Whole House on the state of the Union was considering the Senate amendments to the bill (H.R. 5833) temporarily to provide revenue for the Philippine Islands, Mr. James D. Richardson, of Tennessee, proposed to a Senate amendment the following amendment:

That upon all articles the growth and product of the Philippine Archipelago coming into the United States from the Philippine Archipelago there shall not be collected any rate of duty, but the trade between the Philippine Islands and the United States shall be free so long as they are a part of the United States.

Mr. Sereno E. Payne, of New York, made the point of order that the amendment would in effect change a part of the bill which had not been amended by the

[1] First session Fifty-seventh Congress, Record, p. 4642.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] First session Fifty-seventh Congress, Record, pp. 2189, 2190.

Senate, i.e., that it would change a provision of the text to which both Houses had agreed.

In the course of the debate Mr. Richardson called to the attention of the Chair a ruling establishing the principle:

> The fact that a proposed amendment is inconsistent with the text or embodies a proposition already voted on constitutes a condition to be passed upon by the House and not by the Speaker.

The Chairman[1] overruled the point of order.

6184. On May 15, 1828,[2] the House was considering the Senate amendments to the tariff bill, the particular amendment under consideration being that which fixed the time when the iron schedules should take effect as the 1st day of September.

Mr. Churchill C. Cambreleng, of New York, asked if it would be in order to amend the Senate's amendment by a proviso that none of the duties of the bill should be collected until September 1.

The Speaker[3] replied that it would not be, saying:

> The House, having passed the bill, is *functus officio* in regard to it, except so far as it acts upon the amendments of the Senate. It may either concur with or disagree to those amendments simply, or it may amend them, and then, as amended, concur with or disagree to them; but the amendment proposed, though it is offered as an amendment to that of the Senate, is, in effect, an amendment to our own bill, in a part to which the amendment of the Senate does not apply, and is, therefore, out of order.

6185. On July 10, 1832,[4] during the consideration of Senate amendments to the bill (H. R. 584) "to alter and amend the several acts imposing duties on imports," the question was stated on agreeing to the twenty-second amendment, viz, to increase the duty on brown sugar, and sirup of sugar cane, in casks, from 2½ cents per pound to 3 cents per pound.

Mr. William Drayton, of South Carolina, moved to amend the Senate amendment by striking out "three" and inserting "two" cents.

Mr. Henry A. Bullard, of Louisiana, made a point of order that this motion was not in order, because it reduced the duty below the rate already fixed by the House in the bill.

The Speaker[3] decided that Mr. Drayton's motion was in order.

Mr. Bullard appealed, and the decision of the Speaker was overruled, 81 votes to 78 votes.

6186. Where the Senate had amended a House bill by striking out a section, it was held in order in the House to concur with an amendment inserting a new text in lieu of that stricken out.—On August 11, 1856,[5] the House began the consideration of the bill (H. R. 153) making appropriations for the support of the Army, which had been returned from the Senate with an amend

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[1] William P. Hepburn, of Iowa, Chairman.

[2] First session Twentieth Congress, Debates, p. 2698.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] First session Twenty-second Congress, Journal, p. 1127; Debates, p. 3894.

[5] First session Thirty-fourth Congress, Journal, pp. 1424, 1426.

ment striking out a section which prohibited the use of troops of the United States to enforce the acts of the legislature of Kansas, etc.

Pending the question on agreeing to the Senate amendment, Mr. Lewis D. Campbell, of Ohio, moved to amend the Senate amendment by inserting in lieu of the provision stricken out a proviso that no part of the military force of the United States should be used in aid of the enforcement of any enactment of the body claiming to be the Territorial legislature of Kansas, until such enactments should have been affirmed and approved by Congress, etc.

Mr. Howell Cobb, of Georgia, submitted as a question of order that, as the Senate amendment proposed simply to strike out a section of the House bill, the House must either agree or disagree with the Senate amendment. How was it possible to agree to strike out with an amendment?

The Speaker[1] ruled that it was in order to concur in the Senate amendment with the amendment proposed.

An appeal was laid on the table, 97 yeas to 81 nays.

6187. In amending a Senate amendment the House is not confined within the limits of amount set by the original bill and the Senate amendment.—On February 26, 1902,[2] while the Committee of the Whole House on the state of the Union was considering the Senate amendments to the bill (H. R. 5833) temporarily to provide revenue for the Philippine Islands, the following amendment was read:

On page 2, line 1, after the word "countries," insert:

"Provided, That upon all articles the growth and product of the Philippine Archipelago coming into the United States from the Philippine Archipelago there shall be levied, collected, and paid only 75 per cent of the rates of duty aforesaid," etc.

Mr. George B. McClellan, of New York, moved to amend the Senate amendment by striking out the figures "75" and inserting in lieu thereof "25."

Mr. Sereno E. Payne, of New York, made the following point of order:

As I understand it, the House having fixed the rate at 100 per cent and the Senate at 75 per cent, the House must agree upon something between 75 and 100 per cent.

After debate the Chairman[3] overruled the point of order.

6188. In the consideration of Senate amendments in the House, an amendment must be germane to the particular Senate amendment to which it is offered, it not being sufficient that it should be germane to provisions of the bill.—On July 3, 1884,[4] the House having under consideration a general pension bill which had been returned with Senate amendments, the question was on concurring with a Senate amendment striking out the word "wars" and inserting "war."

Mr. Goldsmith W. Hewitt, of Alabama, moved that the House concur in the amendment with an amendment.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 2188.

[3] William P. Hepburn, of Iowa, Chairman.

[4] First session Forty-eighth Congress, Journal, p. 1653.

Mr. Thomas M. Browne, of Indiana, made the point of order that Mr. Hewitt's amendment was not in order, not being germane to the subject-matter of the Senate amendment.

The Speaker[1] sustained the point of order on the ground that an amendment proposed to an amendment of the Senate must be germane to that amendment, and could not be held in order on the ground of being germane to the subject-matter of the pending bill, for the reason that the text of the bill, except as amended by the Senate, was not again open to amendment by the House.

6189. On March 8, 1898,[2] the House was in Committee of the Whole House on the state of the Union considering the Senate amendments to the Indian appropriation bill, one of these amendments being as follows:

> That the time fixed by the Indian appropriation act, approved June 7, 1897, for opening for location and entry, under all land laws of the United States, the lands of the Uncompahgre Indian Reservation in Utah, under the limitations and exceptions as therein provided, is hereby extended six months from the 1st day of April, 1898.

On behalf of the Committee on Indian Affairs, Mr. James S. Sherman, of New York, proposed to concur in the Senate amendment with this amendment:

> And the Secretary of the Interior is authorized to lease the said reserved lands containing said minerals, said leases to be upon such royalty as the said Secretary may determine to be reasonable, and said leases to be for such periods, not exceeding ten years, as he may determine; and regulations and limitations shall be provided by the Secretary as to the amount of lands embraced in each lease, or as to assignments of said leases, so as to prevent any monopoly of said minerals; and the Secretary will make all such rules and regulations as may be necessary for the purpose of carrying out the objects of this act.

Mr. William H. King, of Utah, made the point of order that the proposed amendment was not germane and was a change of existing law.

After debate, the Chairman[3] sustained the point of order.

6190. On March 10, 1898,[4] the House was in Committee of the Whole House on the state of the Union considering Senate amendments to the Indian appropriation bill.

One of the Senate amendments (No. 72) was for the ratification of a treaty with the Seminole tribe of Indians.

It was moved that the House concur in this with an amendment ratifying a similar treaty with the Kiowa, Comanche, and Apache tribes of Indians.

Mr. James S. Sherman, of New York, raised the point of order that the amendment to the amendment was not germane and that it was new legislation.

The Chairman[3] sustained the point of order.

6191. On March 10, 1898,[5] the House was in Committee of the Whole House on the state of the Union considering the Senate, amendments to the Indian appropriation bill.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Second session Fifty-fifth Congress, Record, pp. 2640–2643.

[3] William P. Hepburn, of Iowa, Chairman.

[4] Second session Fifty-fifth Congress, Record, p. 2716.

[5] Second session Fifty-fifth Congress, Record, p. 2713.

Amendment No. 58, the free-homestead amendment, was under consideration. This amendment proposed to give to settlers certain lands, proceeds of which, if the lands were sold, would go to agricultural colleges in the country.

Mr. Levin I. Handy, of Delaware, moved that the House concur with the Senate amendment with an amendment striking out of the act of August 3, 1890, that portion which restricts the national appropriations for agricultural colleges to proceeds of the sale of public lands.

Mr. James S. Sherman, of New York, made the point of order that this amendment was a change of existing law, and also not germane to the Senate amendment.

After debate, the Chairman [1] said:

It appears to the present occupant of the chair that this question is not a new one; that there are very many precedents for the decision he proposes to make, and he has no difficulty at all in arriving at the conclusion that the point of order, or both points of order, should be sustained, and so sustains the points of order.

Mr. Handy having appealed, the decision of the Chair was sustained, 140 ayes to 34 noes.

6192. When a House bill with Senate amendments is committed to the Committee of the Whole that committee considers only the amendments.— On April 23, 1902,[2] the House, under the terms of a special rule making the motion privileged, voted to go into Committee of the Whole House on the state of the Union for the consideration of the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other dairy products.

The bill having been taken up in Committee of the Whole, Mr. Oscar W. Underwood, of Alabama, raised a question of order that the whole bill, as well as the Senate amendments, was before the committee for amendment.

The Chairman [3] said:

The Chair will state that in his judgment it would not be within the province of the House itself to consider those portions of the bill which have been agreed upon by both House and Senate, but only the Senate amendments. Therefore it would not be within the province or authority of the House to direct the Committee of the Whole to consider anything more than the Senate amendments. The Chair does not understand the rule as requiring or intending that the Committee of the Whole House on the state of the Union shall consider more than the Senate amendments to the House bill.

Mr. John S. Williams, of Mississippi, having renewed the question of order that the whole bill should be considered, the Chairman said:

The Chair will call the attention of the gentleman from Mississippi to a ruling apparently upon this precise point made by Speaker Carlisle in 1895:

"An amendment having been proposed by Mr. Hernando D. Money, of Mississippi, relating to the transmission of certain publications of the second class through the mails, Mr. William S. Holman, of Indiana, made the point of order that the amendment related to a portion of the bill that had been agreed to by both Houses, and therefore was not in order.

"The Speaker [Mr. Carlisle] sustained the point of order, holding that it was not in order to change the original text of a bill which had been passed by both Houses."

The Chair would state that in his judgment the position of the gentleman from Alabama is in direct opposition to the ruling of Speaker Carlisle. In that case the House itself was considering the

[1] William P. Hepburn, of Iowa, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 4585, 4586.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

post-office appropriation bill, which had passed the House and had been passed by the Senate with amendments. It had not been sent to conference. It simply came back as this bill has, with certain Senate amendments, and the Chair ruled that it was not in order for the House itself to consider anything but the Senate amendments. The House itself not having that power, it certainly can not be construed to have power to direct the Committee of the Whole House on the state of the Union to do something which the House itself can not do.

6193. The process of amending Senate amendments in Committee of the Whole, and the subsequent agreement of the House to the amendments as amended.—On March 1, 1831,[1] the House resolved itself into a Committee of the Whole House on the state of the Union for the consideration of the amendments of the Senate to the bill (H. R. 528) making appropriations for the support of Government for the year 1831.

After some time therein the committee rose and the Chairman reported the said amendments with amendments.

The Senate amendments were then taken up in order. When the Committee of the Whole had amended, the House voted on the question of concurring with the Committee of the Whole in agreeing to the amendment proposed to the Senate amendment; and where the Committee of the Whole, instead of amending, had agreed or disagreed to the Senate amendment, the question was put on concurring with the Committee of the Whole in this agreement or disagreement.

Finally, after the amendments of the Senate had been gone through, the question was put on concurring with the Senate amendments as amended.[2]

6194. In Committee of the Whole, a Senate amendment, even though it be very long, is considered as an entirety and not by paragraphs or sections.—On April 22, 1902,[3] the Committee of the Whole House proceeded to consider the Senate amendment to the bill (H. R. 8587) for the allowance of certain claims for stores and supplies, etc. This amendment, while in form a single amendment, consisted in reality of many paragraphs relating to many different claims.

A question arising as to procedure, the Chairman[4] said:

The Chair will state that the consideration of Senate amendments in Committee of the Whole House, as we are now doing, is of very rare occurrence. But, considering the rules and precedents so far as applicable, the Chair is inclined to hold that the entire Senate amendment must first be read, and then the Chair is of the opinion that amendments may be offered to any clause, paragraph, or line, precisely as if the amendment covered but one page or one line.

This is probably the longest Senate amendment that has ever come over to the House. It covers many pages and embraces many paragraphs to clauses, and yet it is only one amendment. The inquiry is quite pertinent, whether an amendment to this amendment must be offered when, in reading, the Clerk has reached the paragraph to which it is applicable, or withheld until the entire Senate amendment has been read.

The rule as adopted April 17, 1789, provided that—

"Upon bills committed to a Committee of the Whole House the bill shall be first read throughout by the Clerk and then again read and debated by clauses, leaving the preamble to be last considered * * *. After the report (to the House) the bill shall again be subject to be debated and amended by clauses before a motion to engross it be taken."

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[1] Second session Twenty-first Congress, Journal, pp. 392–394; Debates, pp. 830–839.

[2] Andrew Stevenson, of Virginia, Speaker; Charles A. Wickliffe, of Kentucky, Chairman.

[3] First session Fifty-seventh Congress, Record, p. 4530.

[4] Marlin E. Olmsted, of Pennsylvania, Chairman.

In the revision of 1880 this rule was omitted, possibly because the practice of reading a bill by paragraphs for amendment had become such a matter of course in the practice of Committees of the Whole that its repetition was considered unnecessary, or possibly because it was entirely overlooked, but the present Rule XXIII, section 6, provides that—

"The committee may, by the vote of a majority of the members present, at any time after the five-minute debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph."

This is a recognition of the practice of reading and amending the bill itself by clauses or paragraphs, but the Chair is unable to find any rule or evidence of any practice or any precedent for the reading of an amendment by paragraphs for amendments to the amendment. Certainly an amendment offered originally in Committee of the Whole would not be so read. Although it might be a very long amendment, embracing many paragraphs, it would be read as an entirety, and then an amendment or successive amendments might be offered to any part of it. Now, this is not a Senate bill. It is simply a Senate amendment to a House bill and, in the opinion of the Chair, to be treated as any other amendment that is to say, first read as an entirety, and then considered as subject to such amendments as may be offered to any part thereof, precisely the same as if, instead of coming from the Senate, it had been offered to-day for the first time by a member of this Committee of the Whole House.

6195. Senate amendments referred to the Committee of the Whole must be considered, although they may not be within the rule requiring such consideration.—On April 23, 1902,[1] the House went into Committee of the Whole House on the state of the Union for the consideration of the Senate amendments to the bill (H. R. 9206) relating to oleomargarine and other dairy products. This bill, when received from the Senate with amendments, had been referred to the Committee on Agriculture, and having been reported by that committee had been referred to the Committee of the Whole, under the rule relating to all nonprivileged reports, i. e., the report was made at the Clerk's desk and not in open House.

The bill having been taken up in Committee of the Whole, Mr. E. Stevens Henry, of Connecticut, having risen to a parliamentary inquiry, asked whether or not the Committee of the Whole would be required to consider all the amendments.

The Chairman[2] said:

The Chair understands that there are ten Senate amendments to the bill as passed by the House. There is a rule—Rule XXIII, section 3—requiring that all propositions involving a tax or involving the expenditure of money must be considered in a Committee of the Whole House, and the Chair understands the gentleman's inquiry to be whether consideration now is to be limited to such Senate amendments as do either involve a tax or the expenditure of money. Upon that inquiry the Chair would state that while the rule referred to does require absolutely that all propositions of a certain character shall be considered in a Committee of the Whole House, it does not prevent the House from ordering other questions to be considered in Committee of the Whole. There is also another rule—No. 13—which requires that all bills which involve a tax shall be referred to the Committee of the Whole House on the state of the Union—not only the part imposing the tax, but the whole bill. This bill was originally referred to that committee, and was considered by that committee before it was passed by the House.

Now, it has been returned by the Senate with sundry amendments. Those amendments have been referred to the Committee of the Whole House on the state of the Union, and the House has to-day adopted a rule and an order requiring, as the Chair understands it, the consideration of all the Senate amendments, which the Chair thinks it is quite within the province of the House to do. The Chair thinks that therefore all of the Senate amendments are to be considered in this Committee of the Whole House on the state of the Union.

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[1] First session Fifty-seventh Congress, Record, p. 4585.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

6196. Senate amendments considered in Committee of the Whole are each subject to general debate and amendment under the five-minute rule.—On February 8, 1904,[1] the urgent deficiency appropriation bill, with Senate amendments thereto, was under consideration in Committee of the Whole House on the state of the Union, when Mr. James A. Tawney, of Minnesota, proposed a parliamentary inquiry as to the method of procedure.

In response thereto, the Chairman[2] said:

The Chair rules that the bill has not to be read, but that each amendment has to be read, and that there may be general debate on each amendment. If the amendment contains more than one paragraph it may be considered, under the five-minute rule, by paragraphs.

6197. When Senate amendments to a House bill are considered in the House they are taken up in their order.—On July 27, 1892,[3] the House resumed the consideration of the amendments of the Senate to the bill (H. R. 7520) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1893, and for other purposes, pending when the House adjourned on the preceding day.

The Speaker[4] stated, in substance, that the pending amendments of the Senate should severally be considered in their respective order; that pending such consideration amendments to the amendment of the Senate under consideration would be in order until the previous question should be ordered thereon, and that each amendment of the Senate should be so considered or otherwise disposed of before passing to the next amendment.

6198. On the Calendar day of March 3, 1901,[5] but the legislative day of March 1, the House was considering Senate amendments to the sundry civil appropriation bill, and various Members demanded separate votes on amendments which they specified.

A vote having been taken on all the other amendments in gross, the Speaker then stated that the excepted amendments would be taken up in the order in which they were numbered in the bill.

Mr. James S. Sherman, rising to a parliamentary inquiry, asked if the vote should not be taken first on the amendment on which a separate vote was first asked.

The Speaker[6] said that the amendments should be voted on in the order in which they appeared in the bill.

6199. Early instances where one House postponed to an indefinite time bills returned from the other with amendments disagreed to and requests for a conference.—On March 2, 1799,[7] a message from the Senate stated that they agreed to the first amendment and disagreed to the second and third amendments proposed by the House to the bill sent from the Senate entitled

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[1] Second session Fifty-eighth Congress, Record, p. 1732.

[2] Frank D. Currier, of New Hampshire, Chairman.

[3] First session Fifty-second Congress, Journal, p. 336; Record, pp. 6824, 6864.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-sixth Congress, Record, p. 3572.

[6] David B. Henderson, of Iowa, Speaker.

[7] Third session Fifth Congress, Journal, p. 513 (Gales & Seaton ed.).

"An act to reform the superior court of the territory of the United States northwest of the Ohio," and that they desired a conference with the House on the subject-matter of the said amendments, to which conference they had appointed managers on their part.

The House, after considering the message,

Resolved, That the further consideration of the said bill and amendments be postponed until the next session of Congress.

As this was the last session of the Fifth Congress, this amounted to indefinite postponement.

On March 2,[1] also, the House, after considering a Senate amendment to a bill "authorizing a detachment from the militia of the United States,"

Resolved, That this House do unanimously disagree to the said amendment.

Later a message from the Senate announced that they had postponed further consideration of bill and amendment to next session.

6200. Instance where a House bill returned with Senate amendments adhered to was postponed indefinitely.—On January 23, 1809,[2] Mr. Nathaniel Macon, of North Carolina, from the joint committee of conference on the disagreeing votes of the two Houses on the bill "authorizing the appointment and employment of an additional number of navy officers, seamen, and marines," reported that after conferring freely they had been unable to agree.

On January 24[3] a message from the Senate announced that they adhered to their amendments.

On January 31,[4] on motion of Mr. Burwell Bassett, of Virginia,

Ordered, That the further consideration of the last-mentioned bill, with the amendments, be postponed indefinitely.

On April 21, 1810,[5] the bill "to examine into the title to the batture in front of the suburb of St. Mary" was indefinitely postponed under similar conditions.

6201. A motion to lay on the table a House bill returned with Senate amendments is in order.—On May 6, 1820,[6] the House proceeded to consider a message from the Senate notifying the House that the Senate had disagreed to the first amendment of the House to the bill (S. 59) to provide for clothing the Army of the United States in domestic manufactures, and for other purposes.

The House voted to insist on their said amendment, and ordered the Clerk to acquaint the Senate therewith. No conference was asked.

On May 10 a message from the Senate announced that they insisted on their disagreement, but the message included no request for a conference.

On May 11 the House proceeded to consider the message, and a motion to postpone the bill indefinitely was disagreed to. The bill was then laid on the table.

This was the last proceeding on the bill.

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[1] Journal, p. 516 (Gales & Seaton ed.).

[2] Second session Tenth Congress, Journal, p. 483 (Gales & Seaton ed.).

[3] Journal, p. 488.

[4] Journal, p. 502.

[5] Second session Eleventh Congress, Journal, p. 384 (Gales & Seaton ed.).

[6] First session Sixteenth Congress, Journal, pp. 493, 511, 516 (Gales & Seaton ed.).

6202. On March 3, 1853,[1] the House was considering the Senate amendments to the naval appropriation bill, when Mr. Alexander H. Stephens, of Georgia, moved to lay the bill on the table.

Mr. David T. Disney, of Ohio, made the point of order that the motion was not in order, since the House had sent the bill to the Senate, which had returned it with amendments. The House now had no power over the bill.

The Speaker[2] said:

The Chair decides that the motion to lay upon the table is in order.

6203. On August 2, 1854,[3] the House was considering the Senate amendments to the civil and diplomatic appropriation bill.

Mr. John Wheeler, of New York, moved that the bill be laid on the table.

Mr. David T. Disney, of Ohio, made the point of order that the motion was not in order, saying that the writers on parliamentary law held that a bill being returned from a coordinate body with amendments the originating body could only agree or disagree to the amendments.

The Speaker[2] overruled the point of order, saying:

The Chair is determined in his own mind as to the rule on this subject. It is in order to move to lay the amendments of the Senate upon the table, and if the motion be agreed to, it carries the bill with it. The Chair has no doubt about his decision.

Mr. Disney having appealed, the appeal was laid on the table.

6204. The motion to recede takes precedence of the motion to insist.— On January 22, 1834,[4] the House proceeded to the consideration of the message from the Senate informing the House that the Senate had adhered to their second amendment to the bill (H. R. 36) making appropriations, in part, for the support of the Government for the year 1834.

A motion was made by Mr. James K. Polk, of Tennessee, that the House do insist on its disagreement to the said amendment and ask a conference with the Senate on the subject-matter thereof.

A motion was then made by Mr. Samuel A. Foot, of Connecticut, that the House recede from its disagreement to the said amendment.

The Speaker[5] decided that this motion took precedence of the motion to insist and ask a conference.

6205. A motion to recede being decided in the negative, the House does not thereby vote to insist.—On February 18, 1903,[6] the Speaker pro tempore[7] held that the House by deciding in the negative a motion to recede and concur did not thereby vote to insist, quoting from Jefferson's Manual in support of the ruling.

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[1] Second session Thirty-second Congress, Globe, p. 1148.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Thirty-third Congress, Journal, p. 1250; Globe, pp. 2071, 2072.

[4] First session Twenty-third Congress, Journal, pp. 229, 1126; Debates, p. 2497.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] Second session Fifty-seventh Congress, Record, p. 2351.

[7] John Dalzell, of Pennsylvania, Speaker pro tempore.

6206. On February 25, 1903,[1] the House was considering the bill (S. 4825) to provide for a union railroad station in the District of Columbia, the Senate having disagreed to the House amendments to the bill.

Mr. Joseph W. Babcock, of Wisconsin, had moved that the House insist on its amendments.

Mr. Edward Morrell, of Pennsylvania, had moved that the House recede, and the question was about to be taken on this motion when Mr. Babcock, rising to a parliamentary inquiry, asked:

I ask, as a parliamentary inquiry, what difference there is, in effect, between the motion I make to insist and the gentleman's motion to recede? Is it not, in fact, the same motion; that is, an affirmative vote on one proposition is the same as a negative vote on the other?

The Speaker[2] said:

Not in this case. We have here a Senate bill with House amendments. The bill has passed, and the amendments only are in controversy. The gentleman from Wisconsin [Mr. Babcock] moves to insist on the amendments. The gentleman from Pennsylvania [Mr. Morrell] moves to recede. If the House recedes from these amendments, that ends the matter; that disposes of the controversy. If the House does not recede, there may be several things that may be done under parliamentary law.

6207. Amendments being in issue between the Houses, the motion to recede may be repeated at a new stage of the proceedings.—On January 30, 1834,[3] the House disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 36) making appropriations, in part, for the support of Government for the year 1834.

Mr. Richard H. Wilde, of Georgia, thereupon moved that the House recede from its disagreement.

The Chair, recalling a motion to recede that had been decided in the negative before the conference was asked, ruled the motion out of order, as the House had expressly refused to recede.

On February 7, a motion to reconsider the vote disagreeing to the report having failed, Mr. Wilde renewed his motion to recede.

The Speaker[4] entertained the motion, saying that when it was first made the Chair had not looked to the particular stage of the bill, and had supposed that the second motion to recede would not be in order; but, on reflection, he was clearly of opinion that his first opinion was wrong, and that it was in order. The parliamentary usage, the Chair said, was this: That after a question was once made and carried, in the affirmative or negative, it could not again be revived, but must stand as the judgment of the House. This rule, however, was rather to be kept in substance than in words; and Mr. Speaker Onslow had (while in the House of Commons) given a construction to this part of the Lex Parliamentaria, which had ever since universally prevailed. It was that this rule did not extend to prevent putting the same question in the different stages of a bill (open to amendment), nor to prevent the discharge of orders that have been previously made, though on great

[1] Second session Fifty-seventh Congress, Record, pp. 2659, 2660.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Twenty-third Congress, Debates, pp. 2561, 2683.

[4] Andrew Stevenson, of Virginia, Speaker.

deliberation. The true doctrine was that in every stage of a bill every part of the bill is submitted to the opinion of the House, and open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected. The House might therefore have refused, in the first instance, to recede, with a view to see the effect of a conference. Consequently, after having had a conference and rejected the report of the committee, they might now be disposed to recede. The bill was not in the same stage, and the Chair had no doubt that it was in order to move again to recede.

The motion to recede was accordingly put and decided in the affirmative.

6208. A motion to recede and concur is in order even after the previous question has been demanded on a motion to insist.—On March 2, 1905,[1] the House was considering the Senate amendments to the naval appropriation bill, and the following amendment had been read:

> That the Secretary of the Navy shall cause a thorough inquiry to be made as to the cost of armor plate and of armor plant, the report of which shall be made to Congress.

Mr. George E. Foss, of Illinois, moved that the House insist on its disagreement to the Senate amendment, and on that motion asked the previous question.

Mr. John F. Rixey, of Virginia, moved that the House recede and concur.

A question arising, the Speaker[2] said:

> Now, this is a motion to further insist on the disagreement, and the gentleman demands the previous question, but pending that the gentleman from Virginia [Mr. Rixey] moves that the House recede and concur. Now, the Chair recognizes that motion. It is an illogical ruling heretofore that would allow it to be recognized, and, on careful examination, the decision that was made was based, the Chair is convinced, upon error;[3] but the Chair will follow the ruling notwithstanding.

So the question was put first on Mr. Rixey's motion.

6209. A motion to recede and concur is divisible, and being divided and the House having receded, a motion to amend has precedence of the motion to concur.—On February 27, 1907,[4] the army appropriation bill, which had been returned from the Senate with sundry amendments thereto, came before the House for consideration, and Senate amendment numbered 20, relating to the retirement of a certain class of officers, was read.

Mr. George W. Prince, of Illinois, moved to recede and concur[5] in this amendment with an amendment.

Mr. James Hay, of Virginia, thereupon moved to recede and concur in the Senate amendment, urging that this motion had precedence of that made by Mr. Prince.

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[1] Third session Fifty-eighth Congress, Record, pp. 3883, 3884.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] See section 6321a of this volume for the decision here referred to.

[4] Second session Fifty-ninth Congress, Record, p. 4123.

[5] The House had already disagreed to the Senate amendments, and a conference had been held. The managers had made a partial report, which was agreed to by the House, but had reported that they could not agree as to amendment 20. The Record shows that Mr. Prince moved "to concur with an amendment," but the Speaker entertained the motion as "to recede and concur with an amendment"—the proper form.

The Speaker[1] held:

The Chair will state to the gentleman from Illinois [Mr. Prince] and the gentleman from Virginia [Mr. Hay] that before the stage of disagreement the motion to concur with an amendment takes precedence of the motion to concur, but it is divisible—that is to say, first, a vote on the amendment, then on the motion to concur. The gentleman from Illinois moves not only to recede and concur, which would bring the two bodies together, but moves to recede and concur with an amendment. Now, that presents two propositions, or rather three. Does the gentleman ask a division? * * * On former occasions there has been much of contention as to the precedence of these motions, and the Chair now recalls that the House has already once disagreed with the Senate amendment, and the Chair is informed by the clerk at the Speaker's table that there is probably a precedent exactly in point. The Chair will read:

"The stage of disagreement having been reached"—

That is this case—

"the motion to recede and concur takes precedence of the motion to recede and concur with an amendment."

Referring to several precedents. * * * The gentleman from Illinois [Mr. Prince] moves to recede and concur in the Senate amendment with an amendment. That involves two propositions—to recede and to concur with an amendment; in fact, three propositions, for the motion to concur may be separated from the motion to amend. The gentleman from Virginia moves to recede and concur, a motion containing two propositions. Now, there being two propositions, one to recede and the other to concur, these if agreed to as one motion would bring the House in accord with the Senate, and as far as this amendment is concerned, pass the bill; and so it has been held that this motion when undivided has precedence of the double or treble motion that the House recede and concur with an amendment. There being two propositions in the motion of the gentleman from Virginia [Mr. Hay], the House will see at once that if it desire to amend freely, without being restricted to a single amendment, it must be possible to divide the motion to recede and concur and the motion to concur with an amendment. Hence, while the motion of the gentleman from Virginia would take precedence, yet on demand of a Member it is divisible, and the first question would be on a motion to recede, and if the House concludes to recede, then on the motion to concur, unless a preferential motion to amend should come in.

Thereupon a division of the question was demanded, and the question was first put on the motion to recede.

The House voted to recede, whereupon the Speaker said that as the House had retired from its position of disagreement, the motion to amend had precedence of a motion to concur, explaining:

The House has receded from its position of disagreement with the Senate, and that leaves the situation as if there had been no disagreement. At that stage a motion to amend takes precedence of the motion to concur.

Mr. Prince thereupon moved an amendment, which was disagreed to.

Thereupon the question was taken on the motion to concur, and the House agreed to it.

6210. On March 2, 1907,[2] the conference report on the agricultural appropriation bill had been ruled out on a point of order, and the House thereupon took up for consideration the Senate amendments in disagreement.

This amendment was read:

Survey of and report on Appalachian and White Mountain watersheds: To enable the Secretary of Agriculture to examine, survey, and ascertain the natural conditions of the watersheds at and near the sources of the various rivers having their sources in the Southern Appalachian Mountains and the White Mountains, and to report to Congress the area and natural conditions of said watersheds, the price at which the same can be purchased by the Government, and the advisability of the Govern-

[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Fifty-ninth Congress, Record, pp. 4483–4489.

ment's purchasing and setting apart the same as a national forest reserve for the purpose of conserving and regulating the water supply and flow of said streams in the interest of agriculture, water power, and navigation, $25,000, to be immediately available.

Mr. Jesse Overstreet, of Indiana, moved to recede and concur with an amendment, which was read.

After debate, Mr. Charles R. Thomas, of North Carolina, rising to a parliamentary inquiry, asked:

Will the motion to recede and concur not take priority over the motion of the gentleman from Indiana?

The Speaker [1] replied:

The Chair understands that a motion to recede and concur would take priority, but both motions are divisible, and if the motion was taken first on receding, as it would be,[2] then the motion to amend would have precedence over the motion to concur.

6211. On June 25, 1902,[3] the House had agreed to a partial report of the conference committee on the naval appropriation bill, and the amendments of the Senate remaining in disagreement were taken up for consideration.

Mr. H. C. Loudenslager, of New Jersey, moved that the House recede and concur in the Senate amendment numbered 92, relating to submarine boats.

Mr. Ebenezer J. Hill, of Connecticut, demanded a division of the motion.

The Speaker,[4] granting the demand, announced that the question would first be taken on receding.[5]

6212. The House having receded from its disagreement to Senate amendments, they are open to amendment precisely as before the original

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Of course the House would have to vote affirmatively on the motion to recede before a motion to amend could be offered.

[3] First session Fifty-seventh Congress, Record, pp. 7391, 7392.

[4] David B. Henderson, of Iowa, Speaker.

[5] There is one ruling based on the idea that the motion to recede and concur should not be divided, which illustrates the difficulties arising without a division.

On the calendar day of March 3, 1901 (second session Fifty-sixth Congress, Record, p. 3577), but the legislative day of March 1, the House was considering a Senate amendment to the sundry civil appropriation bill. This amendment, about thirty pages in length, made appropriations and legislative provisions for three separate expositions, one at Buffalo, another at Charleston, and a third at St. Louis.

Mr. James S. Sherman, of New York, moved to recede and concur in this amendment, with an amendment striking out the portion providing for the exposition at Charleston.

Mr. Joseph W. Bailey, of Texas, moved to amend the motion by striking out also the portion of the Senate amendment relating to the exposition at Buffalo.

The Speaker (David B. Henderson) said: "The Chair desires to say to the gentleman from Texas that, as just stated in reply to his parliamentary inquiry, the motion of the gentleman from New York is subject to amendment. Still, the amendment must be germane to that motion; and as the amendment of the gentleman from Texas affects an entirely separate matter, it would seem to the Chair that it must be in the form of a separate motion and can not be offered as an amendment to the motion of the gentleman from New York. The proposition of the gentleman from Texas will be in order after the disposition of the motion now before the House. * * * The gentleman from Texas will readily realize that a motion to strike out one part of a bill would not properly be subject to amendment by a motion to strike out an entirely different part, which was not germane." And in this case the House was prevented from expressing its will unhampered, because after voting to recede and concur with one amendment another might not be offered.

disagreement.—On March 3, 1849,[1] Mr. Samuel F. Vinton, of Ohio, from the committee of conference on the disagreeing votes on amendments to the civil and diplomatic appropriation bill, reported that the committee had been unable to come to any agreement, and asked that they might be discharged.

Mr. George Ashmun, of Massachusetts, rising to a parliamentary inquiry, asked as to the position of the bill.

The Speaker[2] said that if the House refused to insist on its disagreement to the Senate amendments it might recede. If it receded, the amendments would then be open to amendment precisely as they were before the original disagreement. The question would then be restored to the precise condition in which it was before the House disagreed to the Senate's amendments.

6213. On August 31, 1841,[3] the House was considering the Senate amendments to the fortifications appropriation bill, and had reached the fourth amendment, which inserted in the bill the following:

> For defraying the expenses of selecting and purchasing a site for a western, southwestern, or northwestern armory, to be selected by the President of the United States, the sum of $75,000.

A motion was made, and decided in the affirmative, that the House recede from its disagreement to this amendment.

And the question recurred that the House do agree to the amendment, when a motion was made by Mr. George W. Summers, of Virginia, to amend this amendment by striking out certain words and inserting certain others.

This amendment proposed by Mr. Summers was agreed to.

The question was then taken on concurring in the Senate amendment as amended, and was decided in the affirmative.

6214. On June 17, 1842[4] the House was considering the Senate amendments to the bill (H. R. 73) for the apportionment of Representatives among the several States according to the Sixth Census. And the question was taken first on receding and then on concurring in the several amendments.

6215. By receding from its disagreement to a Senate amendment the House does not thereby agree to the same.—On May 6, 1828,[5] the Senate returned the bill "making appropriations for the Indian Department for the year 1828," and insisted on their amendment, which had been disagreed to by the House.

The House receded from their disagreement to the said amendment.

Thereupon the Speaker[6] decided that the question would recur upon agreeing to the said amendment of the Senate, the fact of receding not being equivalent to an agreement.

In this decision the House acquiesced.

6216. The House may not recede from its own amendments with an amendment.

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[1] Second session Thirtieth Congress, Globe, p. 695.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] First session Twenty-seventh Congress, Journal, pp. 444–447; Globe, pp. 412, 413.

[4] Second session Twenty-seventh Congress, Journal, p. 986; Globe, pp. 643, 644.

[5] First session Twentieth Congress, Journal, p. 1042.

[6] Andrew Stevenson, of Virginia, Speaker.

One House may not send to the other an amendment of its own bill after it is passed.

On June 28, 1906,[1] the House agreed to a partial conference report on the agricultural appropriation bill.

Thereupon the amendments remaining in disagreement were considered, including amendment of the Senate No. 29, in which the House had concurred with an amendment, to which the Senate had disagreed.

Mr. James W. Wadsworth, of New York, moved that the House insist on its amendment to the Senate amendment.

Mr. Charles R. Davis, of Minnesota, proposed a motion that the House recede from its amendment with an amendment.

Mr. Wadsworth made a point of order that the motion was not in order.

The Speaker[2] held:

We concurred in the Senate amendment with an amendment to which they have disagreed. The Chair understands the rule to be that the House in the present condition can only insist or recede. With the consent of the House, the Chair will have the following read:

"But the House can not recede from or insist on its own amendment with an amendment, for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. (9 Grey, 363; 10 Grey, 240.) In Senate, March 29, 1798. Nor, where one House has adhered to their amendment and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence. (Jefferson's Manual, Sec. XLV.)"

And so far as the Chair is informed and believes, these precedents have been followed by both the Senate and House. * * * But we have already concurred in the Senate amendment with an amendment. * * * If we recede now from the amendment of the House, it leaves the Senate amendment concurred in, and that is the end of the whole matter. * * * We have already concurred in the Senate amendment with an amendment, and the Senate has disagreed to our amendment, and we can not change the issue without the consent of the Senate, and perhaps not even with the consent of the Senate.

6217. On January 14, 1868,[3] the House disagreed to the Senate amendments to the bill (H. R. 207) to provide for the exemption of cotton from internal tax. In the Senate Mr. John Sherman proposed, on January 16, that the Senate recede from its amendments, with an amendment to the House bill. But, the bill going over, on January 20, Mr. Sherman stated that after consultation with the chief clerk he had come to the conclusion that the motion was not in order under the rules, and he would therefore move to insist and ask a conference as the best way of attaining the object desired.

6218. On March 3, 1879,[4] the Senate was considering its own amendment to strike out a certain paragraph in the legislative appropriation bill as it came from the other House. This paragraph contained two different propositions, one relating to qualifications of jurors in United States courts and the other to use of marshals and their deputies at the polls. The Senate Committee on Appropriations reported

[1] First session Fifty-ninth Congress, Record, pp. 9566, 9568, 9569.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fortieth Congress, Globe, pp. 552, 627.

[4] Third session Forty-fifth Congress, Record, pp. 2181, 2335–2337.

the bill with an amendment, striking out the whole paragraph; but when the Senate voted on it the question was divided, and the question was taken first on striking out the portion relating to jurors, and then on that relating to marshals. The House disagreed to the amendment, the Senate insisted, and the conferees being appointed, reported inability to agree.

The amendment in all these proceedings was treated as a single amendment (except for the division of the question on the original adoption of it), and when it came up after the failure of the conference, Mr. Allen G. Thurman, of Ohio, moved to recede from the amendment of the Senate except as to the portion of it relating to jurors.

Mr. Roscoe Conkling, of New York, having stated that the amendment was a single one, made a point of order that the motion was out of order.

The Vice-President[1] said:

> The Chair was under the impression that there were two amendments, and in that case the Senator from Ohio having moved to recede from one and having left the other distinct could now move to recede from that. Upon the statement of the Senator from New York that the amendment was a single one, but taken in divisions in the Senate, it does not change the character of being a single amendment now.

Therefore he ruled the motion out of order.

Mr. Thurman having appealed, after debate, the appeal was laid on the table without division.

6219. The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment.—On August 10, 1894,[2] the House was considering certain Senate amendments to the sundry civil appropriation bill, on which there was still disagreement between the two Houses.

The question being on amendment No. 280, Mr. John A. Pickler, of South Dakota, moved that the House recede from its disagreement to the amendment and agree thereto.

Mr. Thomas C. McRae, of Arkansas, submitted a motion that the House recede from the amendment and agree to the same with an amendment.

The Speaker pro tempore[3] held that inasmuch as the motion of Mr. Pickler tended to bring the Houses to a more immediate agreement than the motion of Mr. McRae, the motion of Mr. Pickler had precedence.[4]

6220. On March 2, 1895,[5] the House was considering Senate amendments to the sundry civil appropriation bill on which there was still disagreement between the two Houses.

Mr. Samuel M. Robertson, of Louisiana, moved that the House recede from its disagreement to amendment No. 107 (relating to the sugar bounty), and agree to the same.

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[1] William A. Wheeler, of New York.

[2] Second session Fifty-third Congress, Journal, p. 557; Record, p. 8389.

[3] James D. Richardson, of Tennessee, Speaker pro tempore.

[4] This and the following decisions are made on a state of fact wherein no division of the question is demanded. For principles of procedure where a division is demanded, see section 6209 of this chapter.

[5] Third session Fifty-third Congress, Journal, p. 185; Record, p. 3178.

Mr. Nelson Dingley, of Maine, submitted a motion that the House recede from its disagreement and agree to the amendment of the Senate with an amendment which he was about to propose.

The Speaker pro tempore[1] suggested that the pending motion to recede, and agree absolutely to the amendment of the Senate, would take precedence over the motion proposed by Mr. Dingley.

Mr. Dingley insisted that the motion he was about to submit had precedence over the pending motion.

After debate, on the question of order, the Speaker pro tempore held as follows:

The Chair thinks there can be no doubt about the rule. The very purpose of a conference is to reach an agreement between the two Houses. A motion to recede takes precedence of a motion to insist, upon the theory that it removes all differences. Reasoning by this analogy, the motion to recede absolutely ought to take precedence of a motion to recede with an amendment, because the former motion would terminate the controversy between the two Houses, while the latter motion would still leave an amendment between them. If it is not the will of the House to recede and agree to the Senate amendments, it can vote down the pending motion, and the motion of the gentleman from Maine would then be in order.

On page 257 of the Digest this language is found:

"While the motion to amend a Senate amendment takes precedence in the first instance over a motion to agree or disagree, yet if the House has disagreed, and subsequently the amendments are again before the House, the motion to recede and agree takes precedence over the motion to recede and agree with an amendment."

The Chair overrules the point of order made by the gentleman from Maine, because it is the opinion of the Chair that the motion best calculated to dispose of the difference between the two Houses ought to have precedence.

6221. On June 3, 1896,[2] the House was considering a conference report on the urgent deficiency bill when Mr. Joseph D. Sayers, of Texas, moved that the House recede from its disagreement to the amendment numbered 27 and agree to the same with an amendment.

Mr. Thomas Updegraff, of Iowa, proposed a motion to recede and concur.

A question arising, after debate, the Speaker pro tempore held:

The Chair is of the opinion that at the present period of the disagreement between the two Houses a motion to recede and concur takes precedence of a motion to recede and concur with an amendment. That has been the ruling on previous occasions. The motion to recede brings the two Houses together.

6222. On July 16, 1897,[3] the House was considering certain Senate amendments to the naval appropriation bill which were in disagreement. An amendment numbered 98, relating to the purchase of armor plate for naval vessels being before the House, Mr. Joseph D. Sayers, of Texas, moved that the House recede from its disagreement to the amendment and agree to the same.

Mr. Charles A. Boutelle, of Maine, moved that the House recede from its disagreement and agree to the amendment with an amendment.

Mr. Alexander M. Dockery, of Missouri, made the point that the motion to recede and concur had precedence.

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[1] Joseph W. Bailey, of Texas, Speaker pro tempore.

[2] First session Fifty-fourth Congress, Record, p. 6068.

[3] First session Fifty-fifth Congress, Record, p. 2661.

The Speaker [1] sustained the point of order.[2]

6223. On July 6, 1898,[3] the House was considering certain Senate amendments to the general deficiency appropriation bill, upon which there was a condition of disagreement between the two Houses.

The amendment embodying the Pacific railroad funding proposition having been reached, and a motion to recede and concur being pending, Mr. John A. Barham, of California, rising to a parliamentary inquiry, asked if a motion to recede and concur with an amendment would be in order.

The Speaker pro tempore [4] said:

The motion to recede and concur would take precedence of a motion to concur with an amendment, for the reason that the motion to recede and concur, if agreed to, would bring the two Houses together and at once dispose of the bill.

6224. The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment.—On July 16, 1897,[5] the House was considering certain Senate amendments to the naval appropriation bill, on which there was still disagreement between the two Houses, and the Clerk had read the amendment numbered 98, which related to the purchase of armor plate for battle ships.

Mr. Joseph G. Cannon, of Illinois, moved that the House further insist on its disagreement to this Senate amendment.

Mr. William A. Stone, of Pennsylvania, moved to recede from the disagreement and concur with an amendment, which he presented.

The Speaker [1] held that the motion to recede and concur with an amendment took precedence of the motion to further insist.[6]

6225. The stage of disagreement having been reached the motion to insist has precedence of the motion to refer.—On July 31, 1886,[7] the Speaker laid before the House the bill (S. 1599) for the relief of the Phoenix National Bank of the City of New York, with an amendment of the House thereto and a message from the Senate disagreeing to the amendment and requesting a conference upon the disagreeing votes of the two Houses.

Mr. William S. Holman, of Indiana, moved to refer the bill, amendment, and message to the Committee on Claims.

Pending this motion, Mr. Darwin R. James, of New York, moved that the House insist upon its amendment and agree to the conference asked by the Senate.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 6422, for a like ruling.

[3] Second session Fifty-fifth Congress, Record, p. 6731.

[4] Sereno E. Payne, of New York, Speaker pro tempore.

[5] First session Fifty-fifth Congress, Record, pp. 2641, 2642.

[6] This decision was made in a case where no division of the question was demanded. The House in ordinary practice rarely wishes to make more than one amendment to a Senate amendment, and hence a division of the question is rarely demanded. For practice where it is demanded see section 6209 of this chapter.

[7] First session Forty-ninth Congress, Journal, p. 2457; Record, p. 7820.

The Speaker[1] held the latter motion to be privileged, for the reason that the bill had now reached the stage of actual disagreement between the two Houses, and the appointment of conferees on the part of the House would be in order as soon as the House had insisted on its amendment and agreed to the request of the Senate for a conference.

6226. An instance wherein one House receded from its own amendment after the other House had returned it concurred in with an amendment.—On June 27, 1898,[2] the District of Columbia appropriation bill (H. R. 8428) was returned to the House with the notification that the Senate had receded from sundry of its amendments to the bill, including the Senate amendment No. 74. This amendment related to electric lighting in the District, and the House had at first disagreed to it, but later on, June 17, had receded and concurred in it with an amendment legislating as to a conduit system for electric-light wires. The Senate disagreed to the House amendment to Senate amendment No. 74, and then, at the same time, receded from the said amendment No. 74, thus concluding the matter and accepting this portion of the bill as it came from the House originally.[3]

6227. After the stage of disagreement had been reached on amendments between the Houses, the Senate decided that new matters might not be brought in by way of amendment.—On June 28, 1882,[4] the Senate took up the bill (H. R. 4167) to enable national banking associations to extend their corporate existence. This bill had been returned from the House with Senate amendments disagreed to, but without any request for a conference.

Mr. William B. Allison, of Iowa, moved that the Senate insist on its amendments and ask a conference of the House.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Second session Fifty-fifth Congress, Record, pp. 6097, 6099, 6377.

[3] The action of the Senate in first disagreeing to the House amendment to the Senate amendment seems to have been simply an act of courtesy, to avoid the appearance of ignoring entirely the legislative proposition submitted by the House. The action of the Senate in this case is unusual, and the steps of it are as follows:

The House sends over a bill which the Senate amends and returns to the House.

The House concurs in the amendment with an amendment.

The question then arises: May the Senate recede from its amendment and concur with the original bill?

In such a case the Senate has the following courses open:

It may concur in the House amendment to the Senate amendment.

It may insist on its amendment and ask a conference.

It may adhere to its amendment.

May it also recede from its amendment and concur in the original House bill? Undoubtedly such would have been the proper course had the House disagreed to the Senate amendment instead of agreeing to it in a modified form. Does the partial agreement of the House, which may be in reality no agreement at, all, since it may make the Senate amendment more distasteful to the Senate than was the original bill, bind the Senate either to accept this distasteful legislation or to enter upon a course of disagreement against it, when there lies the shorter and more simple form of receding from the original amendment and agreeing to the bill?

But if the motion is admissible, which would have precedence, the motion to concur with the House amendment to the Senate amendment or the motion to recede from the original Senate amendment and concur in the bill? Either motion would bring the two Houses together, and perhaps the one first made should have precedence.

[4] First session Forty-seventh Congress, Record, pp. 5441–5445.

Mr. James B. Beck, of Kentucky, proposed a motion that the bill and amendments be referred to the Committee on Finance, in order that several amendments made necessary by recent developments might be incorporated.

Mr. Allison at once objected that:

After the House has concurred in a portion of the amendments sent to it and nonconcurred in others, I do not see how it is possible, under the rules of the two Houses, to materially amend the amendments which we have already made.

Mr. John T. Morgan, of Alabama, said:

I do not think it is legitimate to refer the bill back to the committee at this time, unless the Senate shall agree to reconsider the vote by which it passed the bill, for that committee is shut out by the action of the Senate of record here from the consideration of any other matter than the mere question of the agreement or disagreement to the action proposed by the House.

Mr. John Sherman, of Ohio, said:

The bill has passed beyond our consideration; the text of the bill can not be changed, even by unanimous consent of the Senate; it would be a violation of the rules of the Senate and of the rules of parliamentary order. We can not play Indian in this game; we can not pass a bill and then recede from it afterwards. We may recede from the amendments that we proposed to the House which are in our power or we may go and confer with them, and if the amendments are not agreeable to the Senate we may change them somewhat or abandon them or we may get the House conferees to agree with us; but there is nothing pending between the two Houses except the disagreeing votes of the two Houses on the amendments. It is a violation of the rules to bring any new matter into this debate. I remember when a distinguished Senator of this body, the present Postmaster-General, Mr. Howe, undertook, by consent of a committee of conference, to introduce new matter, the Senate practically reproved him, so much so that Mr. Howe refused to consent to serve on any future committee in regard to that subject-matter, because it was deemed to be a violation of his duty to vary in the slightest degree from the question between the two Houses, which was the question of the pending amendments disagreed to by one of the Houses. It would be an extraordinary proceeding for us to send back this bill to the Committee on Finance with a view to introduce matter not contained in the pending amendment. * * * All questions of conference between the two Houses form the most delicate process of legislation. We can not add one single thing to the proposition we have made to the House.

In view of the objections, Mr. Beck proposed to modify his motion by adding directions to the committee to consider whether or not the Senate amendments should be adhered to.

The Senate agreed to this modification; but the motion to refer with the instructions was then disagreed to, yeas 16, nays 37.

Then the motion to insist and ask a conference was agreed to.

6228. Both Houses insisting, and neither asking a conference, the bill failed.—On March 3, 1879,[1] after two ineffectual conferences on the army appropriation bill, the two Houses being unable to agree on the subject of the use of troops at elections, one of the House conferees, Mr. Abram S. Hewitt, of New York, having reported the inability of the conferees to agree, moved that the House further insist. This motion was agreed to, but Mr. Hewitt purposely refrained from moving that a further conference be asked. When the Senate were notified they, on motion of Mr. James G. Blaine, of Maine, voted to insist, and refrained from asking a conference. So the bill failed.

6229. The House may recede from its disagreement to certain amendments and adhere to it as to others.—On September 28, 1850,[2] the House was

[1] Third session Forty-fifth Congress, Journal, pp. 663, 676; Record, pp. 2339, 2379, 2394.

[2] First session Thirty-first Congress, Journal, p. 1593.

considering the Senate amendments to the bill (H. R. 334) making appropriations for civil and diplomatic expenses of the Government.

Mr. Edward Stanly, of North Carolina, moved that the House recede from their disagreement to the Senate's amendments numbered 1 and 18.

And the question being put, the motion was agreed to.

Mr. Stanly then moved that the House adhere to their disagreement to the Senate amendments numbered 89, 90, 91.

And the question being put, this motion was agreed to.

6230. Bills on which one House had adhered have been lost by the expiration of the Congress, even while the roll was being called on a motion to recede that might have passed the bill.—In 1871,[1] the bill (H. R. 2509) to abolish the grades of admiral and vice-admiral of the Navy, after being the subject of unsuccessful conference, was lost by the adherence of the Senate to their amendments. The Congress expired before the roll call was completed in the House on the motion to recede.

6231. On March 3, 1877,[2] the conferees on the army appropriation bill reported that they had been unable to agree. The House had asked the conference and apparently the papers were retained by the House conferees when the conferees were unable to agree. The report of inability to agree being made, Mr. William R. Morrison moved that the House adhere (as recorded in the record of debates) or insist (as recorded in the Journal). The Congress expired during the roll call on this motion. So the bill was lost.

6232. On March 3, 1879,[3] the House adhered to its disagreement to the Senate amendments to the legislative appropriation bill, and the bill was lost. This was after two ineffectual conferences, the difference between the two Houses being on account of certain legislation proposed by the House in regard to the qualifications of jurors and the use of troops in elections.

6233. In many instances bills have been lost by the adherence of both Houses, sometimes, in earlier days, when no effort at adjustment by conference had been made.

The inability of the two Houses to agree on even the slightest amendment to a bill causes the loss of the bill.

On May 17, 1790,[4] the House proceeded to consider the conference report on the House amendments to the Senate bill entitled "An act for giving effect to the act therein mentioned, in respect to the State of North Carolina, and to amend the said act." It was voted:

Resolved, That this House do recede from their first amendment and in lieu thereof propose to strike out, in the last line of the third section, the words "And Hillsborough," etc.

Resolved, That this House do insist on their second amendment to the said bill.

On May 19, 1790,[5] a message from the Senate announced that they receded from their disagreement to the first amendment and agreed to the amendment as

[1] Third session Forty-first Congress, Journal, pp. 490, 513.

[2] Second session Forty-fourth Congress, Journal, pp. 684, 688, 698; Record, pp. 2251, 2252.

[3] Third session Fifty-fifth Congress, Journal, pp. 680, 693; Record, p. 2403.

[4] Second session First Congress, Journal, p. 109 (old ed.), 217 (Gales & Seaton ed.).

[5] Journal, pp. 111, 112 (old ed.), 219 (Gales & Seaton ed.).

amended by the House; and that they adhered to their disagreement to the second amendment.

On May 20 [1] the House having proceeded to reconsider their second amendment resolved to adhere to it.

So the bill was lost.

6234. On April 9, 1790 [2] Mr. Fisher Ames, of Massachusetts, from the managers appointed on the part of the House to attend a conference with the Senate on the subject-matter of the amendment depending between the two Houses to the bill entitled "An act to provide for the remission or mitigation of fines, forfeitures, and penalties, in certain cases" reported that they had not been able to agree.

On April 12, 1790,[3] the House proceeded to reconsider the amendment proposed by the Senate, and it was—

Resolved, That this House do adhere to their disagreement to the same amendment.[4]

6235. On July 22, 1790,[5] Mr. Elbridge Gerry, of Massachusetts, submitted the report of the conference on the amendments to the bill "to establish the post-office and post roads within the United States," and the House resolved to adhere to their disagreement to the first amendment, and to recede or insist on their disagreement to several other amendments.

On July 26, 1790,[6] a message from the Senate announced that they adhered to their first amendment to the bill, and that they insisted or receded in the case of other amendments.

So the bill was lost.

Also on March 3, 1791 [7] the bill entitled "An act concerning consuls and viceconsuls" was lost through adherence by both Houses.

On December 20, 1791,[8] the bill "apportioning representatives among the people of the several States" was lost in the same way.

On May 6, 1794,[9] the bill "to encourage the recruiting service" was also lost; also on June 9, 1794,[10] the bill "for the more effectual protection of the southwestern

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[1] Journal, p. 112 (old ed.), 219 (Gales & Seaton ed.).

[2] Second session First Congress, Journal, p. 77 (old ed.), 192 (Gales & Seaton ed.).

[3] Journal, p. 78 (old ed.), 192 (Gales & Seaton).

[4] The bill was lost evidently, as on April 27, 1790, a new bill to the same effect was reported in the House. Other instances of adherence are:

August 24, 1789 the House adhered to disagreement to amendment of the Senate to the act to establish the Treasury Department. The Senate receded. (First session First Congress, Journal, p. 113.)

September 17, 1789, the House adhered to its disagreement to Senate amendment to bill allowing compensation to President, Vice-President, etc. (First session First Congress, Journal, p. 142.)

September 25, 1789, the House adhered to its amendment to a Senate bill "to regulate processes in the courts of the United States." (First session First Congress, Journal, p 156.) On September 28, after a conference had failed, the House receded from their adherence "so far as to agree to the amendments proposed by the Senate to the same." (Journal, pp. 159–161.)

[5] Second session First Congress, Journal, pp. 180, 182 (old ed.), 276 (Gales & Seaton ed.).

[6] Journal, p. 185 (old ed.), 278 (Gales & Seaton ed.).

[7] Third session First Congress, Journal, pp. 96–98.

[8] First session Second Congress, Journal, pp. 54, 55, 58–61.

[9] First session Third Congress, Journal, p. 293.

[10] First session Third Congress, Journal, p. 432.

frontier settlers;" also March 1, 1797,[1] on resolutions relating to accounts between the United States and the States.

6236. On January 23, 1799,[2] the bill to provide "for the enumeration of the inhabitants of the United States" was lost by adherence of both Houses to disagreement over an amendment.

On December 29, 1803,[3] the bill "fixing the salaries of certain officers therein mentioned," was lost.

On March 3, 1805,[4] the bill "making an appropriation for the payment of witnesses," etc., was lost.

On March 31, 1810,[5] the bill "respecting the commercial intercourse between the United States and Great Britain and France" was lost.

6237. On April 19, 1806,[6] the House proceeded to consider the amendment proposed by the Senate to strike out the second and third sections of the bill entitled "An act making appropriations for carrying into effect a treaty between the United States and the Chickasaw tribe of Indians," and a division of the question being demanded, the question was taken that the House do agree with so much of the Senate amendment as proposed to strike out the second section of the bill. This was decided in the negative, yeas 33, nays 57.

Then the question being taken on agreeing to the residue of the amendment, for striking out the third section of the bill, it was decided in the negative, 35 yeas, 53 nays.

The House then—

Resolved, That this House do disagree to the said amendment, and adhere to their disagreement.

The same day a message from the Senate announced that they adhered to their amendment.

So the bill was lost.

6238. On March 3, 1827,[7] the bill (S. 66) "to regulate the commercial intercourse between the United States and the Colonies of Great Britain" was lost by the adherence of both Houses in a disagreement as to an amendment of the House.

6239. On March 3, 1837,[8] the House proceeded to the consideration of the message from the Senate in relation to the amendment pending to the bill (H. R. 756) "making appropriations for certain fortifications of the United States for the year 1837," when it was—

Resolved, That this House do agree to the conference asked by the Senate on the disagreeing votes of the two Houses on the amendment of the Senate to the said bill.

This amendment struck out the clause providing for the distribution of the surplus revenue.

Three conferees were then appointed on the part of the House.

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[1] Second session Fourth Congress, Journal, pp. 261, 266.

[2] Third session Fifth Congress, Journal, p. 103.

[3] First session Eighth Congress, Journal, pp. 247, 248.

[4] Second session Eighth Congress.

[5] Second session Eleventh Congress.

[6] First session Ninth Congress, Journal, pp. 408, 410 (Gales & Seaton ed.): Annals, p. 1082.

[7] Second session Nineteenth Congress, Journal, pp. 384, 392.

[8] Second session Twenty-fourth Congress, Journal, pp. 596, 600, 601, 605; Debates, pp. 1022, 2149.

The same day Mr. John Bell, of Tennessee, from the House managers, reported that the managers from the two Houses had conferred, "and had separated without coming to any agreement."

Thereupon Mr. Bell moved that the House adhere to its disagreement, and the motion was agreed to, yeas 107, nays 98.

Subsequently a message was received from the Senate announcing that they had adhered to their amendment.

So the bill was lost.[1]

6240. On January 25, 1865,[2] the House adhered to its disagreement to an amendment of the Senate to the deficiency appropriation bill (H. R. 620), the amendment infringing on what the House considered its right to provide suitable salaries for its own employees. On the next day a message was received from the Senate announcing that they adhered to their amendment. So the bill was lost.

6241. One House, after an amendment or disagreement by the other, may at once adhere, but this does not preclude the granting of the request of the other House for a conference.—On May 3, 1826,[3] a message from the Senate announced that they adhered to their amendment to the bill "to amend the judiciary system of the United States," to which amendment the House had disagreed.

The message was referred to the Committee on the Judiciary, and on May 5, Mr. Daniel Webster, from that committee, reported this resolution:

Resolved, That a conference be asked of the Senate, upon the subject-matter of the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the said bill.[4]

Mr. John Forsyth, of Georgia, asked if the measure proposed was within the rules of the House.

The Speaker[5] replied that it was, saying:

When, in case of a disagreement, not only one House but both Houses adhere to the position taken, there is an end of all further proceedings, and the bill in dispute must drop; but where only one House has adhered, there are instances of a conference.

The resolution was agreed to and the conferees were appointed.

6242. On January 17, 1834,[6] the House considered the amendments with which the Senate had returned the bill (H. R. 36) "making appropriations, in part, for the support of the Government for the year 1834," and disagreed to the second amendment relating to use of the contingent fund of the two Houses.

The Senate returned the bill with the message that they adhered[7] to their second amendment, and this message came up for consideration in the House on

[1] It is evident that the papers remained with the House conferees after the conference broke up, and that the report was acted on first in the House, and that the Senate did not act until they received the message announcing the action of the House. (See Debates, p. 1022.)

[2] Second session Thirty-eighth Congress, Journal, pp. 147, 151; Globe, p. 416.

[3] First session Nineteenth Congress, Journal, pp. 510, 517 Debates, p. 2603.

[4] Note that in this case the House does not further insist before asking the conference.

[5] John W. Taylor, of New York, Speaker.

[6] First session Twenty-third Congress, Journal, pp. 211, 229, 231; Debates, pp. 2493–2498.

[7] This motion to adhere at once without insisting was made in the Senate by Mr. Daniel Webster, of Massachusetts, who said there were precedents for it, and that no disrespect was offered the other House. (Debates, p. 333.)

January 22, when Mr. James K. Polk, of Tennessee, moved that the House insist on its disagreement to the amendment, and ask a conference with the Senate.

Mr. John Quincy Adams, of Massachusetts, made the point of order that when either House announced to the other its adherence, there could be no conference.

After discussion, the Speaker[1] said that in the British Parliament it was once the usage not to confer after adherence, but that rule had been changed, and it was the practice to ask a conference after an adherence by both Houses. The practice here had been different. After an adherence by both Houses, it had never been the usage to ask a conference. But when one House mounted up at once to an adherence, and the other did not, the other could ask a conference. This last course was taken in two prominent instances—in regard to the Missouri restriction bill, and the judiciary bill, as he showed by reference to the journals. It was for the House now to adhere (in which case there could be no conference), or to recede; or to insist and ask a conference.

The House voted not to insist, but asked the conference and appointed managers.

6243. On January 23[2] when the message of the House came up in the Senate, it was referred to the Committee on Finance, in view of the novel question involved, and the same day Mr. Daniel Webster, of Massachusetts, made the following report from that committee:

> The House requests a conference after the Senate had adhered to its amendments, to which the House had previously disagreed. It can not be denied that the Senate has a right to refuse such conference—a case exactly similar having been so disposed of by the Senate in 1826, as will be seen by the extracts from its Journals, which are appended to this report; but the committee think it equally clear that such is not the usual and ordinary mode of proceeding in cases of this kind. It is usually esteemed more respectful, and more conducive to that good understanding and harmony of intercourse between the two Houses which the public interest so strongly requires, to accede to requests for conferences even after an adhering vote. Such conferences have long been regarded as the established and approved mode of seeking to bring about a final concurrence of judgment in cases where the Houses have differed; and the committee think it unwise either to depart from the practice altogether, or to abridge it, or decline to conform to it in cases such as those in which it has usually prevailed. It should only be, therefore, as the committee think, in instances of a very peculiar character that a free conference, invited by the House, should be declined by the Senate.

The committee therefore recommended that the Senate agree to the conference, which was done.

6244. On July 20, 1867,[3] the last day before the recess, the Senate returned the concurrent resolution of the House providing for the recess, with an amendment. The House disagreed to the amendment, and at once adhered to the disagreement.

The Senate thereupon insisted on their amendment and asked a committee of conference.

The House thereupon receded from its adherence and agreed to the conference.

6245. One House having adhered, the other may further insist and ask a conference.—On February 21, 1815,[5] a message from the Senate announced that they disagreed to the amendment of the House to the "resolutions expressive

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] Debates, pp. 336, 337.

[3] First session Fortieth Congress, Journal, pp. 245, 246; Globe, pp. 753, 757, 761.

[4] Third session Thirteenth Congress, Journal, pp. 746, 747, 752, 755 (Gales & Seaton ed.); Annals, pp. 1174, 1184.

of the thanks of Congress to Major-General Jackson and the troops under his command for their gallantry and good conduct in the defense of New Orleans," except so much as strikes out the word "immediate" in the third line of the first resolution.

The House thereupon insisted on their amendment, and directed the Clerk to inform the Senate of their action.

The Senate presently informed the House that they adhered to their disagreement.

On February 22 the House proceeded to reconsider so much of their amendment as the Senate had adhered in a disagreement to, and decided, after debate, to ask a conference with the Senate, conferees were appointed, and the Senate was informed.

The Senate agreed to the conference, and a report having been made by the conferees, was agreed to by both Houses.

6246. On June 14,1860,[1] Mr. Schuyler Colfax, of Indiana, from the second committee of conference on the disagreeing votes of the two Houses on the bill of the Senate (S. 416) to secure homesteads to actual settlers on the public domain, and for other purposes, reported that after full and free conference the committee had separated without coming to any agreement.[2]

Then, on motion of Mr. Colfax—

Ordered, That the House adhere to its amendment disagreed to by the Senate to the said bill of the Senate No. 416.

On June 15, a message from the Senate announced that they further insisted on their disagreement, and asked a further conference of the House.

The House voted to further insist on its disagreement, and to agree to the conference.

6247. Instances where, after one House had adhered, the other receded.—On July 1, 1789,[3] a message was received from the Senate stating that they agreed to the amendment proposed by the House to their third amendment to the bill "for imposing duties on tonnage," so far as to admit the insertion of the words substituted by the House in lieu of others proposed by the Senate; but that they adhered to such other part of the said third amendment as was disagreed to by the House; and that they also adhered to their fourth, fifth, and sixth amendments to the said bill, on a disagreement to which the House had insisted.

The House having proceeded to the consideration of the message, receded from their disagreement to the third, fourth, fifth, and sixth amendments adhered to by the Senate.

6248. On March 23, 1790,[4] the House considered the Senate amendments to the bill "making appropriations for the support of Government for the year 1790," and the same were amended and agreed to.

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[1] First session Thirty-sixth Congress, Journal, pp. 1092, 1096; Globe, pp. 2988, 3038.

[2] It will be noticed that in this case, where there was no agreement, the papers were kept by the House conferees, although the House had asked the conference. (See Journal of June 11, p. 1056.) So in the preceding conference, asked by the House on May 30 (Journal, p. 958), the report was made to the House first on June 11, a new conference being asked of the Senate on that date.

[3] First session First Congress, Journal, p. 69 (old ed.), 56 (Gales & Seaton ed.); Annals, pp. 639–643.

[4] Second session First Congress, Journal, p. 61 (old ed.), 179 (Gales & Seaton ed.); Annals, p. 1523.

The same day a message was received from the Senate stating that they disagreed to the amendment proposed by the House to their last amendment, and adhered to that amendment.

On March 24[1] the House proceeded to reconsider the last amendment, adhered to by the Senate, and it was—

Resolved, That this House do recede from their disagreement to the said amendment.

6249. On March 2, 1827,[2] the House having adhered to their disagreement to the Senate's amendment to the Indian appropriation bill, the Senate receded.[3]

6250. On March 3. 1864[4] after the failure of three conferences, the House adhered to its disagreement to the Senate amendments to the bill (H. R. 122) to increase the internal revenue. On March 4 the Senate receded from their amendments and the bill was in this way passed.

6251. One House having adhered may recede from its adherence and agree to a conference asked by the other.

One House having adhered, may, at the next stage, vote to further adhere.

One House having receded from certain of its amendments may not, at a subsequent stage, recall their action in order to form a new basis for a conference.

On March 2, 1867,[5] a message from the Senate announced that the Senate had receded from all their amendments to the bill (H. R. 896) making appropriations for the legislative, executive, and judicial expenses of the Government, except the forty-fourth amendment, and that they had adhered to that amendment.

The House voted to insist on the forty-fourth amendment, and ask a conference with the Senate.

A message from the Senate announced that they had receded from their adherence and agreed to the conference. When the Senate took this action, a desire was expressed that the Senate might also recall its action receding from its other amendments, in order that they all might be considered in the new conference, but after informal discussion between the Chair and Mr. William Pitt Fessenden, of Maine, it was decided to be impossible Without the assent of the House.

The conferees of the new conference were unable to agree, and this being reported, the Senate voted to further adhere to the forty-fourth amendment.

The House thereupon receded from its disagreement to the amendment.

6252. The House may recede from its adherence.—On June 25, 1902,[6] Mr. John A. T. Hull, of Iowa, moved that the House recede from its adherence to its disagreement to Senate amendment No. 14 to the army appropriation bill, and agree to the same with an amendment.

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[1] Journal, p. 64 (old ed.), 181 (Gales & Seaton ed.).

[2] Second session Nineteenth Congress, Journal, pp. 370, 374.

[3] Instances of one body receding after the other had adhered were common—March 27, 1792, May 8, 1792, February 25, 1793 (first and second session Second Congress); also March 2, 1795 (second session Third Congress, Journal, p. 303); also Much 3, 1797 (second session Fourth Congress, Journal, pp. 276, 279, 281), May 7, 1798 (second session Fifth Congress, Journal, p. 463), January 17, 1798 (second session Fifth Congress, Journal, pp. 136–139),

[4] First session Thirty-eighth Congress, Journal, pp. 339, 344; Globe, pp. 935, 937.

[5] Second session Thirty-ninth Congress, Journal, pp. 583, 585, 587, 590; Globe, p. 1979.

[6] First session Fifty-seventh Congress, Record, pp. 7387, 7388.

Mr. James D. Richardson, of Tennessee, made the point of order that the House, after having adhered, might not recede.

The Speaker[1] said:

The Chair is ready to rule on the point of order. While an adherence is the highest expression the House can give in respect to an amendment, still it is never beyond the power of the House to recede from adherence, and there are abundant authorities where this has been done.

6253. After the House had adhered it reconsidered its action, receded from its disagreement, and agreed to the Senate amendment with an amendment.[2]—On September 2, 1789,[3] the House considered the amendments of the Senate to the bill "for allowing a compensation to the Members of the Senate and House of Representatives of the United States, and to the officers of both Houses," and

Resolved, That this House do disagree to the first, second, and third amendments, and do agree to all the other amendments to the said bill.

On September 7, 1789,[4] a message from the Senate stated that they adhered to their first amendment and receded from their other amendments.

On September 8[5] the House asked for a conference on the amendment and appointed conferees.

On September 9[6] a message from the Senate announced their agreement to the conference.

On September 10[7] the conferees reported to the House, whereupon it was moved that the House recede from their disagreement and agree to the Senate amendment with an amendment. This motion was decided in the negative, yeas 24, nays 29.

Thereupon it was—

Resolved, That this House do adhere to their disagreement to the said first amendment.

On September 11[8] it was moved that the House reconsider the vote of adherence.

A point of order being made, the Speaker[9] declared the motion in order; and this decision was sustained on appeal.[10]

The reconsideration then took place; the motion to recede and concur with an amendment was offered again and agreed to.

September 12[11] a message from the Senate announced their agreement to the amendment of the House.

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[1] David B. Henderson, of Iowa, Speaker.

[2] It is not necessary, however, that the vote to adhere be reconsidered. See section 6310 of this volume.

[3] First session First Congress, Journal, pp. 120, 121 (old ed.), 95 (Gales & Seaton ed.); Annals, p. 867.

[4] Journal, p. 131 (old ed.), 104 (Gales & Seaton ed.); Annals, p. 921.

[5] Journal, p. 132 (old ed.), 105 (Gales & Seaton ed.); Annals, p. 921.

[6] Journal, p. 133 (old ed.), 105 (Gales & Seaton ed.); Annals, p. 922.

[7] Journal, pp. 134, 135 (old ed.), 106 (Gales & Seaton ed.); Annals, p. 923.

[8] Journal, pp. 136, 137 (old ed.), 107, 108 (Gales & Seaton ed.); Annals, pp. 924, 925.

[9] Frederick A. Muhlenburg, of Pennsylvania, Speaker.

[10] It is not necessary, however, to go through the process of reconsidering the vote to adhere. (See sec. 6252 of this chapter.)

[11] Journal, p. 138 (old ed.), 109 (Gales & Seaton ed.); Annals, p. 926.

Chapter CXXXII.

GENERAL PRINCIPLES OF CONFERENCES.

1. Provisions of the parliamentary law. Section 6254.
2. Conference rarely asked except in case of disagreement. Sections 6255–6258.[1]
3 The managers, their functions, etc. Sections 6259–6267.[2]
4. Asking a conference. Sections 6268–6287.[3]
5. Asking a further conference after failure to agree. Sections 6288–6292.
6. Conference asked before vote of disagreement. Sections 6293–6302.
7. Conference asked after adherence. Sections 6303–6312.
8. Requests for conference declined or disregarded. Sections 6313–6318.
9. General precedents. Sections 6319–6325.[4]

6254. Conferences are usually asked to compose disagreements as to amendments between the Houses.

The request for a conference must come from the House in possession of the papers.

A conference may be asked before the House has come to a resolution of disagreement.

At the conclusion of an effective conference, after a vote of disagreement, the managers of the House which asked the conference leave the papers with the managers of the other House.

When a conference occurs before a vote of disagreement, the managers of the House asking the conference retain the papers and bring them back to their House.

Conferences are generally held in the Senate portion of the Capitol, and with closed doors, although in rare instances Members and others have been admitted to make arguments. (Footnote.)

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[1] Instances of conferences over questions other than disagreements over amendments:

As to questions of prerogative. (Secs. 1485, 1488, 1495 of Vol. II.)

As to electoral count. (Sec. 1936 of Vol. III)

As to propriety of instructing managers. (Sec. 6401 of this volume.)

As to a concurrent resolution rejected by the other House. (Sec. 3442 of Vol. IV.)

[2] Recent instance of change of managers at a second conference. (Secs. 6288, 6324 of this volume.)

[3] As to the repetition of the motion to request a conference. (Sec. 6325 of this volume.)

Conference may be asked on a portion only of the amendments in disagreement. (Sec. 6401 of this volume.)

[4] Instance wherein one House reminded the other of its neglect to act on a conference report. (Sec. 6309 of this volume.)

Jefferson's Manual, in Section XLVI, gives the parliamentary law relating to conferences:

It is on the occasion of amendments between the Houses that conferences[1] are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. (3 Hats., 31; 1 Grey, 425.)

Conferences may either be simple or free.[2] At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered, without debate, to the managers of the other House at the conference, but are not then to be answered. (4 Grey, 144.) The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory and ask a conference on the subject of the last conference, where they read and deliver in like manner written answers to those reasons. (3 Grey, 183.) They are meant chiefly to record the justification of each House to the nation at large and to posterity, and in proof that the miscarriage of a necessary measure is not imputable to them. (3 Grey, 255.) At free conferences the managers discuss, viva voce and freely,[3] and interchange propositions for such modifications as may be made in a parliamentary way and may bring the sense of the two Houses together. And each party reports in writing to their respective Houses the substance of what is said on both sides, and it is entered in their Journals.[4] (9 Grey, 220; 3 Hats., 280.) This report can not be amended or altered, as that of a committee may be. (Journal Senate, May 24, 1796.)

A conference may be asked before the House asking it has come to a resolution of disagreement, insisting or adhering (3 Hats., 269, 341); in which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions and upon terms of impossibility to persuade." (3 Hats., 226.) So the Commons say, "an adherence is never delivered at a free conference, which implies debate." (10 Grey, 137.) And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then

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[1] Conferences are almost invariably held with closed doors; but it is not an infrequent occurrence for Members to come before the managers to make statements. And on April 23, 24, and 25, 1906, the managers of the conference on the bill (H. R. 12707) to provide for the formation of State governments by the people of Oklahoma, Indian Territory, New Mexico, and Arizona held formal hearings, admitting attorneys and individuals to make arguments as to matters in difference. But such a course is very rare. Conferences are usually held in the room of the Senate committee having jurisdiction of the bill; and Mr. James C. Courts, who has been clerk of the Committee on Appropriations for about thirty years and has attended many conferences, states that he has known of but one conference held in the House wing of the Capitol. One day, when he was accompanying Mr. Samuel J. Randall, the famous chairman of the Appropriations Committee, to a conference in the Senate wing, Mr. Randall remarked: "Why should we go over there to listen to their reasons for amending one of our bills?" It would seem that the logical rule would be for the managers of the House asking the conference, and hence in possession of the papers, to set the time and place of the conference and invite the managers of the other House. The practice is otherwise, however.

[2] Former joint rule 1, dating from April 17, 1789 (first session first Congress, Journal, p. 16), and which lapsed with the other joint rules in 1876, provided:

"In every case of an amendment of a bill agreed to in one House and disagreed to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committee shall, at a convenient hour, to be agreed upon by their chairmen, meet in the conference chamber, and state to each other verbally or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon."

[3] There is no presiding officer in a conference, except in so far as the first-named manager in each body may be said to preside over his section of the conference.

[4] In the present practice of the House the differences between the two Houses are committed to the conferees, who report simply what they have done, accompanied by a written statement in explanation. Conferences, except in cases of disagreeing votes, rarely take place. (See, however, secs. 1485, 1488, 1495, of Vol. II, 1936 of Vol. III, and 3442 of Vol. IV of this work.)

affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering (Hats., 269), and we do in fact see instances of conference, or of free conference asked after the resolution of disagreeing (ib., 251, 253, 260, 286, 291, 316, 349); of insisting (ib., 280, 296, 299, 319, 322, 355); of adhering (ib., 269, 270, 283, 300); and even of a second or final adherence. (ib., 270.) And in all cases of conference asked after a vote of disagreement, etc., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them, they were left on the table in the conference chamber.[1] (Ib., 271, 317, 323, 354; 10 Grey, 146.)

After a free conference the usage is to proceed with free conferences, and not to return again to a conference. (3 Hats., 270; 9 Grey, 229.)

After a conference denied, a free conference may be asked. (1 Grey, 45.)

When a conference is asked the subject of it must be expressed, or the conference not agreed to. (Ord. H. Com., 89; 1 Grey, 425; 7 Grey, 31.) They are sometimes asked to inquire concerning an offense or default of a member of the other house. (6 Grey, 181; 1 Chand., 304.) Or the failure of the other house to present a bill to the King a bill passed by both houses. (8 Grey, 302.) Or on information received and relating to the safety of the nation. (10 Grey, 171.) Or when the methods of Parliament are thought by the one house to have been departed from by the other a conference is asked to come to a right understanding thereon. (10 Grey, 148.) So when an unparliamentary message has been sent, instead of answering it, they ask a conference. (3 Grey, 155.) Formerly an address or articles of impeachment, or a bill with amendments, or a vote of the house, or concurrence in a vote, or a message from the King, were sometimes communicated by way of conference. But this is not the modern practice.

6255. A conference is sometimes asked on a subject when no legislative proposition relating to it is pending, and may be granted or declined.[2]— On June 24, 1797,[3] doubts having arisen in the House as to whether the act passed at the last session, for fixing the next meeting of Congress on the 1st day of November, was not superseded by the present extraordinary session, it was resolved by the House to ask a conference with the Senate on the subject, and managers of the conference on the part of the House were appointed.

In the Senate, on June 26, it was:

Resolved, That the Senate do not agree to the proposed conference.

On June 8, 1798,[5] the House requested a conference with the Senate on the subject of adjournment and the propriety of altering the time of meeting of Congress. No legislative proposition was transmitted to the Senate.

The Senate agreed to the conference, which was held, and a report submitted. To this report the House disagreed.

6256. On June 8, 1798,[5] the House having appointed a select committee consisting of five Members, to wit: Mr. Samuel Sewall, of Massachusetts; Mr. Albert Gallatin, of Pennsylvania; Mr. William B. Grove, of North Carolina; Mr. George Dent, of Maryland, and Mr. Robert G. Harper, of South Carolina, "to inquire whether and when it may be proper to close the present session of Congress; and also into the propriety of altering the time for the next annual meeting of Congress," it was then—

Resolved, That a conference be desired with the Senate, on the subject-matter referred to the committee; and that the said committee be appointed managers at the proposed conference, on the part of this House.

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[1] This may not be so in cases where the conferees fail to agree. (See secs. 6239 (footnote), 6246 (footnote), 6571–6585 of this volume.)

[2] As on a question relating to the prerogatives of the House (Sec. 6338 of this volume, and Sees. 1485, 1487, 1495 of Vol. II of this work.)

[3] First session Fifth Congress, Journal, pp. 50, 52 (Gales & Seaton ed.); Annals, pp. 28, 377.

[4] Second session Fifth Congress, Journal, pp. 328, 332, 338, 349 (Gales & Seaton ed.).

[5] Second session Fifth Congress, Journal, p. 544 (old ed.), 328 (Gales & Seaton ed.); Annals, p. 1877.

On June 11[1] a message from the Senate announced that they had agreed to the conference.

On June 14[2] Mr. Sewall "from the joint committee of conference" made a report.

6257. An early instance wherein committees of the two Houses held a conference, not over disagreements to amendments, but over proposed legislation.

One of the first messages from the Senate was transmitted by letter from the Vice-President.

On April 24, 1789[3] the Speaker laid before the House a letter from the Vice President of the United States inclosing a resolution of the Senate for the appointment of a committee

to consider and report what style or titles it will be proper to annex to the office of President and Vice President of the United States, if any other than those given in the constitution.

Thereupon a committee for that purpose were appointed on the part of the House.[4]

6258. A rare instance wherein the House asked a conference as to a proposition which had been rejected by the Senate.—On May 29, 1874,[5] a message was received from the Senate announcing that they disagreed to the concurrent resolution passed by the House for the suspension of the rule requiring bills to be enrolled on parchment in the case of certain bills revising the statutes.

On the same day, on motion of Mr. Luke P. Poland, of Vermont,

Ordered, That the House ask a conference with the Senate on the disagreeing votes of the two Houses on the concurrent resolution, etc.

On June 1 the Senate insisted on its action and agreed to the conference.

6259. Instance of complaint of House managers at their treatment by the Senate managers.—On the calendar day of March 3, 1901,[6] but the legislative day of March 1, Mr. Eugene F. Loud, of California, from the conference committee on the post-office appropriation bill, made the following statement:

On Thursday last the conferees made their second report to the House, recommending an agreement in the shape of a modification of two amendments in the shape of legislation, which had been put upon the appropriation bill in the Senate. We modified the amendments in the conference as far as it was possible for any modification to be had.

The House by a very decided vote rejected the report of the conferees. On Friday morning the conferees again met. As is the custom in the House, we are notified from the Senate by messenger or telephone, and I was able to get one of the conferees to attend that meeting, not being able to find the third conferee.

We went to the Senate, assuming that we had received the instructions of the House, and the Senate conferees refused to meet the conferees of the House on the ground that there were but two of the House conferees present. We argued that question with the Senate conferees for some few moments; and I might mention, in passing, that there had been but two conferees present but a very little of the time on their side during the conference that had taken place.

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[1] Journal, pp. 551, 552 (old ed.), 332 (Gales & Seaton ed.).

[2] Journal, p. 564 (old ed.), 338 (Gales & Seaton ed.).

[3] First session First Congress, Journal, p. 23.

[4] This committee reported May 5, and subsequent proceedings occurred May 11 and 12.

[5] First session Forty-third Congress, Journal, pp. 1068–1070, 1088; Record, pp. 4400, 4410, 4416.

[6] Second session Fifty-sixth Congress, Record, p. 3585.

The House conferees, after this refusal to meet was made, withdrew from the conference. Again, this afternoon, after two days had elapsed, the Senate again suggested a conference, and the conferees have been unable to agree. What may be the ultimate result I can not say. I believe the House conferees have been treated with such discourtesy, at least, as never before has been my lot to witness. This is legislation upon an appropriation bill, and in accordance with the universal custom the Senate must recede. I thought that statement was due to the House.[1]

6260. According to the later practice the powers of a conference committee which has not reported do not expire by reason of the termination of a session of Congress unless it be the last session.—In the closing hours of the second session of the Forty-second Congress, on June 8, 1872,[2] the House agreed to the report of the committee of conference on the bill (H. R. 827) to authorize the construction of a bridge across the Ohio River. The message announcing this action was sent to the Senate on December 5, at the beginning of the third session of the Congress. The Senate at that time held to the view that the conference committee had expired with the session, and in order to consider the matter, on December 6, passed a resolution reviving their part of the conference committee.

On June 8, 1872,[3] the House asked and the Senate agreed to a conference on the bill (H. R. 2046) for the relief of Theodore Adams. No further action was taken at this session. At the next session, on January 8,[4] the report was agreed to in the Senate, and on January 15 it was agreed to in the House. No question was raised in the House as to the continuance of the powers of the conferees during the recess.

On August 3, 1886,[5] the Senate returned the fortifications appropriation bill (H. R. 9798) with amendments, and asked a conference thereon. The House, on August 4, disagreed to the amendments and agreed to the conference. On August 5, in the Senate, the conferees reported inability to agree.[6] On December 9, 1886[7] at the beginning of the next session of Congress, the House conferees reported in the House inability to agree. The House thereupon asked a new conference, which was agreed to by the Senate.

6261. On December 3, 1902,[8] the Speaker appointed Mr. John J. Jenkins, of Wisconsin, a member of the committee of conference on the disagreeing votes of the two Houses on the bill (S. 3653) for the protection of the President of the United States, to take the place of Mr. George W. Ray, of New York, who had resigned his membership in the House. The managers of this conference had been appointed at the first session of this Congress,[9] but had not reported. Mr. Ray had resigned his seat during the recess between the first and second sessions.

6262. On February 20, 1903,[10] the House considered the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. 3653)

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[1] At this time old and experienced Members of the House expressed the opinion that two of the three managers, being a quorum, might participate in a valid conference.

[2] Second session Forty-second Congress, Journal, p. 1129; third session, Globe, pp. 35, 60.

[3] Second session Forty-second Congress, Journal, pp. 1113, 1114.

[4] Third session Forty-second Congress, Globe, pp. 396, 608.

[5] First session Forty-ninth Congress, Journal, pp. 2516, 2530.

[6] Record, p. 8018.

[7] Second session Forty-ninth Congress, Record, pp. 67, 68.

[8] Second session Fifty-seventh Congress, Journal, p. 16; Record, p. 42.

[9] Journal, p. 818.

[10] Second session Fifty-seventh Congress, Journal, p. 268; Record, pp. 2419, 2420.

"for the protection of the President of the United States, and for other purposes." This bill had been sent to conference at the preceding session of this Congress.

6263. Instance wherein the Senate referred papers in the nature of petitions to the managers of a conference.

Conferees do not usually admit persons to make arguments before them.

On June 18, 1906,[1] in the Senate, during the time for the introduction of petitions, Mr. Joseph B. Foraker, of Ohio, said:

> I have numerous similar telegrams, protesting against the provision of the railroad rate bill (H. R. 12987) in regard to pipe lines. I send them to the desk and ask that they may be filed as petitions, and I would be glad if they could be referred to the conferees who now have that bill under consideration, I tried to get them there, but the august presence would not tolerate any petitions, and I did not succeed in leaving them. * * * To the conferees was the request I made. I did not know what the parliamentary usage is in that respect; and I could not get beyond the doorkeeper. I suppose the conferees did not know of it.

Mr. Benjamin R. Tillman, of South Carolina, said:

> As I am the only member of the conference committee on the part of the Senate whom I see present, I wish to take occasion to say that if we should add to our troubles (and we have enough of them since the bill has been sent back to conference), I think, probably, the present session of Congress might last considerably longer than we expect. We therefore have felt unwilling to take up the numerous telegrams that have been sent from the lumber interests and the pipe-line interests and others. When anyone has sent us telegrams we have received them, but we have not felt willing to have arguments made, because we have arguments enough among ourselves, I assure the Senator. * * * As I said, we could not afford—at least we did not feel willing—at this stage of the proceedings to add to our misery by having long arguments made in conference, after we had listened to them four days here in the Senate.

The Vice-President[2] announced that the telegrams would be referred to the conferees as requested.

6264. A bill sometimes fails because of the inability of managers to agree.—In 1869,[3] the Indian appropriation bill failed, the conferees being unable to agree. The conferees agreed among themselves to examine the bill no further. And this was reported to the House.

6265. In 1886 and 1887 the fortifications appropriations bill (H. R. 9798) failed through the inability of conferees to agree, after the conference had been prolonged from one session to another.[4]

6266. On December 18, 1856,[5] occurs an instance of a bill (S. 203) that was sent to conference, and on which the record indicates that the conferees never reported.

6267. The bill (H. R. 581) appears from the Journal to have died in conference in the session of 1862–63.[6] It was a bill concerning judgments in certain

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[1] First session Fifty-ninth Congress, Record, p. 8667.

[2] Charles W. Fairbanks, of Indiana, Vice-President.

[3] Third session Fortieth Congress, Globe, p. 1891.

[4] First session Forty-ninth Congress, Record, pp. 7892, 7983, 8018; second session Forty-ninth Congress, Record, pp. 67, 68, 2658, 2749.

[5] Third session Thirty-fourth Congress, Journal, pp. 122, 753; Globe., p. 160.

[6] Third session Thirty-seventh Congress, Journal, pp. 91, 661.

suits brought by the United States. The Journal has no record that the conferees ever reported.

6268. The motion to ask a conference is distinct from motions to agree or disagree to Senate amendments.—On February 11, 1901,[1] Mr. Sereno E. Payne, of New York, by direction of the Committee on Ways and Means, reported back the bill (H. R. 12394) to reduce the war revenue, with the substitute proposed by the Senate as an amendment, and offered a motion "that the House disagree to the substitute proposed by the Senate as an amendment, and ask for a conference."

Mr. James A. Tawney, of Minnesota, demanded a division of the motions.

The Speaker[2] said that, while it was usual to consider the motions together, they were divisible if a demand should be made that they be put separately.

6269. The House having rejected a motion to further insist and agree to a conference asked by the Senate, the Speaker ruled that a motion to ask a conference was not in order at the same stage.—On August 18, 1856,[3] the conferees on the army appropriation bill reported that they had been unable to agree as to the amendment relating to the use of United States troops in Kansas in connection with the controversy over the Territorial government.

The committee were thereupon discharged, and a motion that the House further insist on their amendment and agree to the further conference asked for by the Senate, was made and disagreed to.

After the receipt of a message from the Senate, and a report from the Committee on Enrolled Bills, Mr. John C. Kunkel, of Pennsylvania, moved that the House ask a further conference with the Senate on the disagreeing votes of the two Houses on the army bill.

The Speaker[4] decided that the motion was not now in order, as a similar question had just been voted on and rejected.

Mr. Kunkel having appealed, subsequently withdrew the appeal.

6270. The Senate having disagreed to an amendment of the House it was held that a motion to ask a conference should not be made before a motion to recede or insist had been made and decided.

The motion to recede takes precedence of the motion to insist or the motion to ask a conference.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution.

On April 20, 1846,[5] a message was received from the Senate that that body had disagreed to the amendment of the House to the amendment of the Senate to the joint resolution of the House (No. 5) entitled, "Joint resolution of notice to Great Britain to annul and abrogate the convention between Great Britain and the United States of August 6, 1827, relative to the country on the northwest coast of America westward of the Stony Mountains, commonly called Oregon."

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[1] Second session Fifty-sixth Congress, Record, pp. 2257, 2258; Journal, p. 217.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Thirty-fourth Congress, Journal, pp. 1534, 1582; Globe, p. 2240.

[4] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

[5] First session Twenty-ninth Congress, Journal, pp. 695, 697; Globe, p. 701.

The House proceeded again to consider the amendments pending to the resolution and the disagreeing votes of the two Houses thereupon. A motion was made by Mr. Robert D. Owen, of Indiana, that a conference be asked on the disagreeing votes of the two Houses on the amendments pending to the resolution, and that managers on the part of this House be appointed to conduct the conference.

Mr. Robert W. Roberts, of Mississippi, moved that the House insist upon its amendment to the amendment of the Senate to the joint resolution.

Mr. Meredith P. Gentry, of Tennessee, moved that the House recede from its amendment to the said amendment of the Senate.

The Speaker[1] decided that the motion to recede was first in order, and took precedence of the motion for the appointment of a committee of conference and of the motion to insist. In making this decision the Speaker quoted the first joint rule, which declared:

> In every case of an amendment of a bill agreed to in one House and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose and the other House shall also appoint a committee to confer, such committee shall,[2] etc.

From what was implied by this rule and from the practice of the House for several years past, the Speaker ruled:

> The Chair decides that, under the rule, it would be irregular to ask a committee of conference until the House shall have decided either to recede or insist. But the Chair states that the Manual itself, at one point, provides that a committee of conference may be appointed at any time.

At this point the following from the Manual was read:

> A conference may be asked before the House asking it has come to a resolution of disagreement, insisting or adhering. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding.

The Speaker continued:

> The joint rule which has been read, is, as a matter of course, the statute governing the action of the House; and though the Chair is not prepared to say but that a committee might be appointed, under certain circumstances, yet the Chair says that it would be irregular and not according to practice. By reference to the Journals of the last two Congresses, it will be seen that a motion to insist, or to recede, has uniformly been acted upon by the House before a committee of conference has been appointed.

Later, in putting the question on the appeal the Speaker said:

> Gentlemen on one side desire that a committee of conference shall be appointed before the question is taken, either on a motion to recede, or a motion to insist. The Chair has decided that, according to the practice of the House, and under the first joint rule, a motion to recede, or to insist, or to adhere, has universally been made and acted upon before asking for a committee of conference. There is not one instance in several years past, during which the Chair has examined the Journals, wherein a motion for a committee of conference was made without a previous or concurrent motion either to insist, to recede, or to adhere. And the Chair is of the opinion that it is necessary that the House should vote on one or the other of these motions before asking a committee of conference.

From this decision Mr. Seaborn Jones, of Georgia, appealed, and the decision of the Chair was sustained.

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[1] John W. Davis, of Indiana, Speaker.

[2] The joint rules no longer exist, having been permitted to lapse in 1876.

The question was stated on agreeing to the motion made by Mr. Gentry, that the House recede from its amendment to the said amendment of the Senate to the said joint resolution; and on this question the yeas were 87 and the nays were 95.

So the House refused to recede, and the question recurred on the motion made by Mr. Owen, that a conference be asked on the disagreeing votes of the two Houses on the amendments pending to the resolution, and that managers be appointed on the part of this House to conduct the conference.

At the suggestion of Mr. Roberts, Mr. Owen modified his motion by prefixing thereto the words "that the House insist upon its amendment to the amendment of the Senate," and moved the previous question, which was seconded; and the main question was ordered and stated, on agreeing to the motion of Mr. Owen as modified.

A division of the question was demanded by Mr. Washington Hunt, of New York, so as to take the question first on insisting, and then on asking a conference, and appointing managers. And it was divided accordingly.

6271. It has been held that a resolution from a committee recommending a request for a conference on certain disagreements as to amendments must be acted on before the preferential motion to agree.

The motion to recede has precedence of the motion to adhere.

On May 5, 1826,[1] the Committee on the Judiciary, to whom was referred the message of the Senate announcing that that body adhered to its amendment to the bill "to amend the judicial system of the United States," reported the following resolution:

Resolved, That a conference be asked of the Senate upon the subject-matter of the disagreeing votes of the two Houses on the amendment proposed by the Senate to the said bill.

Mr. John Forsyth, of Georgia, proposed a motion to agree[2] to the Senate amendment.

The Speaker[3] declined to receive the motion on the ground that the question before the House was the resolution of the Committee on the Judiciary, which must first be disposed of.

Later, on May 16,[4] when a motion, made from the floor, to adhere to the amendment of the House to this bill, was pending, the Speaker gave precedence to a motion to recede.

6272. Instance wherein, after managers of a conference had reported their inability to agree, a resolution insisting on the House's disagreement to Senate amendments and asking a further conference was admitted as privileged.—On June 17, 1892,[5] Mr. Newton C. Blanchard, of Louisiana, manager on the part of the House on the conference on the river and harbor bill presented a report that the conferees had been unable to agree.

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[1] First session Nineteenth Congress, Journal, p. 517; Debates, p. 2604.

[2] The modern form of the motion is "recede and concur." At that time Speaker Taylor considered a vote to recede from a disagreement equivalent to a vote to agree. (See Debates, p. 2647.) Such is not the present practice.

[3] John W. Taylor, of New York, Speaker.

[4] Debates, p. 2639.

[5] First session Fifty-second Congress, Journal, p. 230; Record, p. 5371.

The report having been read, Mr. Blanchard submitted the following resolution:

Resolved, That the House insist upon its disagreement to the Senate amendments numbered 64 and 173 to House bill 7820, making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, and agree to a further conference with the Senate.

Mr. James D. Richardson, of Tennessee, made a point of order that Mr. Blanchard in his individual capacity had no right as a privileged motion to submit the proposed resolution.

The Speaker[1] held that this resolution, relating to the disagreement between the two Houses on the river and harbor bill, was now in order, to follow, as it did, the report by the conferees of a disagreement.[2]

6273. It is so usual in later practice for the House disagreeing to an amendment of the other to ask a conference, that an omission so to do caused question.—On February 14, 1896,[3] the House was considering the Senate amendment to the bill H. R. 2904, entitled "An act to maintain and protect the coin redemption fund, and to authorize the issue of certificates of indebtedness to meet temporary deficiencies of revenue;" and voted to disagree to the Senate amendment.

The House did not ask a conference of the Senate, and in the latter body some question was made on this account. The bill was not acted on further.

6274. It is not always the practice for the House disagreeing to amendments of the other House to ask a conference.—On June 2, 1900,[4] the sundry civil appropriation bill had been returned to the House with Senate amendments. On motion of Mr. Joseph G. Cannon, of Illinois, the House disagreed to the Senate amendments, but did not ask a conference.

Later in the day, when a message was received from the Senate announcing that they had insisted on their amendments and asked a conference, the House agreed to the conference and the Speaker appointed conferees.

6275. On April 22, 1904,[5] Mr. Joseph W. Babcock, of Wisconsin, chairman of the managers of the conference on the bill (S. 2134) to connect Euclid Place with Erie street, submitted a report that the managers had not been able to agree. The disagreement had been over an amendment of the House to the Senate bill.

Mr. Babcock moved that the House recede from its amendment.

The House disagreed to the motion.

Then Mr. Babcock moved that the House further insist upon its amendment.

The House agreed to the motion.

The House did not request a conference.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] This is not the regular procedure, and is questionable for the reason that the resolution is indivisible, affording only one substantive proposition, while by the use of the regular motions a separate vote would be possible as to each of the amendments and as to the question of a further conference. By a resolution reported from the Committee on Rules the House sometimes deprives itself of this power to have separate votes, but a resolution to effect this is not ordinarily privileged until reported from the Committee on Rules.

[3] First session Fifty-fourth Congress, Journal, pp. 210, 211; Record, pp. 1735, 1736, 1825, 1826.

[4] First session Fifty-sixth Congress, Record, pp. 6475, 6495; Journal, pp. 658, 663.

[5] Second session Fifty-eighth Congress, Record, p. 5316; Journal, p. 653.

On April 23,[1] the Senate insisted on its disagreement to the House amendment, and voted to ask a further conference with the House, appointing managers.

6276. On April 25,1904,[2] the bill (H. R. 14754) entitled "An act providing for the restoration or maintenance of channels, or of river and harbor improvements, and for other purposes," with Senate amendments thereto, was taken from the Speaker's table.

Mr. Theodore E. Burton, of Ohio, moved that the House disagree to the Senate amendments.

This motion was agreed to.

No motion to ask a conference was made.

On the same day[3] in the Senate, it was voted that the Senate insist on its amendments and ask a conference.

Later in the day,[4] in the House, Mr. Burton moved that the House agree to the conference, and the motion was agreed to.

6277. On June 25, 1906,[5] a message from the Senate announced that the Senate had disagreed to the amendments of the House to the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

The Senate did not, however, ask a conference.

The bill coming before the House, on motion of Mr. James R. Mann, of Illinois, the House voted to insist on its amendments and ask a conference.

The same day a message from the Senate announced that the Senate had agreed to the conference.[6]

6278. It was formerly the more regular practice for the House disagreeing to amendments of the other to leave the asking of a conference to that other House.—On July 15, 1882,[7] the House disagreed to the amendments of the Senate to the river and harbor appropriation bill.

Mr. Horace F. Page, of California, rising to a parliamentary inquiry, asked if it would be in order to move to ask for a committee of conference.

Mr. John A. Kasson, of Iowa, said:

> Except in the last moments of a session, where one of the Houses disagrees to the amendments of the other, the practice is, where, as in this case, the House is the body that disagrees, to notify the Senate that we have disagreed, and thereupon the Senate insists on its amendments and asks a committee of conference.

The Speaker[8] said:

> That is the practice; but there are precedents for the course suggested by the gentleman from California.

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[1] Record, p. 5408.

[2] Second session Fifty-eighth Congress, Journal, p. 673; Record, p. 5534.

[3] Record, p. 5512; House Journal, p. 678.

[4] Journal, p. 679; Record, p. 5558.

[5] First session Fifty-ninth Congress, Record, p. 9172.

[6] Record, p. 9195.

[7] First session Forty-seventh Congress, Record, p. 6114.

[8] J. Warren Keifer, of Ohio, Speaker.

6279. It is by no means uncommon for one House to disagree to the amendments of the other and return the bill and amendments without a request for a conference. Thus, in 1861,[1] this course was pursued with the Senate amendments to the deficiency appropriation bill, the consular and diplomatic appropriation bill, and the legislative bill.[2]

Also the Senate pursued this course with the House amendments to the bill (S. 10) to promote the progress of the useful arts. The House, on February 16, 1861,[3] insisted on its amendments, disagreed to by the Senate, and asked a conference.

6280. In 1861[4] it was a common procedure for one House to disagree to amendments made to a bill by the other, and to return the bill and amendments without a request for a conference, leaving it for the amending House to insist on its amendments and ask a conference. Thus, on July 23, on the bill (S. 2) to increase the military establishment of the United States, the Senate returned the bill with the simple announcement that it disagreed to the amendment of the House, leaving it for the House to insist and ask the conference. On July 25[5] a similar procedure took place on the bill (S. 20) authorizing the appointment of an Assistant Secretary of the Navy.

6281. On January 14, 1868,[6] the House disagreed to the Senate amendments to the bill (H. R. 207) to provide for the exemption of cotton from internal tax, and sent this action to the Senate without asking a conference. The action excited no comment in the Senate, which insisted on its amendment and asked a conference.

6282. On June 10, 1876,[7] Mr. Samuel J. Randall, of Pennsylvania, from the Committee on Appropriations, reported the legislative appropriations bill with Senate amendments thereto, and recommended on behalf of the committee that the House nonconcur. Thereupon the House voted to nonconcur. No motion was suggested to ask a conference.

6283. On April 25, 1876,[8] in the Senate, a question was made over the fact that the House had disagreed to the Senate amendments to the consular and diplomatic appropriation bill, and returned the bill without asking a conference. Mr. Aaron A. Sargent, of California, having the bill in charge, stated that it was the ordinary custom for the House making the amendments to ask the conference "except that toward the close of the sessions, when we are very much hurried, and time is of great consequence, we have got into the habit, when nonconcurring with amendments, of asking for a conference; but if the Senator will look back over the precedents he will find that the original practice was, as it was maintained for a good many years, that the House making the amendments asked for a conference when the other did not."

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[1] Second session Thirty-sixth Congress, Journal, pp. 281, 303.

[2] Journal, p. 303.

[3] Second session Thirty-sixth Congress, Journal, p. 331.

[4] First session Thirty-seventh Congress, Journal, p. 132.

[5] Journal, p. 143.

[6] Second session Fortieth Congress, Journal, p. 184; Globe, pp. 505, 552, 627.

[7] First session Forty-fourth Congress, Journal, p. 1091; Record, p. 3754.

[8] First session Forty-fourth Congress, Record, pp. 2732, 2733.

6284. On November 17, 1877,[1] the House considered the Senate amendments to the bill (H. R. 902) making appropriations for the support of the Army, and after agreeing to some, disagreed to others.

The House thereupon notified the Senate of its disagreement, not making a request for a conference.

The Senate receded from its amendments disagreed to by the House, and so the bill was passed.

6285. On May 10, 1820,[2] a message from the Senate announced that the Senate insisted on their disagreement to the first amendment proposed by the House to the bill (S. 59) to provide for the clothing of the Army of the United States in domestic manufactures, and for other purposes. The Senate did not ask a conference.

Previously, on May 6,[3] the House had insisted on their amendment.

6286. One House having asked a conference at one session the other House may agree to the conference at the next session of the same Congress.—On December 3, 1902,[4] a message from the Senate gave notice that the Senate had insisted upon its amendment to the bill (H. R. 619) providing for the recognition of the military service of the officers and enlisted men of the First Regiment Ohio Volunteer Light Artillery, disagreed to by the House of Representatives; had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. Foraker, Mr. Proctor, and Mr. Cockrell as the conferees on the part of the Senate.

The House had disagreed to the Senate amendments at the first session of this Congress;[5] and had asked a conference and appointed managers.

6287. The House may disagree to certain Senate amendments to a bill, agree to others with amendment, and ask a conference only on the disagreement, leaving to the Senate to agree or disagree to the amendments to Senate amendments.

Form of message where the House disagrees to certain amendments of the Senate to a House bill and agrees to others with amendments.

On January 18, 1907,[6] the House took action which was transmitted to the Senate in a message, as follows:

IN THE HOUSE OF REPRESENTATIVES,
January 18, 1907.

Resolved, That the House disagrees to all the amendments of the Senate, except amendment No. 222, to the bill (H. R. 21574) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1908, and for other purposes, and agrees to amendment No. 222 with the following amendment:

Omit the matter stricken out by the said amendment and insert the following:

"That on and after March 4, 1907, the compensation of the Speaker of the House of Representatives, the Vice President of the United States, and the heads of Executive Departments, who are mem-

[1] First session Forty-fifth Congress, Journal, pp. 226–229, 233; Record, pp. 514, 525.

[2] First session Sixteenth Congress, Journal, p. 511.

[3] Journal, p. 493.

[4] Second session Fifty-seventh Congress, Journal, p. 16; Record, p. 42.

[5] First session, Journal, p. 875.

[6] Second session Fifty-ninth Congress, Record, p. 1305.

bers of the President's Cabinet, shall be at the rate of $12,000 per annum each, and the compensation of Senators, Representatives in Congress, Delegates from the Territories, and the Resident Commissioner from Porto Rico shall be at the rate of $7,500 per annum each."

The message further announced that the House asked a conference with the Senate on the disagreeing votes of the two Houses and had appointed conferees.

In the Senate on January 23 [1] it was voted that the Senate concur in the House amendment to the Senate amendment.

Then it was further voted that the Senate insist on its remaining amendments, which had been disagreed to by the House, and agree to the conference asked by the House.

6288. Where managers of a conference are unable to agree, or where a report is disagreed to in either House, another conference is usually asked.

Illustration of the old practice of changing the managers at each conference.

A motion to take from the table a matter laid there may be admitted by a suspension of the rules.

A motion to reconsider an affirmative vote to lay on the table is admitted.

On June 12, 1858,[2] Mr. Henry C. Burnett, of Kentucky, from the committee of conference on the part of the House on the disagreeing votes of the two Houses on the bill of the House (H. R. 526) entitled "An act making appropriations for the service of the Post-Office Department during the fiscal year ending June 30, 1859," reported that the committee were unable to agree.

On motion of Mr. Henry C. Phillips, of Kentucky, by unanimous consent,

Ordered, That the House further insist upon its former action upon the amendments of the Senate to the said bill, and ask a further conference with the Senate upon the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Phillips, Mr. Wood, and Mr. Boyce be appointed the committee on the part of the House.

On the same day Mr. Phillips, from the second committee of conference on the part of the House, reported that the committee were unable to agree.

On motion of Mr. J. Glancy Jones, of Pennsylvania, the bill and amendments were laid on the table.

Mr. Jones moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

On June 14, on motion of Mr. Jones, the rules having been suspended for that purpose, the bill heretofore laid on the table was taken up. And then, on motion of Mr. Jones, the rules having been suspended for that purpose, the motion to reconsider the vote by which the fourth, fifth, sixth, seventh, and tenth amendments of the Senate were agreed to, heretofore laid on the table, was taken up, and under the operation of the previous question the vote was reconsidered.

The question then recurring on agreeing to the amendments, Mr. Jones moved the previous question; which was seconded and the main question ordered, and under the operation thereof the fourth, fifth, sixth, seventh, and tenth amendments of the Senate to the said bill were disagreed to.

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[1] Record, p. 1541–1552.

[2] First session Thirty-fifth Congress, Journal, pp. 1118, 1136; Globe, pp. 3026, 3030, 3045.

On motion of Mr. Phillips, the House insisted upon its disagreement to all the other amendments of the Senate to the said bill H. R. 556, and asked a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Phillips, Mr. Elihu B. Washburne, and Mr. Dowdell be appointed the committee on the part of the House.

Ordered, That the Clerk acquaint the Senate therewith.

6289. On March 3, 1857,[1] on motion of Mr. Lewis D. Campbell, of Ohio,

Ordered, That the House further insist upon its disagreement to the amendments of the Senate to the bill of the House (H. R. 635) entitled "An act to supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1857," and agree to a further conference with the Senate upon the disagreeing votes of the two Houses thereon.

The Speaker thereupon appointed Mr. Pringle, Mr. Cadwalader, and Mr. J. Morrison Harris the managers at the conference on the part of the House.

Mr. Benjamin Pringle, of New York, from the second committee of conference, reported that the committee were unable to agree.

Mr. Pringle moved that the House further insist upon its disagreement to the amendments of the Senate to the bill, and ask a further conference with the Senate upon the disagreeing votes of the two Houses thereon. After intervening motions the question was put on the motion submitted by Mr. Pringle, and it was decided in the affirmative, yeas 82, nays 68.

The Speaker thereupon appointed Mr. Howard, Mr. Bowie, and Mr. Eustis the managers at the conference on the part of the House.

6290. On June 11, 1858,[2] the managers on the part of the House, Messrs. Thomas S. Bocock, of Virginia; John Kelly, of New York, and Freeman H. Morse, of Maine, made a report on the disagreeing votes of the two Houses on the bill of the House (H. R. 199) making appropriations for the naval service for the year ending the 30th of June, 1859.

The report having been disagreed to, it was, after debate and several votes,

Ordered, That the House further insist on its former action upon the amendments of the Senate to the bill of the House (H. R. 199) making appropriations for the naval service for the year ending June 30, 1859, and ask a further conference with the Senate on the disagreeing votes thereon.

Ordered, That Mr. Winslow, Mr. Groesbeck, and Mr. Elihu B. Washburne be the committee on the part of this House.

6291. On May 1, 1856,[3] Mr. James L. Seward, of Georgia, from the committee of conference (on the part of the House) on the disagreeing votes of the two Houses on the amendment of the Senate to the bill of the House (H. R. 68) to supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1856, reported that the committee were unable to agree.

On motion of Mr. Seward,

Ordered, That the said committee be discharged, and that a further conference be asked with the Senate on the said disagreeing votes.

The Speaker thereupon appointed Mr. Benjamin Pringle, of New York; Mr. Fayette McMullin, of Virginia, and Mr. Benjamin Stanton, of Ohio, the managers of the second committee of conference on the part of the House.

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[1] Third session Thirty-fourth Congress, Journal, pp. 653, 655, 663.

[2] First session, Thirty-fifth Congress, Journal p. 1107.

[3] First session Thirty-fourth Congress, Journal, p. 919.

On May 8, 1856,[1] the House resumed the consideration of the message from the Senate in regard to the deficiency bill, the pending question being on the motion of Mr. Benjamin Pringle, of New York, that the House further insist upon their action upon the Senate amendments to the bill, and agree to the further conference asked by the Senate thereon.

After debate, and pending the question on agreeing thereto, the House adjourned.

On May 9 the motion was agreed to.

6292. The conference on a disagreement as to Senate amendments to a House bill having failed, the Senate reconsidered its action in amending and passing the bill, passed the bill with a new amendment, and asked a new conference.—The House having passed the bill (H. R. 3589) to extend the powers and duties of the Commission of Fish and Fisheries,[2] the Senate on January 6, 1899,[3] passed the bill with amendments, and asked for a conference with the House.

On January 12, 1899,[4] the House disagreed to the Senate amendments, and agreed to the conference.

February 24, 1899,[5] the conferees reported in the House their inability to agree, and the House further insisted upon its disagreement, and asked a further conference.

February 25 the report that the conferees had been unable to agree was made in the Senate.[6]

Then the Senate reconsidered the vote whereby they had passed the bill, reconsidered the vote whereby they had amended it, then adopted a new amendment, passed the bill as amended, and asked a conference of the House.[7]

On March 2,[8] in the House, the bill was referred to the Committee on Merchant Marine and Fisheries, which had reported it originally, as the Senate amendment, by prohibiting the importation of a revenue-producing article, had brought the bill into a form requiring consideration in Committee of the Whole.

6293. One House may pass a bill of the other with amendments, and immediately, without waiting for the other House to disagree, may ask a conference.

When one House amends a bill of the other House and at the same time asks a conference, it may or may not vote to insist on its amendment before asking the conference.

On June 8, 1872,[9] the last legislative day of the session, a message from the Senate announced:

The Senate have passed a bill of the House of the following title, viz: "H. R. 2705. An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1873, and for other purposes;" with amendments, in which I am directed to ask the concurrence of the House.

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[1] First session Thirty-fourth Congress, Journal, p. 943.

[2] Third session Fifty-fifth Congress, Record, p. 317; Journal, p. 42.

[3] Congressional Record, p. 439.

[4] Record, pp. 628, 631; House Journal, p. 72.

[5] Record, p. 2303; House Journal, pp. 200, 205.

[6] Record, p. 2360.

[7] Record, p. 2362.

[8] Record, p. 2770; House Journal, p. 251.

[9] Second session Forty-second Congress, Journal, pp. 1077, 1100, 1103; Globe, p. 4428.

The Senate insist upon their amendments to the said bill, ask a conference with the House on the disagreeing votes of the two Houses thereon, and have appointed Mr. Cole, Mr. Edmunds, and Mr. Stevenson the managers at the said conference on the part of the Senate.

Later the House voted to nonconcur in the Senate amendments and to agree to the conference.

6294. On February 27, 1891,[1] the House had passed with an amendment the bill of the Senate (No. 3738) to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations.

Mr. John M. Farquhar, of New York, moved that the House request a conference with the Senate on the bill and amendment.

Mr. William M. Springer, of Illinois, made the point of order that the motion was not in order, the Senate not having disagreed to the amendment.

The Speaker pro tempore[2] overruled the point of order, on the ground that under the established practice of the House the same was permissible.

6295. On May 8, 1884,[3] in the Senate, certain amendments had been added to the bill (H. R. 2228) to remove certain burdens on the American merchant marine, etc., and the bill as amended had passed the Senate, when Mr. William P. Frye, of Maine, moved that the Senate ask a conference with the House on those amendments. Mr. John Sherman, of Ohio, made the point that this motion was premature, the House not yet having disagreed to the amendments. Mr. John R. McPherson, of New Jersey, and Mr. Isham G. Harris, of Tennessee, also took this view, the latter characterizing the proceedings as unusual and in violation of parliamentary usage. Mr. James B. Beck, of Kentucky, recalled the fact that the year before this had been done in the case of the tariff bill, but intimated that outside of the tariff bill he had not thought such to be the rule. Mr. George F. Hoar, of Massachusetts, observed that it would be in order to pass a Senate bill and send it down with a request for a committee of conference before the House had considered it at all.

The Chair[4] expressed an opinion against the point of order made by Mr. Harris, on the ground that it is within the principles and usages of parliamentary law, although the instances were rare, for either House to ask a conference with the other upon any subject that either House desired to consult with the other about.

Mr. Frye observed that he had known it to be done many times, especially in the last days of a session, when it was desirable to save time. In the absence of joint rules they were relegated to general parliamentary law. Jefferson's Manual was then read in support of this contention; but Mr. Beck contended that while it might be done in the English Parliament, it was not a usage of the Senate. The Chair then cited a case occurring March 1, 1879, on the sundry civil bill, when a conference was asked before the House had disagreed.

On May 13 the matter was debated again on appeal from the decision of the Chair. Mr. Thomas F. Bayard, of Delaware, argued strongly against the plan of Mr. Frye. He said that the two Houses were deliberative assemblies and the

[1] Second session Fifty-first Congress, Journal, p. 321; Record, p. 3512.

[2] Julius C. Burrows, of Michigan, Speaker pro tempore.

[3] First session Forty-eighth Congress, Record, pp. 3974, 4098; Senate Journal, pp. 628, 642, 643.

[4] George F. Edmunds, of Vermont, President pro tempore.

wisdom of their action depended upon the character of the deliberation preceding the adoption of measures. Amy system which tended to substitute discussions in committees of conference, which were limited bodies, for the deliberations of the two Houses was not, in his judgment, a thing to be desired. In his opinion, the precedent read by the Chair did not meet the case, as that was an appropriation bill in the last hours of the session, when time was limited. Appropriation bills were, moreover, not bills of general legislation, but money bills, appropriating sums in response to fixed legal requirements. A difference of opinion between the two Houses was a mere question as to assessment of amounts. But this case was entirely different. The formal language used in the appointment of the committee showed the necessity of a disagreement of votes between the two Houses before the committee of conference was called into operation. The exception proved the rule, and the rule of the Senate had not been to ask for a committee of conference before the House had had submitted to it the amendments. The action on the tariff bill of last spring was a most unwarranted assumption of power indulged in by the committee of conference. Mr. Bayard said, in conclusion, that he was in favor of this particular bill now before the Senate.

Mr. John Sherman, of Ohio, said that he also was very desirous to have the bill passed, but he did not think that the way proposed by the Senator from Maine would give the bill any advantage in the other House, and if they could give the bill such advantage it would be setting a dangerous and troublesome precedent. "I assume," he said, "that, as a matter of course, the House, having the power over this bill the moment it received our message, will send amendments to the Committee of the Whole House on the state of the Union; and what advantage, then, is given to this bill by having pending upon it a request from the Senate that up to that time is ignored? * * * The only advantage that could be given to this bill by the adoption of this motion would be on the assumption that the House would act upon our request for a committee of conference and send to a committee of conference amendments which have never been read or considered by the House. Such a practice as that once adopted and ingrafted on the parliamentary law or the practice of the two Houses would be dangerous, as I said a moment ago, to the last degree.

"We have by our practice heretofore gradually extended the powers of committees of conference until now a proposition to send a bill to a committee of conference sometimes startles me when I remember what occurred in the committee of conference on the tariff bill last year. I feel that both Houses ought to make a stand on the attempt to transfer the entire legislative power of Congress to a committee of three members of each body, selected not according to any fixed rule, but probably according to the favor of the presiding officer or the chairman of the committee that framed the bill; so that in fact, a committee selected by two men, one in each House, may frame and pass the most important legislation of Congress. * * * Therefore I can not see any advantage to be derived from it, unless the House, out of deference to the Senate, in the absence of all joint rules between the two bodies, should give to the request of the Senate an undue weight of importance and attach it as a privileged motion in all the stages of progress to this bill through the committee and in the House."

Mr. Frye, in reply, called attention to the fact that the precedent cited by the Chair did not occur when there was any pressure for time, and also to the fact that the question was debated by Senators Anthony and Blaine. There were also two other precedents in the second session of the Forty-second Congress, one on May 27, 1872, when a bill for consolidating the postal statutes was up, and the second June 7, 1872, when the sundry civil bill was up.

Mr. Frye then went on to say that if the present bill should go to the House without the request for the conference it would, under the iron rule of the House, go to the Committee of the Whole with 136 bills on top of it, and would not be reached in nine months' time; but with the request for a conference attached to it the bill goes to the Speaker's table, whence it goes at once to early consideration in Committee of the Whole; the request gave it a privilege which remained with it.[1]

The point of order having been withdrawn, the Senate agreed to the motion of Mr. Frye that a conference be asked of the House.

This motion did not include a proposition that the Senate insist on its amendments.

6296. On March 1, 1879,[2] in the Senate, the Senate had passed the legislative appropriation bill with amendments, when Mr. Henry B. Anthony, of Rhode Island, made a suggestion which he thought would facilitate business. Thereupon he proposed that the Senate request a conference and appoint its conferees. Mr. James G. Blaine, of Maine, said that it had been done before, and Mr. Roscoe Conkling, of New York, thought that there would be no difficulty about it. The proposition seemed novel to Mr. William Windom, of Minnesota, but his confidence in Mr. Anthony's knowledge was such that he acquiesced. Mr. Justin S. Morrill, of Vermont, asked if anyone knew of a single precedent, and Mr. Allen G. Thurman, of Ohio, asked the same. Mr. Blaine said that in the last fifteen years he thought it had been done three or four times. Mr. Thurman asked what the object of the action was, and Mr. Anthony said it was to save time. Mr. Blaine defended the proposed plan briefly, believing that it could do no harm, and Mr. Thurman criticised it on the ground that he did not see what good it would do. There was very little contention about it, however, and on motion of Mr. William Windom, of Minnesota, it was:

Resolved, That the Senate also ask a conference on the amendments to the foregoing bill.[3]

6297. On May 27, 1872,[4] the Senate had passed with amendments a House bill (H. R. 1) relating to the postal laws, and thereupon, on motion of Mr. Alexander Ramsey, of Minnesota, it was:

Resolved, That the Senate insist upon its amendments to the said bill, and ask a conference with the House of Representatives thereon.

6298. On June 7, 1872,[5] the Senate passed the House bill making appropriations for the sundry civil expenses of the Government, with certain amendments.

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[1] This is no longer the case. See section 6301 of this work.

[2] Third session Forty-fifth Congress, Record, p. 2188; Senate Journal, p, 437.

[3] In this case the Senate did not insist on its amendments at the time of asking the conference.

[4] Second session Forty-second Congress, Globe, p. 3893, Senate Journal, p. 851.

[5] Second session Forty-second Congress, Globe, p. 4398, Senate Journal, p. 1003.

Then, on motion of Mr. Cornelius Cole, of California, it was

Resolved, That the Senate insist on its amendments to the said bill, and ask a conference with the House of Representatives thereon.

6299. On February 25, 28, and March 1, 1861,[1] the House, after adopting amendments to the Senate propositions, at once insisted on its amendments and asked a conference, instead of waiting for the Senate to disagree before insisting.

6300. On June 25, 1906,[2] the House passed with an amendment the bill (S. 4403) to amend the immigration laws.

After the vote on the passage of the bill, Mr. James E. Watson, of Indiana, moved that the House ask for a conference.

This motion was agreed to.

6301. A bill of the House returned from the Senate amended and with a request for a conference before there has been a disagreement is not privileged in the House.—On July 22, 1886,[3] Mr. William H. Hatch, of Missouri, rose for the purpose of submitting a report which he claimed was privileged. The bill (H. R. 6569) to prevent the illegal sale of all imitations of dairy products, and for other purposes, had been returned from the Senate with amendments and a request for a conference, and had been referred to the Committee on Agriculture.

Objection being made to Mr. Hatch's claim that the report from the Committee on Agriculture was privileged, Mr. Nelson Dingley, Jr., of Maine, made the point of order that under the practice of the House a bill returned from the Senate amended and with a request for a conference was privileged.

The Speaker[4] ruled:

Either House has a right to ask a conference at any stage of its proceeding. For instance, the House of Representatives, when it passes a bill and sends it to the Senate, may accompany its message with a request for a conference on that bill, and the Senate, when it finally disposes of the bill by rejecting it or by passing it with amendments, may accede to the request. But the House to which a bill accompanied with such a request is sent must, when it takes up the matter for consideration, reach the final determination whether it will agree or disagree to the proposition sent to it by the other House according to the mode of proceeding prescribed by its own rules.

The fact that the House, when it passes a bill, requests at the same time a conference with the Senate could not prevent the Senate from proceeding to the consideration of that bill in the regular way under its own rules; and when that final determination is reached it might be that, instead of granting a conference, it would agree to the measure as sent by the House, and thus render a conference unnecessary. There are cases in the parliamentary history of England, and perhaps in this country, where there have been conferences between the two branches of legislative assemblies, not upon disagreeing votes on amendments, but where one House had passed a bill and the other had absolutely rejected it. But in coming to that conclusion or stage of the proceeding which must be reached before a conference can be agreed to—because there can be no conference except upon disagreeing votes of the two Houses—each House must be governed by its own rules. If a conference is asked in advance upon a bill, the bill must nevertheless take its usual course, and the request can not be acceded to until the measure is rejected; and likewise if a conference be asked in advance upon amendments they must take the usual course and be disagreed to before the request is granted.

The only rule the House has upon this subject is one which makes the conference report privileged. It reads: "The presentation of reports of committees of conference"—the language is "reports"—"shall

[1] First session Thirty-sixth Congress, Journal, pp. 384, 429, 439.

[2] First session Fifty-ninth Congress, Record, p. 9195.

[3] First session Forty-ninth Congress, Record, pp. 7331, 7332.

[4] John G. Carlisle, of Kentucky, Speaker.

always be in order except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition."

It is claimed now by the other branch of the legislative department that there are no joint rules existing which regulate the proceedings on any subject between the two Houses. Formerly there was a joint rule regulating this matter of interchanging messages between the two Houses and granting conferences on disagreeing votes, but we seem now to have no such joint rules—at least none which can be enforced on the part of the House of Representatives.

So the Speaker decided that the consideration of the bill was not privileged simply because the Senate might choose in advance of a disagreement to ask for a conference.

6302. On January 15, 1897,[1] Mr. John F. Lacey, of Iowa, rising to a parliamentary inquiry, called the attention of the Speaker to the free-homes bill (H.R. 3656), which had been returned from the Senate with amendments and a request for a conference, and asked what course the bill would take.

The Speaker[2] said:

The bill, under the ruling of the Chair, would take the course of reference to the Committee on Public Lands. * * * The question has been passed upon once before in the history of the House, and in very much the same way. Mr. Carlisle, then Speaker, was at first inclined to think that the request of the Senate for a conference was sufficient to take the bill out of the operation of the rule of the House, and so ruled; but after reflecting upon the results of that ruling he came to a different conclusion, which he announced in a decision which will be found in the Record. The present occupant of the chair in the Fifty-first congress had originally the same idea that Mr. Carlisle had first entertained and was disposed to give progress to such bills;[3] but not having time to examine the question, he accompanied his decision with a statement that it was subject to further consideration. Upon further consideration it seemed very apparent that any other course than referring the bill to the House committee having charge of the matter would have the effect to give a preference to the Senate's request over the rights of Members of the House, which could not be tolerated.[4] Under our rule, House bills with Senate amendments are to be considered without reference when the Senate amendments, if they had originated in the House, would not have to be considered in Committee of the Whole on the state of the Union; but when they would have been subject to such consideration, then it is the duty of the Chair to refer the bill with the amendments to the appropriate committee. This is the rule of the House.

Now, this bill comes before us with amendments made by the Senate which change its nature to such an extent as, in the opinion of the Chair, to bring the bill within the operation of the rule of the House which requires that Senate amendments making appropriations which have not been considered by the House shall be referred to the Committee of the Whole House on the state of the Union. That being the case, this bill would be referred to the committee unless there is something in the request of the Senate for a conference to dispense with the reference. But the request of the Senate for a conference, or the request of either House for a conference, in order to be binding upon the other House, in courtesy, should indicate or should come after an absolute disagreement between the two Houses. Then is the time when either House can obtain a conference, but either can ask for it before. I suppose that the House might pass a bill and ask for a conference upon it without the bill having gone to the Senate at all, and so the Senate might pass a bill and ask a conference upon it without the House having received the bill; and if, in that event, the measure was not subject to the rule of the House, then the Senate would have a method by which they could be more prevalent in the House than the Members of the House themselves and dispense with a rule of the House; and that conclusion is, of course, one that would not be proper or suitable and could not be tolerated. The Senate may ask for a conference, but when the bill reaches the stage of disagreement, then that request takes effect upon the House, and the

[1] Second session Fifty-fourth Congress, Record, pp. 833, 834.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 342.

[4] See section 6301.

House will accede to the conference in pursuance of that courtesy which exists between the two House of a legislative body.

Before it reaches the stage of disagreement the House has its own methods of examining questions and should not abandon them, and by its Rule No. XX[1] has indicated its wish not to abandon them. Whatever under Rule XX goes to the Committee of the Whole must be referred to the committee having charge of the subject-matter.

The Chair has thought it worth while to state this view, although he has acted upon it at least once before without making any statement.

6303. A vote to adhere may not be accompanied by a request for a conference.

An instance of immediate adherence to a first disagreement.

On July 20, 1867,[2] the House had disagreed to an amendment of the Senate to a concurrent resolution of the House providing for an adjournment and had adhered to that disagreement.

This action being communicated to the Senate, the Senate had insisted on their amendment and asked for a committee of conference.

The action of the Senate being reported to the House, a motion was made that the House recede from its adherence and agree to the conference.

Thereupon Mr. Lewis W. Ross, of Illinois, rising to a parliamentary inquiry, asked if it would not be possible to adhere and have a committee of conference.

The Speaker[3] replied that such a procedure would be impossible.

6304. After one House has adhered the other may recede or ask a conference, which may be agreed to by the adhering House.—On September 17, 1789,[4] Mr. Abraham Baldwin, of Georgia, from the managers appointed on the part of this House to attend a conference with the Senate on the subject-matter of the amendment depending between the two Houses to the bill entitled "An act for allowing a compensation to the President and Vice-President of the United States," made a report; whereupon

Resolved, That this House doth adhere to their disagreement to the said amendment.

On September 21 a message was received from the Senate that they had receded from their amendment disagreed to by the House.

6305. September 25, 1789,[5] the Senate sent a message to the House saying that they agreed to all the amendments to the bill "An act to regulate the processes in the courts of the United States" except the first, and disagreed to that.

The House proceeded to reconsider the first amendment; whereupon it was

Resolved, That the House doth adhere to the said amendment.

The next day the Senate sent a message asking a conference, and announced that they had appointed conferees. The House thereupon agreed to the conference and appointed conferees.

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[1] For this rule see section 4796 of Vol. IV of this work.

[2] First session Fortieth Congress, Globe, pp. 757, 761; Journal, pp. 245, 246.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] First session First Congress, Journal, pp. 104, 105, 113, 114, 116 (Gales & Seaton ed.).

[5] First session First Congress, Journal, pp. 156, 157 (old ed.); 124, 125 (Gales & Seaton).

6306. On March 26, 1792,[1] a message was received from the Senate announcing that that body disagreed to the amendment proposed by the House to the bill "establishing a mint," etc.

The House proceeded to reconsider the amendment, and on the motion that the House doth recede from the said amendment it was determined in the negative—32 nays to 24 yeas. Then it was resolved that the House doth adhere.

The next day a message was received that the Senate had receded from their disagreement to the amendment.

6307. On April 28, 1794,[2] a message was received from the Senate that they adhered to their amendment disagreed to by the House to the first section of the bill to encourage the recruiting service.

Thereupon the House resolved that a conference be desired with the Senate on the subject-matter of the amendment adhered to.

The Senate on the next day sent a message that they agreed to the conference.

6308. Where one House votes to adhere to its attitude of disagreement, the other may vote to insist and ask a conference.

The House that votes to adhere does not ask a conference, but the other House may.

After an adherence by both Houses a conference is not asked.

A motion to recede has precedence of the motion to insist.

On January 22, 1834,[3] the House proceeded to the consideration of the message from the Senate informing the House that the Senate had adhered to their second amendment to the bill (No. 36) entitled "An act making appropriations, in part, for the support of the Government for the year 1834."

A motion was made by Mr. James K. Polk, of Tennessee, that the House do insist on its disagreement to the amendment, and ask a conference of the Senate on the subject-matter thereof.

Mr. Benjamin Hardin, of Kentucky, made the point that the Senate having adhered the House must recede or lose the bill.

The Speaker[4] ruled that Mr. Polk's motion was in order.

Mr. John Quincy Adams, of Massachusetts, said that, according to the practice of the last thirty years, when either House announced to the other its adherence, there could be no conference. They must either recede, or adhere and lose the bill; and this practice, he contended, had its advantages. He thought that the Senate would reject a request for a conference. Mr. Foot said the decision of the Chair was correct as to the parliamentary rule, but the practice had not prevailed in this country. The Senate had adhered in the first instance without insisting, and the door for conference was therefore closed. Thus the Senate had declared that there was something in the bill insulting to their dignity, and therefore not a subject for further consideration.

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[1] First session Second Congress, Journal, p. 152 (old ed.); 551 (Gales & Seaton).

[2] First session Third Congress, Journal, pp. 221, 222 (old ed.); 133 (Gales & Seaton).

[3] First session Twenty-third Congress, Journal, p. 229; Debates, pp. 2493, 2494, 2498.

[4] Andrew Stevenson, of Virginia, Speaker.

In response to a question from Mr. Edward Everett, of Massachusetts, the Speaker said he felt sure that the motion of the gentleman from Tennessee was in order. In the British Parliament it was once the usage not to confer after adherence, but that rule has been changed, and it was the practice to ask a conference after an adherence by both Houses. The practice here had been different. After an adherence by both Houses it had never been the usage to ask a conference. But when one House mounted up at once to an adherence, and the other did not, the other could ask a conference. This last course was taken in two prominent instances in regard to the Missouri restriction bill and the judiciary bill, as shown by reference to the Journals. It was for the House now to adhere (in which case there could be no conference), or to recede, or to insist and ask a conference.

In response to an inquiry by Mr. Daniel L. Barringer, of North Carolina, as to the result if both Houses granted the conference and no agreement resulted, the Speaker said that the clause of adhering, not insisting, being connected with that for the conference, would have the effect of placing the bill on the table of the Senate in case of refusal to compromise.

Mr. Adams read extracts from a work on the routine of work in the British Parliament relative to the results in the different stages of disagreement between both Houses in insisting and adhering to their original motions and asking a conference, which appeared to be at variance with the statement made by the Speaker.

The Speaker then maintained his own views, verifying it by the practice of Congress in its action on the judiciary bill, and by this practice he considered himself bound, although his own private opinion was in coincidence with that of the parliamentary routine read by the gentleman from Massachusetts, and had been so expressed on the judiciary bill referred to at the time of his predecessor in the chair. But, finding that a different practice had prevailed, he saw no adequate reason to deviate from it. There are three stages in the procedure—asking, insisting, and adhering. If the House insist and ask the conference, it can retain the bill in its possession, provided the conferees of the other House do [not?] agree to a compromise; but if it adheres, when it asks the conference, it must lose the bill, if there be no agreement between the compromisers, particularly as the Senate have in this instance advanced at once to adhere without adopting the intermediate step to insist.

In answer to a question from Mr. Richard H. Wilde, of Georgia, the Speaker said that the privileged question of a motion to recede had certainly the preference over the motion by the gentleman from Tennessee.

A motion was then made by Mr. Samuel A. Foot, of Connecticut, that the House do recede from its disagreement to the amendment; which motion taking precedence of that made to insist and ask a conference, the question was put that the House do agree thereto, and it was decided in the negative, 127 nays to 87 yeas.

The question then recurred on the motion made by Mr. Polk that the House do insist on its disagreement to the amendment, and ask a conference with the Senate on the subject-matter thereof.

And the question being divided, it was put on so much thereof as proposed to insist on the disagreement to the amendment, and decided in the negative. The question was then put on the second member of the motion, viz, that the House ask

a conference with the Senate on the subject-matter of the said amendment, and passed in the affirmative.[1]

6309. The Senate having disagreed to an amendment of the House, and the House having insisted, the Senate adhered, whereupon the House, for the first time, asked a conference, which was granted.

One House has by message reminded the other of its neglect to act on a conference report, but this was an occasion of criticism.

A conference report being made up but not acted on at the expiration of a Congress, the bill is lost.

On March 3, 1835,[2] the House was considering the Senate amendments to the fortifications appropriation bill, and agreed to the fourth amendment with an amendment providing for the appropriation of three million of dollars to be expended under the direction of the President for the defense of the country.

On the same day the Senate by message informed the House that they disagreed to the amendment of the House. The Senate, however, did not ask a conference.

The House insisted on their amendment, but asked no conference. The Senate, on motion of Mr. Daniel Webster, of Massachusetts, and after debate in which the proposed procedure was characterized as unduly harsh to the other House, voted to adhere to its disagreement.

The House insisted[3] on its amendment and asked a conference. The Senate agreed to this conference.

The conferees agreed upon a report, and the papers were taken by the House conferees to the House.[4] There a quorum had failed, so the report could not be presented. The Senate meanwhile were awaiting the papers in order to act on the report of their conferees, and on motion of Mr. Webster adopted this resolution:

> *Resolved,* That a message be sent to the honorable House of Representatives respectfully to remind the House of the report of the committee of conference appointed on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill respecting the fortifications of the United States.[5]

No action could be taken by the House, and the bill failed.

6310. When one House asks a conference after the other House has adhered, the adhering House may agree to the conference without reconsidering or receding from its vote to adhere.

After the previous question has been moved on a motion to adhere, a motion to recede may not be made.

On April 8, 1858,[6] the House proceeded to the consideration of the bill of the Senate (S. 161) entitled "An act for the admission of the State of Kansas into the

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[1] For action of the Senate see Sec. 6311 of this chapter.

[2] Second session Twenty-third Congress, Journal, pp. 509, 516, 517, 518, 530; Debates, pp. 738, 745, 1656, 1661.

[3] The Journal (p. 519) does not record the motion to insist, but the Debates (p. 1658) does record it, and, as it would be the natural motion, the Journal is probably in error.

[4] Under the rule the papers should have been taken first to the Senate.

[5] At the first session of the next Congress Mr. John Quincy Adams, of Massachusetts, criticised this message as an insult and discussed the propriety of it. (First session Twenty-fourth Congress, Debates, p. 2277, January 22, 1836.)

[6] First session Thirty-fifth Congress, Journal, pp. 604, 615, 620; Globe, pp. 1544, 1589, 1590.

Union," with the amendment of the House thereto, together with the message from the Senate announcing the disagreement of the Senate to the amendment.

Mr. John G. Montgomery, of Pennsylvania, moved that the House adhere to its amendment, and on this motion asked for the previous question.

Mr. James L. Seward, of Georgia, moved that the House recede, claiming that the latter motion had precedence of the motion to adhere.

The Speaker [1] said that the motion could not be entertained pending a demand for the previous question. If the motion to recede had been made before the call for the previous question, it would have taken precedence.[2]

The previous question was ordered, and the motion to adhere was agreed to, 119 yeas to 111 nays.

On April 13 a message was received announcing that the Senate insisted upon their disagreement to the amendment of the House, asked a conference on the disagreeing votes, and had appointed conferees.

Mr. Montgomery moved that the House insist upon its adherence to its amendment.

Mr. William H. English, of Indiana, moved to amend Mr. Montgomery's motion by striking out all after the word "House" and inserting:

> Agree to the conference proposed by the Senate on the subject-matter of the disagreeing votes of the two Houses on the said amendment, and that three managers be appointed to manage said conference on the part of the House of Representatives.[3]

Mr. English's motion having been entertained, Mr. Israel Washburn, jr., of Maine, made the point of order that it was not in order for the House to agree to the conference until it had reconsidered its vote to adhere.

The Speaker said that he would overrule the point of order, and would cite from the Journal of the Senate for January 20, 1834, a precedent of very high authority:

> A message from the House of Representatives, by Mr. Franklin, who informed the Senate that the House had agreed to the *first* and had *disagreed* to the *second amendment* to the bill making appropriations, in part, for the support of Government for the year 1834.
>
> On motion of Mr. Webster, the Senate proceeded to consider the foregoing message from the House, announcing the disagreement of the House to the *second* amendment to said bill; and on motion of Mr. Webster, the Senate *adhered* to the second amendment—yeas 34, nays 13—and the Secretary notified the House of the vote to *adhere*. Whereupon, January 24, the House asked a *conference*. The Senate referred the request for a conference to the Committee on Finance, and Mr. Webster made the following report: "The House requests a conference *after* the Senate has *adhered* to its amendments, to which the House had previously disagreed. It can not be denied that the Senate has a right to refuse such a *conference*, a case exactly similar having been disposed of by the Senate in 1826, as will be seen by the extracts from its Journal,[4] which are appended to this report. (Vide Senate Document, No. 57.) But the committee think it equally clear that such is not the usual and ordinary mode of proceeding in such cases. It is usually esteemed more respectful and more conducive to that good understanding and harmonious intercourse between the Houses which the public interest so strongly requires to accede to requests for conferences, even after an adhering vote.

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[1] James L. Orr, of South Carolina, Speaker.

[2] See section 6321–a of this volume.

[3] A question having been raised as to this amendment, the Speaker said (Globe, p. 1590) that he received it as an amendment, but he was not certain that it might not have been entertained as an independent proposition.

[4] See section 6313 of this chapter.

Such conferences have long been regarded as the established and approved mode of seeking to bring about a final concurrence of judgment in cases where the Houses have differed, and the committee think it unwise either to depart from the practice altogether or to abridge it, or to decline to conform to it, in cases such as those in which it has usually prevailed. It should only be, therefore, as the committee think, in instances of a very peculiar character that a free conference, invited by the House, should be declined by the Senate. The committee recommend the adoption of the following resolution:

"*Resolved*, That the Senate agree to the conference proposed by the House of Representatives on the subject-matter of the disagreeing votes of the two Houses on the said amendments, and that three managers be chosen to manage said conference on the part of the Senate."

The question was then taken on Mr. English's amendment, and there were 108 ayes and 108 noes. Thereupon the Speaker voted in the affirmative and the amendment was agreed to.

The motion of Mr. Montgomery as amended was then agreed to.

6311. The Senate having adhered to their amendment to a House bill, the House decided to ask a conference without the preliminary of voting to insist.

The Senate, after careful examination, thought it respectful to grant the House's request for a conference, although the Senate had already adhered.

In the early practice conference reports were considered in Committee of the Whole.

On January 22, 1834,[1] the House proceeded to the consideration of the message from the Senate informing, the House that the Senate had adhered to their second amendment[2] to the bill (H. R. 36) making appropriations, in part, for the support of the Government.

The House having declined to recede, Mr. James K. Polk, of Tennessee, moved that the House insist on its amendment and ask a conference. This motion was divided, and on the first branch, that the House insist on its amendment, the question was decided in the negative. On the second branch, that a conference be asked, the question was decided in the affirmative.[3]

It was then

Ordered, That five managers be appointed to conduct the said conference.

On January 23[4] the message from the House announcing this action and the names of the managers appointed by the House was received in the Senate, and on motion of Mr. Daniel Webster, of Massachusetts, was referred to the Committee on Finance. Immediately Mr. Webster, from that committee, submitted this report:

The House requests a conference after the Senate has adhered to its amendments, to which the House had previously disagreed. It can not be denied that the Senate has a right to refuse such a conference, a case exactly similar having been so disposed of by the Senate in 1826[5] * * * but the committee think it equally clear that it is not the usual and ordinary mode of proceeding in cases of

[1] First session Twenty-third Congress, House Journal, pp. 229, 231; Debates, pp. 336, 337, 2500.

[2] This amendment related to the use of the contingent fund of the two Houses to pay for printing, etc.

[3] For action of the House in this matter, see section 6308 of this chapter.

[4] Senate Journal, p. 112.

[6] See section 6313 of this chapter.

this kind. It is usually esteemed more respectful and more conducive to that good understanding and harmony of intercourse between the two Houses which the public interest so strongly requires to accede to requests for conferences, even after an adhering vote. Such conferences have long been regarded as the established and approved mode of seeking to bring about a final concurrence of judgment in cases where the Houses have differed, and the committee think it unwise either to depart from the practice altogether or to abridge it, or decline to conform to it, in cases such as those in which it has usually prevailed. It should only be, therefore, as the committee think, in instances of a very peculiar character that a free conference, invited by the House, should be declined by the Senate.

On January 24,[1] on motion of Mr. Webster:

Resolved, That the Senate agree to the proposed conference.

Thereupon three managers were appointed to represent the Senate.[2]

On January 27[3] the report of the committee of conference was considered in the Committee of the Whole House on the state of the Union, which recommended that the report be agreed to.

On January 30[4] the House nonconcurred in the recommendation of the Committee of the Whole; and on February 7[5] refused to reconsider this vote, and then receded from its disagreement to the Senate amendment.

6312. The managers of a conference having reported inability to agree, the House voted to adhere to its disagreement to the Senate amendment, whereupon the Senate receded from it.

When one House recedes from its amendment to a bill of the other, the bill is thereby passed, if there be no other point of difference as to the bill.

On February 28, 1907,[6] Mr. John A. T. Hull, of Iowa, submitted this report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 23551) making appropriation for the support of the Army for the fiscal year ending June 30, 1908, having met, after full and free conference have agreed to recommend and do recommend[7] to their respective Houses as follows:

On amendment numbered 25 the committee of conference has been unable to agree.

F. E. WARREN,
J. B. FORAKER,
JO. C. S. BLACKBURN,
Managers on the part of the Senate.
J. A. T. HULL,
RICHARD WAYNE PARKER,
JAMES HAY,
Managers on the part of the House.

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[1] Senate Journal, p. 113. The Debates (p. 337) speak of four managers, but this was an error, undoubtedly.

[2] Debates, p. 337, indicate that four were suggested, but it is probably an error.

[3] House Journal, p. 256.

[4] House Journal, p. 264.

[5] House Journal, p. 290.

[6] Second session Fifty-ninth Congress, Record, pp. 4289, 4290.

[7] In this case the form in use where the managers actually agree on recommendations is taken; but inasmuch as the managers actually do not recommend anything, a more accurate form would be "after full and free conference have agreed to report to their respective Houses as follows."

This was a case wherein, after a partial conference report had been agreed to by both Houses, the House had receded from its disagreement to one remaining amendment and concurred therein, while as to the other (amendment No. 25) it had voted to further insist on its disagreement and ask a conference. The Senate had then further insisted on its amendment and agreed to the conference. The managers being unable to agree, reported the fact.

After the report had been read,[1] Mr. Hull moved that the House adhere to its disagreement to amendment of the Senate numbered 25.

The motion was agreed to.

On the same day, in the Senate,[2] a motion that the Senate recede from its amendment was agreed to.

And the effect of this was to pass the bill, without further action on the part of the House.

6313. In an exceptional instance, wherein the House had disagreed to a Senate amendment to a House bill, the Senate thereupon adhered at once to its amendment and then declined the request of the House for a conference.

Instance of a request for a conference by one House after the other had adhered.

Instances of the loss of bills by the adherence of both Houses to attitudes of disagreement over amendments.

On April 28, 1826,[3] the House considered and disagreed to a Senate amendment to a bill (H. R. 16) to further amend the judicial system of the United States. The disagreement was moved by Mr. Daniel Webster, of Massachusetts, and carried by a vote of 110 to 60. On May 3 a message was received from the Senate informing the House that they adhered to their amendment. On May 4 the House considered the message, and after debate voted to refer it to the Judiciary Committee. In the debate Mr. Webster spoke of the Senate's action as unusual and opposed to the common and, as it seemed to him, the respectful practice. Mr. Andrew Stevenson, of Virginia, opposed this view of Mr. Webster and said it seemed that the Senate merely wished to indicate that a conference would be a waste of time. He saw no disrespect toward the House. In reply, Mr. Webster quoted from the Senate's own text-book, Jefferson's Manual, to show that to adhere without offering a conference was not respectful to the other body.[4] Hatsell also contained the same doctrine.

On May 5 the Judiciary Committee reported, recommending that a conference be asked of the Senate and that managers be appointed. The House concurred in the recommendations of the committee, and as managers Messrs. Webster, Edward, Livingston, of Louisiana, and John C. Wright, of Ohio, were appointed.

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[1] The House does not act on a report of mere failure to agree; but the Senate does, although it is difficult to see what there is requiring action.

[2] Record, p. 4247.

[3] First session Nineteenth Congress, Journal, pp. 485, 510, 513, 517, 541, 545, 550, 568, 576, 590; Debates, pp. 2601, 2603.

[4] See section 6163 of this volume.

In the debate before this action was taken Mr. Stevenson opposed the request for a conference and maintained that the course of the Senate was neither novel nor unprecedented. During the second session of the Fifteenth Congress the Senate amended the bill admitting Missouri with a restriction as to slavery.[1] The House disagreed to the amendment, and the Senate adhered without first insisting. There was another precedent as late as 1824, when the Senate adhered without insisting on an amendment to the bill concerning invalid pensions. Mr. Webster admitted the Missouri precedent, but contended that the proposition to ask a conference was parliamentary and would give the Senate an opportunity to recede from their adherence.

On May 10, 1826,[2] the Secretary of the Senate communicated to the House the information that the Senate declined the conference asked by the House on the subject-matter of the disagreeing votes of the two Houses on the amendments of the Senate to the bill entitled "An act further to amend the judicial system of the United States;" and, in obedience to an order of the Senate, delivered in at the Clerk's table a paper in the words following:

IN THE SENATE OF THE UNITED STATES, *May 8, 1826.*

Mr. Van Buren, from the Judiciary Committee, on the message from the House of Representatives, proposing a conference on the subject of the disagreeing votes of the two Houses on the amendment proposed by the Senate to the bill entitled "An act further to amend the judicial system of the United States" made the following report:

"That, in the opinion of the committee, the condition of the question and the circumstances of the case render a concurrence in the proposed conference inexpedient. They will, in deference to the high source from which the invitation has proceeded, make a brief explanation of the reasons which have led to this conclusion.

"The amendment proposed by the Senate was freely discussed, and adopted with but four dissenting voices. Upon being advised of the disagreement of the House of Representatives, the question was distinctly presented to the Senate whether it would insist and ask a conference or whether it would at once adhere and thus probably, although not necessarily, avoid one. Upon full discussion and careful consideration of the subject, the Senate, with but twelve dissenting voices, decided to adhere and thereby prevent the unprofitable formality of a conference at this advanced period of the session. That decision was within the rules established for the government of the two Houses, consistent with usage on other and important occasions, and (it can not be necessary to say) was made without the slightest disrespect to the House of Representatives. The committee believe that the same unanimity with which the question of adherence was originally determined in the Senate still exists. The appointment of conferees would be a virtual waiver of the vote of adherence, or, if otherwise considered, would manifest a disposition to meet the conferees of the other House upon unequal terms. Assuming that the Senate is opposed to a waiver of the vote of adherence and believing that the appointment of con-

[1] On March 2, 1819, the House considered and disagreed to a Senate amendment to the House bill for the admission of Missouri as a State. This amendment proposed to strike out a section prohibiting the further introduction of slavery or involuntary servitude into the new State. The House disagreed to the amendment by a vote of 78 to 76. The House did not ask a conference, but there was no special significance in this, as at that time conferences were not in so much favor as at present. The same day the Senate sent a message that they adhered to their amendment, and the House, on motion of Mr. John W. Taylor, of New York, voted to adhere also. So the bill was lost. The Annals do not show any debate on the parliamentary question involved. It was in the last hours of the Congress that this action took place. (Second session Fifteenth Congress, Journal, pp. 335, 338; Annals, pp. 280, 1436. Bills have quite frequently been lost by adherence of both Houses; see Cong. Globe, second session Twenty-fourth Congress, p. 219; Journal, p. 605; see also sections 6233–6240 of this volume.)

[2] First session Nineteenth Congress, Journal, pp. 541, 542.

ferees without it might justly be considered objectionable by the House of Representatives, the committee recommend the adoption of the following resolution:

"'*Resolved,* That, in the opinion of the Senate, no good will result from a conference upon the subject of the disagreeing votes of the two Houses on the amendment proposed by the Senate to the bill entitled "An act further to amend the judicial system of the United States," and the Senate does therefore, decline the same; and further, that a copy of the annexed report be sent to the House of Representatives as explanatory of the views of the Senate.'"

IN THE SENATE OF THE UNITED STATES, *May 10, 1826.*

The Senate proceeded to consider the foregoing report, and

Resolved, That they concur therein.

Attest.

WALTER LOWRIE, *Secretary.*

This message was referred to the Committee on the Judiciary, and on May 12[1] Mr. Daniel Webster, of Massachusetts, reported it back with the recommendation that the House adhere to its disagreement.

On May 15,[2] in an effort to save the bill, Mr. Webster moved its recommittal. This motion was decided in the negative, and the bill was then laid on the table.

6314. Instance wherein the House respectfully declined a conference asked by the Senate.—On March 2, 1905,[3] the following message was received from the Senate:

The message also announced that the Senate had disagreed to the amendment of the House of Representatives to the bill (S. 5108) to amend an act for the prevention of smoke in the District of Columbia, and for other purposes, approved February 2, 1899; had asked a conference with the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. Gallinger, Mr. Stewart, and Mr. Martin as the conferees on the part of the Senate.

Soon after, the bill being taken up, Mr. William S. Cowherd, of Missouri, moved that the House adhere to its amendment and respectfully decline a conference.

This motion was agreed to.

On March 3,[4] when the message was laid before the Senate, Mr. Jacob S. Gallinger, of New Hampshire, said:

That relates to a matter about which there was a special agreement reached in advance that the House bill should be accepted. It is with reference to the smoke law, and is an amendment prepared by the Commissioners, which puts the matter on trial for a year, under certain restrictions. In my absence action was taken upon the bill and it was sent to the House. They declined a conference, I apprehend, for the reason that there was a special agreement that the Senate would accept the amendment.

Thereupon, on motion of Mr. Gallinger, the Senate receded from their disagreement and agreed to the House amendment.

6315. An instance wherein the Senate disregarded a request for a conference and voted to adhere.—On July 18, 1867,[5] the House disagreed to the amendment of the Senate to the bill (H. R. 108) for the relief of certain volunteer soldiers and sailors, and requested a conference with the Senate.

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[1] Journal, p. 550; Debates, pp. 2627, 2628.

[2] Journal, p. 568; Debates, p. 2632.

[3] Third session Fifty-eighth Congress, Record, pp. 3915, 3924.

[4] Record, p. 3937.

[5] First session Fortieth Congress, Journal, pp. 219, 221; Globe, pp. 677, 678, 695, 698.

The Senate, on receipt of this message, voted to adhere to their amendment.

Thereupon the House receded from their disagreement and agreed to the amendment.

The record of debate does not indicate that this procedure was made the subject of consideration.

6316. Sometimes one House disregards the request of the other for a conference and recedes from its disagreement, thereby rendering a conference unnecessary.—On February 25, 1825,[1] the House was considering the bill making appropriations for certain fortifications of the United States for the year 1825, and it was:

Resolved, That this House do insist on their disagreement to the third amendment of the Senate to the bill aforesaid, and that a conference be asked with the Senate upon the subject-matter of the said amendment.

Conferees were then appointed.

On February 26 a message from the Senate announced that they had receded from their amendment.

6317. On May 16, 1866[2] the House disagreed to the amendment of the Senate to the bill (H. R. 563) to regulate the time and fix the place for holding the circuit court of the United States in the district of Virginia. The House also voted to ask a conference with the Senate on the disagreeing votes of the two Houses, and appointed conferees.

On May 18 the message of the House was taken up in the Senate, and, on motion of Mr. Lyman Trumbull, of Illinois, the Senate voted to recede from its amendment. The effect of this was to pass the bill.

6318. On March 3, 1877,[3] after conferences had been unable to agree, a message was received from the Senate announcing that they further insisted, and asked for a further conference. The House, instead of agreeing to the conference, receded from its disagreement, so passing the bill.

6319. Instance wherein the Senate receded from its amendment to a House bill, although it had insisted and asked a conference, to which the House had agreed.—On June 23, 1906,[4] in the Senate, Mr. Eugene Hale, of Maine, submitted a conference report on the naval appropriation bill (H. R. 18750). This report concluded all matters of difference except the Senate amendment No. 13. The report was agreed upon by the Senate. Then the Senate voted to further insist on the amendment No.13 and ask a conference with the House, and Messrs. Hale; George C. Perkins, of California, and Benjamin R. Tillman, of South Carolina, were appointed conferees.

June 25[5] the conference report was also agreed to by the House; and thereupon the House voted to further insist on the disagreement to the Senate amendment No. 13 and to agree to the conference asked by the Senate, and Messrs. George E. Foss, of Illinois; Henry C. Loudenslager, of New Jersey, and Adolph Meyer, of Louisiana, were appointed conferees.

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[1] Second session Eighteenth Congress, Journal, pp. 273, 278.

[2] First session Thirty-ninth Congress, Journal, pp. 711, 720.

[3] Second session Forty-fourth Congress, Journal, p. 677.

[4] First session Fifty-ninth Congress,

[5] Record, pp. 9027–9029. Record, pp. 9147–9149, 9152.

On the same day[1] a message announcing this action of the House and transmitting the papers was received in the Senate. Thus the papers went into possession of the Senate managers of the conference.

But it does not appear that the managers made any report, and it is certain that none was submitted to either House.

On the contrary, on June 26[2] Mr. Hale, in the Senate, presented the papers and moved that the Senate recede from its amendment No. 13.

This motion was agreed to, whereat Mr. Hale said:

> That passes the bill.

And on the same day[3] a message was received in the House announcing that the Senate had receded from its amendment No. 13 to the bill (H. R. 18750) making appropriations for the naval service for the fiscal year ending June 30, 1907, and for other purposes.

And thereafter, without further action, the bill was enrolled for signing and transmission to the President.

6320. The failure of a conference does not prevent either House taking such independent action as may be necessary to pass a bill.—On March 3, 1853[4] the House disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the Senate amendments to the civil and diplomatic appropriation bill. A new conference was had, and the conferees of this conference reported an inability to agree.

Finally, in the closing hours of the session, Mr. Graham N. Fitch, of Indiana, moved that the rules be suspended, so as to enable the House to take up and consider the questions of difference between the two Houses on this bill. The rules being suspended, Mr. Willard P. Hall, of Missouri, submitted this resolution:

> *Resolved,* That the House adopt the recommendations contained in the report of the first committee of conference on the disagreeing votes of the two Houses on the bill of the House (No. 337) making appropriation for the civil and diplomatic expenses of the Government for the year ending the 30th of June, 1854, and that the said bill be amended accordingly.

Mr. Robert Toombs, of Georgia, made the point of order that the resolution was not in order, as it was the same proposition heretofore submitted in the form of a report from the committee of conference and disagreed to by the House.

The Speaker[5] overruled the point of order.

Mr. Toombs having appealed, the appeal was laid on the table.

The resolution was agreed to, and the bill became a law.

6321. Settlement of disagreement by conference.

The stage of disagreement not being reached, the motion to concur in an amendment of the other House with an amendment has precedence of the simple motion to concur.

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[1] Record, p. 9087.

[2] Record, p. 9246.

[3] Record, p. 9275.

[4] Second session Thirty-second Congress, Journal, pp. 393, 404, 407, 409, 430; Globe, pp. 1156, 1157.

[5] Linn Boyd, of Kentucky, Speaker.

One House may amend a bill of the other by striking out all after the enacting clause and inserting a new text.

The act of the Government in intervening to stop the war in Cuba was authorized by a joint resolution.

On April 18, 1898,[1] a message was received from the Senate announcing that that body had passed the joint resolution of the House (H. Res. 233) authorizing and directing the President of the United States to intervene and stop the war in Cuba, etc., with an amendment striking out all after the resolving clause and inserting a new resolution, of which the first clause was as follows:

First. That the people of the island of Cuba are, and of right ought to be, free and independent, and that the Government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island.

The resolution coming before the House, Mr. Nelson Dingley, of Maine, offered this motion:

I move to concur in the Senate amendments to House joint resolution No. 233 with an amendment striking out in the first paragraph the words "are, and," and also the words "and that the Government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island;" so that the first paragraph of said Senate amendment will read as follows:

"First. That the people of the island of Cuba of right ought to be free and independent."

Also amend the title of said joint resolution by striking out the words "and Republic of Cuba."

Mr. Dingley demanded the, previous question on his motion.

Mr. Joseph W. Bailey, of Texas, as a parliamentary inquiry, asked whether, pending the motion to concur with an amendment, it would be in order to make the motion simply to concur.

The Speaker[2] said:

The Chair thinks that motion would be in order, but the pending motion precedes it.

Mr. Dingley's motion to concur with an amendment was agreed to—178 yeas to 156 nays.

6321–a. Settlement of disagreement by conference continued.

Form of message by which one House announces to the other the fact of its disagreement to an amendment of the other House to one of its bills.

Although the previous question may have been demanded on a motion to insist, it has been held that a motion to recede and concur might be admitted to precedence.[3]

Later on the same legislative day a message from the Senate was received and laid before the House by the Speaker, announcing this action by the Senate:

Resolved, That the Senate disagrees to the amendment of the House to the amendments of the Senate to joint resolution (H. Res. 233) authorizing and directing the President of the United States to intervene to stop the war in Cuba, and for the purpose of establishing a stable and independent government of the people therein.

Mr. Dingley at once moved that the House insist on its amendment to the Senate amendment and ask for a conference.

On this motion Mr. Dingley demanded the previous question.

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[1] Second session Fifty-fifth Congress, Record, pp. 4041, 4056, 4060, 4062–4064.

[2] Thomas B. Reed, of Maine, Speaker.

[3] See also section 6208 of this volume.

Mr. Bailey, rising to a parliamentary inquiry, asked if a motion to recede from the House amendment and concur in the Senate amendment would be in order, citing at the same time a statement of the Manual and Digest that a motion to recede had precedence, even though the previous question might have been demanded on the motion to insist.[1]

The Speaker decided that the motion to recede would be in order.

Thereupon Mr. Jacob H. Bromwell, of Ohio, moved that the House, recede from its disagreement to the Senate amendment and concur therein.

On this question there were yeas 146, nays 172, and the motion was disagreed to.

The motion of Mr. Dingley to insist and ask a conference was then agreed to.

6322. Settlement of disagreement by conference continued.

One House having taken action on an amendment of the other, informs the latter House by message.

Form of report by which the managers of a conference announce to their respective Houses their inability to agree.

The report of managers of a conference goes first to one House and then to the other, neither House acting until it is in possession of the papers.

A conference having failed to reach a result, the two Houses successively, as they come into possession of the papers, act on the amendments in disagreement, further insisting or receding and concurring.

The conferees having been appointed and the Senate having been informed by message of the action of the House, a message was presently received from the Senate announcing that the Senate "had insisted upon its disagreement to the amendments of the House to the amendments of the Senate," and had agreed to the conference asked by the House.

The conferees having met, reported as follows, the report going first to the Senate for action:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House of Representatives to the joint resolution (H. Res. 233) for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect, having met, after full and free conference report to their respective Houses as follows:

That they have been unable to agree.

ROBERT ADAMS, Jr.,
JOEL P. HEATWOLE,
HUGH A. DINSMORE,
Managers on the part of the House of Representatives.
C. K. DAVIS,
J. B. FORAKER,
JNO. T. MORGAN,
Managers on the part of the Senate.

[1] The precedent cited in this case was Journal, first session Twenty-ninth Congress, pp. 695, 697. It does not touch upon the previous question and the Manual and Digest was evidently in error. Mr. Speaker Reed felt that the principle set forth was anomalous, but felt constrained to regard it as settled, not having authorities at hand to disprove the statement of the Manual.

A message from the Senate announcing that the Senate further insisted upon its disagreement to the amendments of the House to the amendments of the Senate was received before this report was presented to the House by Mr. Robert Adams, jr., of Pennsylvania.

The report having been read, Mr. Adams moved that the House further insist on its amendments to the amendments of the Senate and ask for a further conference.

On this motion he called for the previous question.

Mr. Bromwell thereupon moved that the House recede and concur, and this motion was entertained and put, resulting in yeas 145, nays 177.

So the motion was rejected, and the question recurring upon the motion of Mr. Adams , it was agreed to.

6323. Settlement of disagreement by conference, continued.

At a second conference the managers of the first are usually reappointed.

Form of conference report wherein one House recedes from certain amendments while the other recedes from its disagreement to certain others.

Form of conference report wherein differences as to an amendment are settled by amending it.

A conference report is valid if signed by two of the three managers of each House.

A conference report must be accepted or rejected in its entirety; and while it is pending no motion to deal with individual amendments in disagreement is in order.

The Speaker reappointed the same conferees, and a message was sent to the Senate, who presently in return sent the message that the Senate further insisted on its disagreement to the amendments of the House to the amendments of the Senate, and agreed to the further conference, etc.

This conference agreed to this report, which was carried first to the Senate:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House of Representatives to the joint resolution (H. Res. 233) for the recognition of the independence of the people and Republic of Cuba, demanding that the Government of Spain relinquish its authority and government in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment numbered 1, in line 1, Striking out the words "are, and."

That the Senate recede from its disagreement to the amendment of the House numbered 2, in line 2, to strike out all after the word "independent," to and including the word "island," in line 4; and agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the resolution, omitting in line 2 thereof the words "and republic," and agree to the same.

ROBERT ADAMS, JR.,
JOEL P. HEATWOLE,
Managers on the part of the House of Representatives.
C. K. DAVIS,
J. B. FORAKER,
Managers on the part of the Senate.

The Senate having agreed to this report, sent a message announcing the fact to the House. This message having been received, Mr. Adam presented the report to the House, moved its adoption, and on that motion demanded the previous question, which was ordered.

As the vote was about to be taken, Mr. Benton McMillin, of Tennessee, asked as a parliamentary inquiry if it would be in order at this stage to move that the House recede from its amendment to the Senate resolution and concur in the same.

The Speaker replied that it would not be in order, because a conference report was to be accepted or rejected in its entirety.

The report was then agreed to, yeas 306, nays 6, and thus the matter was finally concluded.

6324. Instance of prolonged disagreement resulting in the loss of a bill.

Under the former practice the House disagreeing to an amendment of the other did not ask a conference, leaving that to the other House if it should decide to insist.

It was formerly the practice, when a conference failed to produce a result, to appoint new managers at the next conference.

The motions to recede, insist, and adhere have precedence in the order named without regard to the order in which they may be offered.

On August 11, 1856,[1] the House began the consideration of the bill (H. R. 153) making appropriations for the support of the Army, which had been returned from the Senate with an amendment striking out a section which prohibited the use of troops of the United States to enforce the acts of the legislature of Kansas, etc.

The House concurred in the amendment with an amendment.

On August 16 a message from the Senate announced that that body disagreed to the amendment of the House to the Senate amendment.

Thereupon the House insisted upon its amendment and asked for a conference, appointing conferees.

The Senate in turn insisted on their disagreement, agreed to the conference, and appointed their conferees.

On August 16 the House conferees reported that the conference had resulted in disagreement, and Mr. James L. Orr, of South Carolina, moved that another conference be asked, and that the House conferees be instructed to recede. This motion was disagreed to.

Then, a message being received from the Senate that they further insisted and asked a further conference, the House also voted to further insist and agreed to the conference. In this case the conferees of both the House and Senate were new Members, no one of them having been a member of the former conference.[2]

This conference also resulted in disagreement, and the Senate sent a message that they further insisted on their disagreement, and that they had discharged their committee of conference.

Thereupon the House ordered that its conferees be discharged from the further consideration of the subject.

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[1] First session Thirty-fourth Congress, Journal, pp. 1427, 1484, 1516, 1518, 1600, 1602; Globe, p. 2037.

[2] According to the present practice conferees are usually reappointed.

Thereupon Mr. Joshua R. Giddings, of Ohio, moved that the House adhere to its amendment of the amendment of the Senate.

After debate, Mr. Charles J. Faulkner, of Virginia, moved that the House recede and agree to the Senate amendment.

Pending this, Mr. Lewis D. Campbell, of Ohio, moved that the House further insist upon their amendment to the Senate's amendment, and ask a further conference with the Senate.

The motion to recede, being put first as having precedence, was decided in the negative, 86 nays to 82 yeas.

The question was next put on the motion of Mr. Campbell, that the House further insist, etc., and it was decided in the affirmative.

6325. Instance of prolonged disagreement resulting in the loss of a bill, continued.

A motion to request a conference on disagreeing votes of the two Houses having been rejected, may not be repeated at the same stage of the question, even though a recess of Congress may have intervened.

The House having adhered, the Senate insisted and asked a conference, whereupon the House insisted on its adherence and agreed to the conference.

Instance of the loss of an appropriation bill through adherence of both Houses to their attitudes of disagreement over a section containing legislation.

The hour for final adjournment arriving in the midst of a call of the roll, the Speaker directed the call to be suspended and declared the House adjourned sine die.

On August 18 the two Houses were still in disagreement, when the hour for final adjournment arrived. Mr. Campbell had moved that the House further insist on their amendment and agree to the conference asked by the Senate, and this motion had been disagreed to, 103 nays to 98 yeas.

Mr. John C. Kunkel, of Pennsylvania, moved soon after that the House ask a further conference with the Senate.

The Speaker [1] decided that the motion was not in order, inasmuch as a similar question had just been voted on and rejected.

From this decision Mr. Kunkel appealed, and during the call of the yeas and nays the hour for final adjournment arrived. The Speaker directed the call to be suspended and declared the House adjourned sine die.

On August 21, 1856, three days later, Congress assembled in special session, and the joint rule prohibiting the resumption of unfinished business until after six days [2] being suspended so far as it affected the Army appropriation bill, the question on August 23 recurred in the House on Mr. Kunkel's appeal, which he withdrew.

A motion was then made to further insist and agree to the conference, but the Chair ruled it not to be in order, as such a motion had been voted down at the last proceeding on the bill at the last session.[3] Then a motion to reconsider that former

[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] This joint rule no longer exists.

[3] Second session Thirty-fourth Congress, Globe, p. 25.

vote was offered, but the Speaker[1] ruled it out on the ground that more than two days had elapsed.

A motion to recede, made by Mr. Howell Cobb, of Georgia, was disagreed to, and then Mr. Israel Washburn, jr., of Maine, moved to adhere. This motion was decided in the affirmative—yeas 98, nays 97.

On August 27 a message from the Senate announced that they further insisted and asked a conference.

Thereupon, on motion of Mr. Lewis D. Campbell, by unanimous consent,

Ordered, That the House insist upon its adherence to its amendment to the amendment of the Senate to the said bill of the House No. 153, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

The committees for this conference were new, although one or two members had been on the committees of the two preceding conferences.

This conference failed also, and on August 28, 1856, Mr. Campbell moved that the House further insist upon its adherence to its amendment.

Mr. Alexander H. Stephens, of Georgia, moved that the House recede from its vote insisting upon its adherence. This motion, which had precedence, was decided in the negative.

Mr. Campbell's motion was then decided in the affirmative.

On August 29 the Secretary of the Senate delivered this message in the House:

Mr. SPEAKER: The Senate adhere to their disagreement to the amendment of this House to the amendment of the Senate to the bill H. R. 153, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1857," and also adhere to their said amendment to the said bill.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

Chapter CXXXIII.

APPOINTMENT OF MANAGERS OF A CONFERENCE.

1. Speaker appoints. Sections 6326, 6327.
2. Number of managers determined by each House. Sections 6328–6333.[1]
3. Conference managers constitute distinct committees. Sections 6334, 6335.
4. Represent attitude of majority of House. Sections 6336–6340.[2]
5. As to reappointing managers at second conference. Sections 6341–6368.
6. Selection of managers when House overrules committee in charge of the bill. Sections 6369–6371.
7. Changes of managers. Sections 6372–6378.

6326. In the House the Managers of a conference are appointed by the Speaker.—Section 2 of Rule X[3] provides that the Speaker—

* * * shall * * * appoint all * * * conference committees which shall be ordered by the House from time to time.[4]

6327. In appointing managers of a conference the Speaker usually consults the Members in charge of the measure.—On June 14, 1880,[5] Mr. Speaker Randall said that it was the usual custom for him to consult the gentleman in charge of the bill in the appointment of conference committees.

6328. Each House determines for itself the number of its managers at a conference.

In the earlier practice reports of inability of managers of a conference to agree were made verbally, and conference reports were not signed.

On May 19, 1836,[6] a message from the Senate announced that they insisted on their third amendment to the bill (H. R. 264) authorizing the President to accept the service of volunteers, etc., which had been disagreed to by the House, and asked a conference on the subject-matter of the disagreeing vote of the two Houses on the said amendment. Although the message, in accordance with the usage of that

[1] See also section 6405 of this volume.

[2] Senate discussion as to principles governing appointment of. (Sec. 6529 of this volume.) Minority portion of the managers may not report. (Sec. 6406 of this volume.)

[3] For full form and history of this rule, see section 4470 of Volume IV of this work.

[4] In the Senate the Presiding Officer appoints managers only with permission of the Senate. See section 6405 of this volume for illustration of Senate practice.

[5] Second session Forty-sixth Congress, Record, p. 4536.

[6] First session Twenty-fourth Congress, Journal, pp. 854, 855, 859, 860, 861. Debates, pp. 3764, 3788.

time, did not announce the conferees, the Debates[1] show that the Senate had appointed Messrs. Calhoun, King of Alabama, and Buchanan managers on their part.

The House, on the same day, agreed to the conference and appointed Messrs. Lewis, McKay, Ripley, Carr, and Coles managers.

(It will be noticed that the House managers are five and the Senate managers three.)

On May 20, Mr. Lewis, for the House managers, reported verbally that the managers on the part of the House had met the managers on the part of the Senate and after conferring freely upon the subject-matter of the disagreeing vote had separated without coming to any agreement.

Mr. Lewis further reported that he was instructed by the managers on the part of the House to move that the House insist on its disagreement to the said third amendment of the Senate; which motion he made accordingly.

The House voted to insist and the Clerk was instructed to inform the Senate of this action.

Very soon thereafter a message from the Senate announced that they insisted on their amendment and asked a conference. Although the message did not announce it, they had appointed three conferees, two of them being members of the preceding conference.

The House agreed to the conference and five conferees were appointed, all but one of them being members of the preceding conference.

On May 21 Mr. Lewis, from the House managers, made a report embodying in full the whole agreement between the two Houses. This report, which appears in full in the Journal, was agreed to as a whole and the Clerk was ordered to acquaint the Senate with this fact.

This report was not signed, even by the conferees on the part of the House.

6329. On February 27, 1883,[2] the Senate received a message stating that the House had nonconcurred in the amendments of the Senate to the bill (H. R. 5538) to reduce internal-revenue taxation (to which the Senate had appended a general tariff bill), and asked for a conference to be composed on the part of the House of five Members.

A question was at once raised that the House had determined on an unusual number of conferees, and that it had not named its conferees and notified the Senate of them, as was usual.

In reply it was urged that the House did not wish to name its conferees until the Senate had agreed to name a like number. It was also urged that the action of the House in naming five had no binding influence on the Senate, which might name three or ten, since conferees voted by Houses and not per capita.

The Senate finally agreed to the conference and appointed five conferees.

6330. On March 2, 1857,[3] the conferees on the tariff bill were three in number—-Senators R. M. T. Hunter, of Virginia; William H. Seward, of New York; S. A. Douglas, of Illinois; Members of the House Lewis D. Campbell, of Ohio; John Letcher, of Virginia; Alexander De Witt, of Massachusetts.

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[1] Debates, pp. 1463, 1503–1511.

[2] Second session Forty-seventh Congress, Record, pp. 3328–3334.

[3] Third session Thirty-fourth Congress, Journal, p. 609.

6331. On important measures one House has appointed five conferees, although the other named but three.—On January 13, 1905,[1] the House considered the Senate amendments to the bill (H. R. 14623) to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an act approved March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an act approved March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes.

The Senate amendments were disagreed to, a conference was asked, and the Speaker[2] appointed five conferees.

On January 14[3] the action of the House was communicated by message to the Senate, and on the same day the Senate agreed to the conference. Thereupon the Presiding Officer appointed three conferees.

6332. On March 2, 1903[4] in the Senate, the President pro tempore laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 12199) to regulate the immigration of aliens into the United States, and asking for a conference with the Senate on the disagreeing votes of the two Houses thereon.

The Senate voted to insist on its amendments and agree to the conference.

Thereupon Mr. Boise Penrose, of Pennsylvania, asked that the President pro tempore be authorized to appoint five conferees.

A question arose, the number of the House conferees being three; but the President pro tempore[5] recalled precedents where a larger number than three had been appointed, and said:

> There is no rule which limits the number of conferees to be appointed by either House.

On the same day, March 2[6] (legislative day of February 26 in the House), the report was presented in the House, signed by two of the three House conferees and by the five Senate conferees.

6333. On June 27, 1902,[7] a message from the Senate announced that they had disagreed to the amendment of the House to the bill (S. 2295) temporarily to provide for the affairs of civil government in the Philippine Islands, asked a conference with the House, and had appointed as conferees Messrs. Henry Cabot Lodge, of Massachusetts; William B. Allison, of Iowa; and Charles A. Culberson, of Texas.

The House thereupon insisted on its amendments and agreed to the conference.

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[1] Third session Fifty-eighth Congress, Journal, p.—; Record, pp. 805, 806.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Record, p. 826.

[4] Second session Fifty-seventh Congress, Record, p. 2868.

[5] William P. Frye, of Maine, President pro tempore.

[6] Journal, p. 339; Record, p. 2949.

[7] First session Fifty-seventh Congress, Journal, pp. 859, 860; Record, pp. 7524, 7525.

The Speaker[1] thereupon appointed as conferees Messrs. Henry A. Cooper, of Wisconsin; Sereno E. Payne, of New York; Edgar D. Crumpacker, of Indiana; William A. Jones, of Virginia; and John W. Maddox, of Georgia. Three of these managers represented the majority side of the House and two the minority.

6334. The conference managers from the two Houses constitute practically two distinct committees, each of which acts by a majority.

Instances wherein managers of a conference, in reporting their inability to agree, submitted recommendations to their respective Houses.

On August 1, 1846,[2] the bill making appropriations for the support of the Army for the fiscal year ending June 30, 1847, was received from the Senate, with a message setting forth that the conferees on the part of the Senate had met the conferees on the part of the House, and, after free and full discussion on the subject of said disagreeing votes, had been unable to come to an agreement. The conferees had, therefore, recommended to the Senate to adhere to its amendments disagreed to by the House, and to its disagreement to the amendment of the House to the amendment of the Senate; and this report the Secretary notified the House that the Senate had agreed to.

Mr. James J. McKay, of North Carolina, from the managers on the part of the House at the conference, then reported that they had been unable to come to any agreement with the managers on the part of the Senate, and recommended that the House further insist on its amendment to the first amendment of the Senate, and also insist upon its disagreement to the remaining amendment of the Senate, and ask another free conference on the subject of the former conference.

Mr. George Ashmun, of Massachusetts, said he wished to be understood that this was not the report of the whole number of managers on the part of the House; it was the report of the majority only.[3]

6335. The members of a conference committee are properly called "Managers."—On June 26, 1876,[4] the Journal was corrected in its reference to the managers of a conference as the "conferees." The term insisted on was "managers."[5]

6336. The majority of the managers of a conference should represent the attitude of the majority of the House on the disagreements in issue.

Managers of a conference are usually three in number, but the House or the Speaker sometimes varies the number.

In the modern practice managers of a conference are usually selected from the standing committee which reported the bill over which the disagreement arises.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Twenty-ninth Congress, Globe, p. 1179.

[3] It is more usual, under the present practice, for the conferees simply to report that they have been unable to agree, without making recommendations to their respective Houses.

[4] First session Forty-fourth Congress, Record, p. 4155.

[5] In the early days the conferees were sometimes spoken of as "managers" (first session Sixth Congress, May 10, 1800; first session First Congress, September 23, 1789; etc.) and sometimes the "joint committee of conference" (first session Sixth Congress, May 13, 1800; December 29, 1803, first session Eighth Congress, Journal, pp. 247, 248).

In a conference the managers of the two Houses vote separately.

The House members of conference committees, called the managers[1] on the part of the House, are appointed by the Speaker.[2] They are usually three in number, but on very important measures the Speaker or the House sometimes increases the number.[3] Thus, on February 27, 1883, the House authorized five House managers on the bill (H. R. 5538) to reduce internal-revenue taxation.[4] On September 16, 1890, Mr. Speaker Reed appointed seven conferees on the bill (H. R. 9416) to reduce the revenue and equalize duties on imports;[5] and on July 7, 1894, Mr. Speaker Crisp appointed the same number on the bill (H. R. 4864) to reduce taxation, provide revenue for the Government, etc. Again, on July 8, 1897, Mr. Speaker Reed appointed seven managers on the bill (H. R. 379) to provide revenue for the Government and to encourage the industries of the United States.[6]

In the selection of the managers the two large political parties are usually represented, and also care is taken that there shall be a representation of the two opinions which almost always exist on subjects of importance. Of course the majority party and the prevailing opinion have the majority of the managers. Thus, in 1883, three of the five managers were Republicans and represented the Republican principles on the subject of tariff, while two were Democrats representing Democratic principles. In 1890 four of the seven were Republicans and three were Democrats. In 1894 four were Democrats and three Republicans; and again, in 1897, the majority was reversed.

It is also almost the invariable practice in later years to select managers from the members of the committee which considered the bill. Thus, in the above mentioned cases, the managers were from the Ways and Means Committee, which reports the tariff bills. But sometimes, in order to give representation to a strong or prevailing sentiment in the House, the Speaker goes outside the ranks of the committee.

Thus, on August 1, 1888, a controversy arose over the army appropriation bill, which the Committee on Military Affairs reports, and Mr. Joseph D. Sayers, of Texas, representing the Appropriations Committee, offered a resolution insisting upon the House's disagreement to certain Senate amendments, and declaring that the House would not consent that appropriations for fortifications should be placed on the army bill, because that subject had been referred to the Committee on Appropriations. On August 28, Mr. Sayers having carried his point on the floor with regard to disagreeing to the objectionable amendments, Mr. Speaker Carlisle appointed him one of the conferees, thus going outside the Military Affairs Committee in the selection of managers on a bill coming from that committee.[7]

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[1] This is the title always used, although in the earlier history of the House the conferees some times subscribed themselves as the "Committee on the part of the House."

[2] See section 4470 of Vol. IV of this work.

[3] See instance on January 22, 1834, when the House ordered five managers. (See sections 6331–6333 of this chapter.

[4] Second session Forty-seventh Congress, Record, p. 3356; Journal, p. 521.

[5] First session Fifty-first Congress, Journal, p. 1047.

[6] First session Fifty-fifth Congress, Record, p. 2512.

[7] First session Fiftieth Congress, Record, p. 7151, 7173, 7830, 8051, 8474.

Again, on April 7, 1896, on a bill providing for a free library in the District of Columbia, after the House had twice defined its attitude, Mr. H. Henry Powers, of Vermont, requested that the Speaker appoint a majority of the conferees from those who represented the sentiment of the larger portion of the House. Mr. Speaker Reed accordingly appointed Mr. Powers chairman of the managers, although he was not a member of the District of Columbia Committee.[1] In this case also the managers all were of one political party, the issue presented not relating in any way to majority and minority differences.

The managers of the two Houses while in conference vote separately, the majority in each body determining the attitude to be taken toward the propositions of the managers of the other House. When the report is made, the signatures of a majority of each board of managers are sufficient. The minority managers frequently refrain from signing the report,[2] and it is not unprecedented for a minority manager to indorse his protest on the report.[3]

When conferees have disagreed, or a conference report has been rejected, the usual practice is to reappoint the managers, although it was otherwise in former years.[4]

6337. Instance wherein the Senate managers of a conference were appointed entirely from the majority party, members of the minority having declined to serve.—On March 1, 1883,[5] Messrs. Thomas F. Bayard, of Delaware, and James B. Beck, of Kentucky, who had been appointed as representatives of the minority party in the Senate on the conference on the disagreeing votes of the two Houses on the bill (H. R. 5538) "to reduce internal revenue taxation," were excused from further service on the conference. The President pro tempore, whom the Senate had empowered to appoint conferees, appointed successively various other members of the minority party who successively asked to be excused and were excused.

On March 1,[6] after the appointment had been tendered to other minority Senators who were excused on their request, and after the President pro tempore [7] had been informed that no minority Senator would probably consent to serve, he appointed two Senators from the majority side to complete the number of managers, which in this conference was five.

6338. On a conference relating to the prerogatives of the two Houses, all the managers were selected to represent the attitude of the majority of the House.—On May 29, 1902,[8] the House agreed to the following resolution from the Senate:

Resolved by the Senate (the House of Representatives concurring), That a committee consisting of three Senators be appointed by the Presiding Officer of the Senate to meet with a committee of like

[1] First session. Fifty-fourth Congress, Record, pp. 3687, 3698.

[2] See section 6323 of this volume.

[3] See section 6489 of this volume.

[4] See section 6345 of this chapter.

[5] Second session Forty-seventh Congress, Record, pp. 3454–3458.

[6] Record, p. 3466.

[7] David Davis, of Illinois, President pro tempore.

[8] First session Fifty-seventh Congress, Record, pp. 6118, 6119.

number to be appointed by the House of Representatives, to confer upon the matter of the message of the House of Representatives on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12804) entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1903."

The Senate had appointed as conferees Messrs. John C. Spooner, of Wisconsin; Redfield Proctor, of Vermont, and Edmund W. Pettus, of Alabama, who were understood, from their relations to the debate on the resolution, to be all in harmony with the attitude of the majority of the Senate on the question at issue—viz, the propriety of the House's action in instructing conferees and transmitting the instructions to the Senate by message.

The Speaker being about to appoint the House conferees, Mr. William P. Hepburn, of Iowa, rising to a parliamentary inquiry, asked if the conferees should not be appointed on a different principle from that governing the constitution of the ordinary conference committee.

The Speaker[1] said:

The Chair will say, in answer to the gentleman, that, in the opinion of the Chair, the committee should be made up to represent the views of the House on this question. The question is on agreeing to the resolution.

Thereupon the Speaker appointed Messrs. John Dalzell, of Pennsylvania, a member of the Committee on Rules; Mr. Joseph G. Cannon, of Illinois, who had moved the instructions in question, and Mr. James D. Richardson, of Tennessee, leader of the minority. All of these conferees were understood to represent the position of the House, and no one of them belonged to the Military Committee, which had reported the bill, and the members of which, so far as appeared in the debate, had opposed the instructions.

6339. Managers of a conference are selected to represent the opinions as well as the majority and minority divisions of the House.—On May 31, 1900,[2] the bill (S. 3419) to provide a code of laws and a civil government for Alaska was returned from the Senate with the message that the Senate had disagreed to the House amendments and asked a conference.

This bill originally had been reported in the House by the Committee on the Revision of the Laws, although, because of the provisions establishing a civil government, the Committee on Territories had an equal claim to jurisdiction. This claim was recognized in the division of time in the debate when the bill was considered in the House, on May 17.[3]

The House having voted to insist on its amendments and agree to the conference the Speaker[4] appointed the following conferees: Mr. Vespasian Warner, of Illinois, chairman of the Committee on the Revision of the Laws; Mr. William S. Knox, of Massachusetts, chairman of the Committee on Territories; Mr. Henry R. Gibson, of Tennessee, of Revision of the Laws; Mr. James T. Lloyd, of Missouri, of Revision of the Laws; and Mr. John A. McDowell, of Ohio, of Territories. The two latter represented also the minority party in the House.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-sixth Congress, Record, p. 6303.

[3] Record, p. 5656.

[4] David B. Henderson, of Iowa, Speaker. The actual announcement was made, however, by Speaker pro tempore Henry S. Boutell, of Illinois.

6340. On April 28, 1900,[1] the House was considering the bill (S. 2799) to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, etc., and a question having arisen as to the probable results of a conference, Mr. John F. Lacey, of Iowa, made a parliamentary inquiry which elicited this response from the Speaker pro tempore:[2]

The practice of the House is to appoint conference committees on the part of the House to uphold its position. That has been repeatedly done in this House—notably in the case, which the gentleman from Vermont will remember, of the library question. In the present case, if the House should amend the Senate bill so as to send this whole business to the Court of Claims, it would be the duty of the Chair, being bound by no rule except courtesy and the practice of the House, to appoint a committee of conference which would stand by the action of the House.

6341. In the later practice managers have generally been selected from the committee that reported the measure, have been reappointed for later conferences, and have embodied majority and minority representation.— In 1876,[3] there were five conferences before the differences of the House and Senate over the legislative appropriation bill were settled. Four times the conferees returned with the report that they had been unable to agree. Each time this report, with the papers, was made first in the agreeing house. The chairman of the first House committee was Mr. Samuel J. Randall, of Pennsylvania, chairman of the Committee on Appropriations, which reported the bill. He remained chairman of each committee, although his associates were changed at each new conference, except the fifth and last, when the conferees of the fourth conference were reappointed. All the three conferees of the first conference were from the Appropriations Committee, two representing the majority party and one the minority. This proportion between majority and minority was maintained throughout. At the second conference two conferees were not of the Appropriations Committee, in the third all were from that committee, in the fourth two were from that committee. For the fifth conference the conferees were instructed to recede. The differences were over reduction of salaries.

6342. In 1877,[4] Mr. Speaker Randall adopted quite generally the policy of taking the conferees on the appropriations bills from the Committee on Appropriations, and of reappointing the old conferees for new conferences. He maintained the proportion of two from the majority side of the House and one from the minority.

Thus, on the Post-Office appropriation bill (H. R. 4187) the three conferees of the first conference were all from the Appropriations Committee. Two of these were reappointed at the second conference, but the new conferee was also from the Appropriations Committee.

On the legislative appropriation bill (H. R. 4472) the first conferees were all from the Appropriations Committee. They made a partial report, and were reappointed for the second conference. They being unable to agree, a third conference was ordered. One of the conferees was changed, but he was still from the Appropriations Committee.[5]

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[1] First session Fifty-sixth Congress, Record, p. 4824.

[2] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[3] First session Forty-first Congress, Journal, pp. 1109, 1156, 1194, 1225, 1226, 1234, 1412, 1413, 1444.

[4] Second session Forty-fourth Congress, Journal, pp. 522, 631.

[5] Journal, pp. 653, 667, 677.

On the army appropriation bill (H. R. 4691) the three conferees at first were all from the Appropriations Committee. At the second conference two were reappointed, and the new one was not from the Appropriations Committee or even the Military Committee. At the third conference, the inability to agree continuing, the two old conferees were reappointed, but the place of the new one was taken by still another, not a member of the Appropriations Committee, but chairman of Ways and Means.[1]

6343. In 1878,[2] in the two conferences on the Military Academy appropriation bill (H. R. 2507), Mr. Speaker Randall reappointed the conferees, and they were all from the Appropriations Committee, which reported the bill.

The same rule was followed in the three conferences on the legislative appropriation bill[3] (H. R. 4104); and the same in the two conferences on the sundry civil bill[4] (H. R. 3130).

6344. On March 1, 1865,[5] the House disagreed to the committee of conference report on the bill (S. 390) relating to the postal laws, and after further insisting asked for a further conference. The Speaker[6] appointed the same conferees that had officiated in the first conference. The Chairman had made the motion for a new conference, but it does not appear necessarily that this was the reason for the retention of the conferees.

6345. In the earlier practice the managers were changed for a second conference, and the Speaker did not particularly consider the committee reporting the measure or the majority and the minority divisions of the House.—On July 9, 1862,[7] Mr. Speaker Grow appointed the following managers on the bill (H. R. 531) increasing temporarily the duties on imports: Messrs. Thaddeus Stevens, of Pennsylvania, Justin S. Morrill, of Vermont, and Elihu B. Washburne, of Illinois. All of these belonged to the majority party of the House.

On July 9, 1862,[8] the same Speaker made Mr. William S. Holman, of Indiana, chairman of the House managers on the bill (H. R. 438) to grant pensions. Mr. Holman was a member of the minority party in the House.

6346. In 1857,[9] there were four conferences between the Senate and the House on the deficiency appropriation bill, and for each conference three new managers were appointed. Of all these only one was a member of the Ways and Means Committee, which reported the bill.

6347. In 1857,[10] the House managers on the tariff bill were all members of the Ways and Means Committee. But in the conference report on the legislative appropriation bill, also reported from the Ways and Means Committee, on March 3, 1857, the name of only one member of the Ways and Means Committee appears.[11]

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[1] Journal, pp. 665, 666, 678, 688.

[2] Second session Forty-fifth Congress, Journal, pp. 701, 1101, 1264. I15[3] Journal, pp. 1237, 1304, 1346.

[4] Journal, pp. 1418, 1433.

[5] Second session Thirty-eighth Congress, Journal, p. 377; Globe, p. 1257.

[6] Schuyler Colfax, of Indiana, Speaker.

[7] Second session Thirty-seventh Congress, Journal, p. 1020.

[8] Journal, p. 1021.

[9] Third session Thirty-fourth Congress, Journal, pp. 40, 601, 655, 665, 676.

[10] Third session Thirty-fourth Congress, Journal, p. 609.

[11] Journal, p. 648.

6348. In 1863[1] there were three managers on the bill (H. R. 659) to provide ways and means for the support of the Government. The chairman of the first committee on the part of the House was Mr. Thaddeus Stevens, chairman of the Committee on Ways and Means. For the second conference the managers were changed entirely, and for the third conference there was another entire change, except that Mr. Henry L. Dawes, of Massachusetts, who had been second on the second committee, became chairman of the third. With this exception no one man served on more than one of the conferences.

6349. In 1864[2] three conferences took place on the bill (H. R. 122) to increase the internal revenue, originally reported from the Committee on Ways and Means. On the first conference Mr. Speaker Colfax appointed as chairman of the conferees Mr. Thaddeus Stevens, of Pennsylvania, who was chairman of the Ways and Means and a member of the majority in the House, and associated with him Mr. Fernando Wood, of New York, a member of the minority and not a member of the Ways and Means Committee, and Mr. Elihu B. Washburne, of Illinois, also not a member of the Ways and Means Committee, but a member of the majority party. Of the next conference Mr. Washburne was made chairman, and the second was Mr. John A. Kasson, of Iowa, who was a member of the Ways and Means Committee. Mr. John L. Dawson, of Pennsylvania, the third member, was not of the Ways and Means Committee, but was a member of the minority. At the third conference Mr. Justin S. Morrill, of Vermont, was chairman. He was a member of the Ways and Means Committee and of the majority party. Mr. Kasson was second, and Mr. R. P. Spalding, of Ohio, not a member of the Ways and Means, was also the majority party. So in this conference the minority had no representation.

6350. On May 31, 1864,[3] on motion of Mr. George H. Pendleton, of Ohio, the House insisted, on its disagreement to the Senate amendments to the legislative appropriation bill, and agreed to the conference asked by the Senate. The Speaker[4] appointed as conferees Mr. Pendleton (who was a member of the Ways and Means Committee reporting the bill, but also a member of the minority party on the floor), Mr. William Windom, of Minnesota, a member of the majority party, but not of the committee, and Mr. Orlando Kellogg, of New York, also of the majority party, but not of the committee. The conference report made on June 16 was disagreed to, and on motion of Mr. William S. Holman, of Indiana, the House further insisted on its disagreement and asked a further conference. Mr. Holman announced to the Speaker that he desired not to be made a member of the committee (apparently usage entitled him to be chairman) and recommended that for the good of the public service the former conferees be reappointed, as they were conversant with the subject. The Speaker did so, reappointing Messrs. Pendleton, Windom, and Kellogg for the second conference. This appears to be one of the first, if not the very first, occasion where the same conferees acted at a second conference.

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[1] Third session Thirty-seventh Congress, Journal, pp. 500, 502, 510.

[2] First session Thirty-eighth Congress, Journal, pp. 40, 295, 327, 338.

[3] First session Thirty-eighth Congress, Journal, pp. 726, 821, 822; Globe, p. 3018.

[4] Schuyler Colfax, of Indiana, Speaker.

6351. In 1864 [1] there were three conferences on the Army bill. At the first conference the conferees were Messrs. Thaddeus Stevens, of Pennsylvania (chairman of the Committee on Ways and Means which had reported the bill), Robert C. Schenck, of Ohio, chairman of the Committee on Military Affairs, and William R. Morrison, of Illinois, who represented the minority party. At the second conference the conferees were Messrs. Justin S. Morrill, of Vermont (second on the Ways and Means Committee), John F. Farnsworth, of Illinois, second on Military Affairs, and John A. Griswold, of New York, representing the minority party. At the third conference the conferees were Mr. Stevens again, Mr. George H. Pendleton, of Ohio (of the Ways and Means Committee, and also of the minority on the floor), and Mr. Thomas T. Davis, of New York, of the majority party but not of either of the committees. The chairman was in each instance the Member making the motion to further insist.[2]

6352. The practice of changing managers at a second and subsequent conferences was so fixed in the earlier practice that their reappointment had a special significance.—On August 9, 1876,[3] after four ineffectual conferences on the legislative appropriation bill, the House was considering a fifth conference, when attention was called to the fact that the Senate in asking a conference again had reappointed the same conferees in departure from the then prevailing custom. Mr. Samuel J. Randall, of Pennsylvania, stated to the House that this was, in parliamentary proceeding, notice to the House that the Senate would not recede. Mr. Randall was chairman of the conferees on the part of the House throughout, and also chairman of the Committee on Appropriations.

6353. The practice of having new managers at each new conference on a bill was carried so far as to change conferees for the second conference on the bill (H. R. 413) for the payment of bounties to volunteers, the first conference report on which was, on June 17, 1862,[4] ruled out in the Senate after it had been agreed to by the House because the conferees had violated the parliamentary law in changing the text of the bill to which both Houses had agreed.

6354. In June, 1850,[5] three conferences were held on the Post-Office appropriation bill, and for each conference a new committee was appointed.

6355. On March 3, 1855,[6] the report of the committee of conference on the Army appropriation bill was disagreed to, and a new conference was authorized. At this second conference new managers on the part of the House were appointed.

6356. On May 2, 1856,[7] the conferees on the deficiency appropriation bill reported that they had been unable to agree, and were discharged, and a further conference asked with the Senate. For the second conference new conferees on the part of the House were appointed. Again, on May 9,[8] a third conference was agreed to, and still other conferees were appointed.

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[1] First session Thirty-eighth Congress, Journal, pp. 40, 622, (678, 681, 700, 701, 799.

[2] See also sections 6364, 6365, of this chapter.

[3] First session Forty-fourth Congress, Record, p. 5386.

[4] Second session Thirty-seventh Congress, Journal, pp. 852, 906; Globe, pp. 2722, 2746.

[5] First session Thirty-sixth Congress, Journal, pp. 1007, 1064, 1176, 1189.

[6] Second session Thirty-third Congress, Journal, pp. 536, 537.

[7] First session Thirty-fourth Congress, Journal, p. 919.

[8] Journal, p. 946.

6357. In 1864,[1] three conferences took place on the bill (H. R. 122) to increase the internal revenue, two of them resulting in inability to agree. The managers were changed each time, but on the second was one member who had been on the first, and on the third was a member who had been on the second.

6358. On June 16, 1870,[2] the managers on the pension appropriation bill (H. R. 781) reported that they were unable to agree. A new conference having been ordered, Mr. Speaker Blaine reappointed the House managers. No comment was made in regard to this action. The chairman of the first committee made the motion which resulted in the second conference.

6359. In 1870,[3] on July 12, after the report of the committee of conference on the funding bill (S. 380) had been disagreed to by the House, Mr. Speaker Blaine reappointed the conferees.

6360. In 1870,[4] the conferees on the Indian appropriation bill were unable to agree and Mr. Speaker Blaine, in appointing new House conferees, for the second conference, named the chairman of the former conferees, and two new ones.

6361. On June 30, 1870,[5] Mr. Speaker Blaine appointed for the second conference on the bill (S. 378) to provide a national currency of coin notes, etc., new managers. The report of the first conference had been disagreed to by the House.

6362. In 1871,[6] there were two conferences on the bill (H. R. 320) to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and at the second conference, after the first report had been rejected, the Speaker[7] reappointed the chairman but changed the other two conferees.

6363. On May 24, 1872,[8] the conferees on the Post-Office appropriation bill reported a partial agreement, leaving one amendment in dispute. The report having been agreed to, and a further conference asked, Mr. Speaker Blaine reappointed the former managers.

6364. On June 20, 1874,[9] the House disagreed to the report of the committee of conference on the Indian appropriation bill, and a new conference being asked the Speaker[7] appointed new conferees, although a member from the floor had suggested that the old conferees be reappointed.

The first conference on the bill had included, as chairman of the managers, a member of the Appropriations Committee, which reported the bill, the chairman of the Indian Affairs Committee, and a representative of the minority belonging to the Appropriations Committee. At the second conference the second on the committee was a member of the Committee on Appropriations, but the first and third belonged neither to Appropriations nor Indian Affairs.

On June 22, 1874,[10] in a case where the Senate had disagreed to the report of the conferees on the Post-Office appropriation bill, Mr. Speaker Blaine reappointed

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[1] First session Thirty-ninth Congress, Journal, pp. 295, 327, 338.

[2] Second session Forty-first Congress, Journal, pp. 1014–1016; Globe, pp. 4507–4510.

[3] Second session Forty-first Congress, Journal, pp, 1168, 1169, 1179, 1223.

[4] Second session Forty-first Congress, Journal, pp. 1120, 1135, 1139.

[5] Second session Forty-first Congress, Journal, pp. 1101, 1120.

[6] First session Forty-second Congress, Journal, pp. 169, 192.

[7] James G. Blaine, of Maine, Speaker.

[8] Second session Forty-second Congress, Journal, pp. 952, 981.

[9] First session Forty-third Congress, Journal, pp. 1265, 1266; Record, p. 5320.

[10] First session Forty-third Congress, Journal, pp. 1248, 1295; Record, p. 5392.

the old conferees, except that a new member was substituted for one who was absent. On the first conference two conferees had been appointed from the Appropriations Committee, which reported the bill, and one from the Post-Office and Post Roads Committee. This proportion was maintained in the second conference.

6365. In 1875[1] the conferees on the legislative appropriation bill reported inability to agree four times, and in all five conference committees were appointed before a result was reached in the form of a report. When the fourth report of inability to agree was made, Mr. Speaker Blaine reappointed the conferees. In the three preceding cases, he appointed each time a new committee, although on two of the three occasions he put with the new committee a member who had served on the preceding committee. But no one member served on each of the three conferences. On the first conference two of the managers were from the Appropriations Committee, which reported the bill. On the second conference the proportion from the Appropriations Committee was the same. On the third conference only one member of that committee was included, and on the fourth the proportion was the same. At the third and fourth reports of disagreement the papers were returned first for action to the House, which had asked the conferences. On the first and second failures to agree the papers were returned first to the House agreeing to the conferences.

6366. Mr. Speaker Keifer reappointing the old conferees at a second conference in the case of the bill (H. R. 3548) making appropriations for the Post-Office Department, the first conference having resulted in a disagreement.[2]

6367. In 1882,[3] there was a prolonged conference over the legislative appropriation bill, there being several conferences. At each of these the House managers were reappointed by Mr. Speaker Keifer.

6368. On February 27, 1861,[4] in the case of the bill (S. 10) to promote the progress of the useful arts a conference report was made dealing with all the differences but one. This report was agreed to, and the House voted to ask a conference on the remaining point of difference. For this second conference entirely new managers were appointed.

6369. The motion of the Member in charge of the bill as to the disposition of a Senate amendment being disagreed to, and a conference being asked, the conferees were so selected as to represent the attitude of the House.—On June 28, 1902,[5] the House had agreed to a partial conference report on the naval appropriation bill, and there remained in disagreement a single amendment of the Senate.

Mr. George E. Foss, of Illinois, chairman of the Committee on Naval Affairs and chairman of the conferees at the first conference, moved to recede and concur in that amendment with an amendment.

This motion was disagreed to.

Then, on motion of Mr. William W. Kitchin, of North Carolina, the House voted to further insist and ask a further conference.

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[1] Second session Forty-third Congress, Journal, pp. 406, 432, 584, 611, 612, 613, 614, 631, 635.

[2] First session Forty-seventh Congress, Journal, pp. 1043, 1064.

[3] First session Forty-seventh Congress, Journal, pp. 1583, 1643, 1712, 1713, 1719, 1734, 1813.

[4] Second session Thirty-sixth Congress, Journal, pp. 402, 403.

[5] First session Fifty-seventh Congress, Journal, pp. 873, 874; Record, pp. 7607, 7608.

Thereupon conferees were appointed[1] as follows: Messrs. George E. Foss, of Illinois; Robert W. Tayler, of Ohio; and Adolph Meyer, of Louisiana. Both Mr. Tayler and Mr. Meyer had voted against the motion of Mr. Foss.

Mr. Alston G. Dayton, of West Virginia, who had been a member of the first conference, and who voted for the motion of Mr. Foss, was displaced in order that two of the three might represent the attitude of the House.

6370. A Member at whose suggestion the report of a committee, of which he was not a member, was modified, was appointed a manager when the question came to conference.—On January 15, 1901,[2] a joint resolution of the Senate (No. 142) was reported from the Committee on Appropriations, to whom it had been referred upon its receipt from the Senate. The resolution was entitled a "joint resolution to enable the Secretary of the Senate to pay the necessary expenses of the inaugural ceremonies of the President and Vice-President of the United States, March 4, 1901."

After debate, on motion of Mr. John Dalzell, of Pennsylvania, the resolution was recommitted to the Committee on Appropriations with instructions to report amendments insuring a participation by the House in the arrangements.

The resolution was reported with such amendments on January 16,[3] and they were agreed to by the House.

On January 22,[4] the resolution was returned from the Senate with the message that the Senate disagreed to the amendments and asked a conference.

The House having insisted and agreed to the conference, the Speaker[5] appointed as conferees Messrs. Joseph G. Cannon, of Illinois; John Dalzell, of Pennsylvania; and Thomas C. McRae, of Arkansas.

Of these Messrs. Cannon and McRae represented the Committee on Appropriations, while Mr. Dalzell represented the element in the House that had successfully antagonized the first action of the Appropriations Committee on the resolution.

6371. Senate discussion on the principles governing the appointment of managers of a conference.[6]—On March 22, 1906,[7] in the Senate, the Vice-President laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 12707) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. Albert J. Beveridge, of Indiana, moved that the Senate insist upon its amendments, agree to the conference asked for by the House, and that the Chair appoint the conferees on the part of the Senate.

Mr. Joseph B. Foraker, of Ohio, objected:

The proposition to which the House has disagreed is one which was not represented by the chairman of the Committee on Territories, who has just now addressed the Senate, and one with respect to which I

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] Second session Fifty-sixth Congress, Journal, p. 118; Record, p. 1033.

[3] Journal, p. 123; Record, pp. 1103–1106.

[4] Journal, p. 144; Record, p. 1316.

[5] David B. Henderson, of Iowa, Speaker.

[6] See also section 6529 of this volume.

[7] First session Fifty-ninth Congress, Record, pp. 4114, 4115.

fear he would not suggest conferees who would be agreeable to those of us who did represent that proposition. I rise, therefore, to object to the appointment of conferees in the usual way, and to ask that they may be selected by the Senate in such manner as may be proper for us to proceed in making the selection.

The Senate voted to insist on its amendments and agree to the conference; but the selection of managers was deferred.

On March 23,[1] Mr. Beveridge having called the bill up, Mr. Foraker said:

Mr. President, when this matter went over yesterday it was with the statement that I would confer with the Senator from Indiana with a view to reaching some agreement as to what should be the course to be taken with respect to the appointment of the conferees. I have had that conference with the Senator, with the result that I withdraw my motion and allow the conferees to be appointed in the usual way, the Senator from Indiana having given me certain assurances, which I understand he is quite willing to give to the Senate, that the action of the Senate will be faithfully represented by those who are appointed, although they voted against the main proposition which goes to conference. * * * The motion I made was simply that the conferees should be appointed in compliance with the rule of the Senate, as I understand it, instead of the way we have drifted into, of having them appointed by unanimous consent by the Chair. I understand the rule of the Senate which I sought to evoke in this instance would but give those of us who were thinking there ought to be such action taken the benefit of the general rule that obtains, laid down by all parliamentary writers, that those who are the friends of a proposition should go to the conference to represent it.

But I do not wish to discuss it at all. I only want to call attention to the fact that the motion was made in perfect good faith, without reference to the personality of any Senator or his attitude in respect to any measure except only in so far as it pertains to the public business.

I wish to say one other thing. What I suggested should be done in this case is not without precedent. I remember, as all Senators who were here then must very well remember, that we had quite a controversy over this proposition in connection with the adoption of the joint resolution upon which we intervened in Cuba. The Chair at that time recognized the right of those favoring the proposition to be represented as the conferees, and they were appointed.

Mr. Henry Cabot Lodge, of Massachusetts, said:

Mr. President, I may say a single word in regard to this matter. I had occasion to say something about it some time ago in the case of the immigration bill. It seems to me that it must be the absolute understanding always that conferees represent the views of the Senate and not their own views. It does seem to me that it is not possible we can carry on business upon any other basis; that the Senators in charge of the bill, even if they voted against the amendments of the Senate, would, of course, represent the views of the Senate, and that the bill should not be taken from the committee in charge of the measure.

Mr. Henry M. Teller, of Colorado, said:

Mr. President, the right to appoint the members of a conference committee belongs to the Senate. I am not going to find any fault with the withdrawal of the motion made by the Senator from Ohio; I agreed to its withdrawal last night. But I wish to say that it is no reflection upon a committee, nor is it any reflection upon the Chair, because we recognize that without a motion to that effect the Chair has not the right to appoint a committee. The right to appoint the members of a conference committee is with the body that creates the committee. That is not always done, because it is convenient generally and the custom has grown up to that effect—for the chairman of the committee to designate certain members of the committee having charge of the measure to act at the conference. The conferees of the two Houses are then supposed to represent the Senate or the House, as the case may be.

I understand also there is a feeling on the part of some members of the committee that to select anyone off of the committee or to select anyone even on the committee who had not been favorable to the first proposition perhaps would be a reflection on the committee. Whenever a conference committee is created it is created to bring the mind of the other body to that of this body, and to bring them together. It is not to represent the view of the minority, but to represent, if possible, the majority. Upon that theory the majority of the proposition that passes this body is entitled by custom and usage and on

[1] Record, p. 4155.

principle to name the committee. A majority only of this body can pass a bill. If the bill is different from what come from the House, the bill as it leaves this body is supposed to represent the sentiment of this body, and this body then is entitled to have a friendly committee.

I am not going to complain of anything that has been done. I am quite willing to submit to the chairman of the committee the right in this case to make the selection according to what has been somewhat the custom here. I heard Senators say around me yesterday that they thought a different course would be a reflection upon the committee, and therefore they could not favor it. I only want to enter a protest against hampering the Senate, whenever it chooses to exercise a right which belongs to it beyond any question, to select its conferees independent of the chairman of the committee and independent of the presiding officer.

So far have the English authorities gone on this subject in Parliament that they have declared that it was the duty, when a man was put on a conference committee or on any other committee to deal with a subject to which he was hostile, to refuse to become a member of the conference committee or any other committee. As was said by a distinguished English writer on parliamentary law, and as is quoted approvingly in Jefferson's Manual, "the child is not to be put to a nurse that cares not for it." Upon that principle the party that puts the bill through, whether it be an original bill or an amended bill, is entitled to name the committee. That has been done repeatedly in the Senate over and over again, and it is only practically recently—when I say recently I do not mean within the last five years, I mean in modern times—that the custom has grown up to allow the chairman of the committee, however hostile he may be to the bill as it passes the Senate, to designate who shall deal with the House in the effort by a conference to bring the House to the sentiment of the Senate. Everyone can see that logically the friends of the measure are the proper ones to represent the matter to the conferees on the part of the House and win them to the Senatorial mind.

Mr. Beveridge having indicated his assent to the proposition of Mr. Foraker, the Vice-President was by unanimous consent authorized to appoint the managers, and appointed Messrs. Albert J. Beveridge, of Indiana, William P. Dillingham, of Vermont, and Thomas M. Patterson, of Colorado. The first two were the first two men on the Committee on Territories, which reported the bill, and represented the sentiment of that committee as to statehood of Arizona and New Mexico, which sentiment had not prevailed in the Senate. Mr. Patterson was at the head of the minority of the Territories Committee, and represented the view which prevailed in the Senate.

6372. The absence of a manager of a conference causes a vacancy which the Speaker fills by appointment.—On February 9, 1903,[1] Mr. Adolph Meyer, of Louisiana, was appointed one of the managers on the part of the House on the disagreeing votes of the two Houses on the bill (S. 4825) "to provide for a union railroad station in the District of Columbia" etc.

On February 10 the Speaker[2] laid before the House a telegram from Mr. Meyer announcing his absence, and stated that on the preceding day indefinite leave of absence had been granted by the House. Thereupon the Speaker said that the absence of Mr. Meyer caused a vacancy, and appointed Mr. A. C. Latimer, of South Carolina, in his place.

6373. It has long been the practice for a manager on a conference to be excused only by authority of the House.—On March 15, 1852,[3] on motion of Mr. George Briggs, of New York, and by unanimous consent,

Ordered, That Mr. Bissell be excused from service on the committee of conference on the disagreeing votes on the bill of the Senate 146, "to make land warrants assignable, and for other purposes."

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[1] Second session Fifty-seventh Congress, Journal, pp. 224, 226; Record, pp. 1971, 2001.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Thirty-second Congress, Journal, p. 476; Globe, p. 760.

6374. On February 27, 1883,[1] the Speaker announced the appointment of Messrs. William D. Kelley, of Pennsylvania, William McKinley, jr., of Ohio, Dudley C. Haskell, of Kansas, Samuel J. Randall, of Pennsylvania, and John G. Carlisle, of Kentucky, as conferees on the pending tariff bill (H. R. 5538).

On February 28[2] Mr. Randall asked that the House excuse him from service as conferee; and he was excused.

6375. On February 28, 1883,[3] both Messrs. William R. Morrison, of Illinois, and J. Randolph Tucker, of Virginia, declined to serve as conferees on the tariff bill. The Speaker[4] did not put any question on excusing them to the House. At the same time Mr. Samuel J. Randall, of Pennsylvania, asked to be excused, and the Speaker stated that he would be excused if there was no objection.

6376. On June 16, 1884,[5] Mr. George W. Steele, of Indiana, on account of necessary absence from the city, declined to act as conferee. The Speaker[6] does not seem to have asked the consent of the House for this declination.

6377. One House having made a change in a committee of conference, the other is informed by a message.—On May 14, 1900,[7] a message was received from the Senate announcing that Mr. Hansbrough had been excused from further service, on his own request, as a conferee on the bill (H. R. 6250) extending the time for proof and payment on lands claimed under the desert-land law of the United States by the members of the Colorado Cooperative Colony in southwestern Colorado, and that the President pro tempore had appointed Mr. Pettigrew to fill the vacancy.

On May 17, 1900,[8] a message was received from the Senate announcing that the Senate had excused from service Mr. Sewell, on his own request, as a conferee on the bill (H. R. 8582) making appropriations for the support of the Regular and Volunteer Army for the fiscal year ending June 30, 1901, and that the President pro tempore had appointed Mr. Proctor to fill the vacancy.

6378. On May 29, 1906,[9] a message from the Senate announced that the Senate had excused Mr. Newlands from further service as a member of the conference committee on the bill (H. R. 12707) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and had appointed Mr. Patterson in his place.

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[1] Second session Forty-seventh Congress, Record, p. 3356.

[2] Record, p. 3409.

[3] Second session Forty-seventh Congress, Journal, p. 622; Record, p. 3409.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] First session Forty-eighth Congress, Journal, p. 1462; Record, p. 5207.

[6] John G. Carlisle, of Kentucky, Speaker.

[7] First session Fifty-sixth Congress, Record, p. 5223; Journal, p. 573.

[8] First session Fifty-sixth Congress, Record, p. 5668; Journal, p. 591.

[9] First session Fifty-ninth Congress, Record, p. 7627.

Chapter CXXXIV.

INSTRUCTION OF MANAGERS OF A CONFERENCE.

1. General principles governing. Sections 6379–6383.[1]
2. Limitations on the power of instruction. Sections 6384–6394.
3. Reports in violation of instructions. Sections 6395, 6396.
4. Senate practice against instruction. Sections 6397, 6398.
5. Senate objections to conferences that are not free. Sections 6399–6406.

6379. The House may instruct its managers of a conference, and the motion to instruct should be offered after the vote to ask for or agree to a conference and before the managers are appointed.—On July 23, 1886,[2] Mr. Albert S. Willis, of Kentucky, from the managers on the part of & House of the conference on the disagreeing votes of the two Houses on the Senate's amendment to the river and harbor bill, reported that after a full and free conference they had been unable to agree.

Mr. Willis thereupon offered the following resolution:

Resolved, That it is the opinion of the House that its conferees on the river and harbor bill should insist on striking out of the Senate amendments the following item:

For the national harbor of refuge of the first class at Sandy Bay: Continuing improvement, $75,000.

Mr. Eben F. Stone, of Massachusetts, made the point of order that the proposition was in effect an instruction to the committee of conference and that it could not be adopted by the House without destroying the freedom of the conference.

The Speaker[3] said that the conference was ended and the amendments of the Senate were not now in the hands of the conference committee, but were before the House.

Mr. Byron M. Cutcheon, of Michigan, and Mr. Thomas B. Reed, of Maine, having asked whether or not the resolution was privileged, and under what order of business it could be presented, the Speaker replied that such a resolution had frequently been held privileged. Then the Speaker continued:

The amendments are here for some action on the part of the House. The Chair thinks that the original parliamentary practice was not to instruct committees of conference, but to leave them entirely free. However, a practice has grown up in this House, and has prevailed for several years, under which

[1] Motion to instruct may be amended unless the previous question prevents. (See. 6525 of this volume.)

Instance wherein the managers were instructed to consider a matter of prerogative. (Sec. 1491 of Vol. II.)

[2] First session Forty-ninth Congress, Record, pp. 7404, 7405; Journal, pp. 2319, 2320.

[3] John G. Carlisle, of Kentucky, Speaker.

the House has very frequently passed resolutions instructing its managers as to the sense of the House with respect to certain amendments. * * * There have been frequent occasions when it has been done. It is so stated in the Digest, and the rulings upon which the statement is based are cited. The Chair remembers several such cases in the House during the last eight or ten years. If this were an original question, the Chair would be very much inclined to hold that the committee of conference must be free to decide in any way it chooses, subject, of course, to the action of the House afterwards.[1]

Mr. John D. Long, of Massachusetts, having proposed a motion that the House insist on its disagreement to the Senate amendments and ask a new conference, the Speaker said:

There are two motions, as the Chair has stated, which, under the practice, have preference over the motion made by the gentleman from Kentucky. One of these, which has precedence over all other motions, is that the House recede from its disagreement to the Senate amendment and agree to the same. The other is that the House insist upon its disagreement to the Senate amendment and ask a further conference. The gentleman from Massachusetts makes the motion which the Chair has last stated.

The motion of Mr. Long having been agreed to, the Speaker appointed Messrs. Willis, of Kentucky; Newton C. Blanchard, of Louisiana, and Thomas J. Henderson, of Illinois, managers on the part of the House. These had been managers of the former conference.

The appointment of managers having been made, Mr. Willis offered a resolution instructing the conferees, upon which Mr. Seth C. Moffatt, of Michigan, raised a point of order.

The Speaker ruled as follows:

The gentleman from Michigan has raised the point of order that the resolution can not be acted on, because the subject is not before the House. The House having disposed of it by further insisting upon its disagreement to the Senate amendment and requesting a conference and the managers of the conference having been appointed on the part of the House, theoretically of course the matter has gone to the Senate, and is not in the House.

Therefore the Speaker did not entertain the motion of instruction.

6380. Again, on July 27, 1886,[2] the question arose, and the Speaker[3] said:

The Chair will state the situation. The gentleman from Kentucky [Mr. Willis] moves that the House further insist upon its disagreement to the Senate amendments and request a further conference. The Chair ruled the other morning that that motion had priority over the resolution to instruct; and the Chair also ruled at the same time that a resolution to instruct the conferees was not in order after the Chair had actually appointed the managers, as was the case when the gentleman from Kentucky moved an instruction at that time. But the Chair thinks even if the present motion of the gentleman from Kentucky prevails, at any time before the Chair actually appoints the conferees, which takes the matter away from the House, resolutions of instruction are in order, and the Chair will entertain them after this motion is disposed of.

There has been one instance in the House where a resolution of instruction was offered and entertained while the motion to insist and for the appointment of conferees was pending; but the question of order was not then made. At any rate there is an interim after the motion of the gentleman from Kentucky [Mr. Willis] has been disposed of when instructions are in order under the practice of the House. The question is on the motion of the gentleman from Kentucky.

6381. On March 1, 1864,[4] the conferees on the bill (H. R. 122) to increase the internal revenue reported that they had been unable to agree.

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[1] First session Thirty-eighth Congress, March 1, 1864, Globe, p. 892; 1 Journal, p. 327.

[2] First session Forty-ninth Congress, Record, p. 7598; Journal, pp. 2352–2354.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Thirty-eighth Congress, Globe, p. 892.

Thereupon Mr. Elihu B. Washburne, of Illinois, offered the following:

Resolved, That the House insist upon its disagreement to the Senate amendments to House bill No. 122, and that the House request of the Senate another committee of conference on the said bill; and it is hereby declared to be the judgment of this House that in an adjustment of the differences between the two Houses on the said bill there should be an additional duty of not less than 20 nor more than 40 cents per gallon imposed on spirits on hand for sale.

Mr. Thaddeus Stevens, of Pennsylvania, having raised a question as to the instructions, the Speaker [1] said:

The Chair holds that the House of Representatives have the power to instruct any committee which it authorizes to be appointed. It is a judicious check upon the power of the Speaker in appointing committees. They have a right to instruct a committee of conference, as they have a right to instruct a standing or a select committee.

6382. On June 15, 1878,[2] after two unsuccessful conferences on the legislative appropriation bill the House, by a vote of 116 yeas to 92 nays, agreed to the following instructions as to the main point of difference:

Resolved, That it is the opinion of this House that its conferees on the legislative, executive, and judicial appropriation bill should under the circumstances yield to the conferees on the part of the Senate in said bill as to the compensation of its own officers and employees.

6383. At a new conference the instructions of a former conference are not in force.—On May 16, 1902,[3] the House conferees on the bill (H. R. 8587) for the allowance of certain claims for stores and supplies, reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act, reported to the House an agreement as to one Senate amendment. On the disagreement as to the remaining Senate amendment they reported that they had not reached an agreement, since, because of the instructions of the House to its conferees, a free conference had been impossible.

Mr. Thaddeus M. Mahon, of Pennsylvania, then moved that the House further insist on its disagreement to the Senate amendment and ask a further conference.

Mr. Oscar W. Underwood, rising to a parliamentary inquiry, asked whether or not, after the agreement to these motions, the former instructions would still remain in force.

The Speaker [4] replied that the instructions would not remain in force at the new conference.

6384. The House having asked for a free conference, it is not in order to instruct the managers.—On March 2, 1891,[5] Mr. E. H. Funston, of Kansas, as a privileged question, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 13552) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, reported that they had been unable to agree.[6]

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Second session Forty-fifth Congress, Journal, p. 1345; Record, p. 4689.

[3] First session Fifty-seventh Congress, Journal, p. 713; Record, p. 5567.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Fifty-first Congress, Journal, p. 358; Record, pp. 3747, 3768, 3771.

[6] At this conference the House conferees had been under instructions to insist on nonconcurrence in Senate amendment No. 17.

The Speaker laid before the House the following resolution of the Senate:

Resolved, That the Senate insist upon its amendments to the bill (H. R. 13552) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, disagreed to by the House of Representatives, including the amendment numbered 17, referred to in the message from the House, and agree to a free conference on the disagreeing votes of the two Houses thereon.

Then Mr. Funston submitted the following resolution:

Resolved, That the House ask for a free conference.

After debate, Mr. Robert M. La Follette, of Wisconsin, moved that the House recede from its disagreement to the amendments of the Senate and agree to the same. After further debate, Mr. La Follette withdrew the motion.

The question recurring on agreeing to the resolution of Mr. Funston, the previous question was ordered, and under the operation thereof the resolution was agreed to.

Mr. Cannon submitted the following resolution:

Resolved, That it is the sense of the House of Representatives that said conference shall not agree to the amendment of the Senate numbered 17.

Mr. Funston made the point of order that, being in direct conflict with the resolution just adopted, the resolution submitted by Mr. Cannon was not in order.

The Speaker [1] sustained the point of order, and the resolution was not received.

6385. A special order requiring the Speaker to appoint conferees immediately after the vote of disagreement, a motion to instruct was not admitted.—On March 22, 1906,[2] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported this resolution:

Resolved, That the bill (H. R. 12707) entitled "An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," be, and hereby is, taken from the Speaker's table, with the Senate amendments thereto, to the end that the said amendments be, and hereby are disagreed to; and a conference be, and hereby is, asked with the Senate on the disagreeing votes on the said amendments, and the Speaker shall immediately appoint the conferees.

The resolution having been agreed to, the Speaker was proceeding to appoint the conferees, when Mr. John Sharp Williams, of Mississippi, demanded recognition.

The Speaker proceeded with the announcement of the conferees; and that being done, recognized Mr. Williams, who moved to instruct the conferees on the part of the House of Representatives to agree to the amendment of the Senate striking the provision admitting Arizona and New Mexico out of the bill as it passed the House. He insisted that he had sought recognition before the Chair appointed the conferees.

After debate the Speaker [3] held:

The resolution adopted by the House a short time ago is the rule of the House and binding on the House, and on the Speaker as the presiding officer of the House. It begins "Resolved," etc., and the conclusion of the rule is "And the Speaker shall immediately appoint the conferees." That binds the House;

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 4122, 4128.

[3] Joseph G. Cannon, of Illinois, Speaker.

that binds the Speaker; and under a rule adopted by the majority it binds the gentleman from Mississippi as well, whatever may have been his opinion or that of the minority of the House as to the propriety of the adoption of the rule. The Chair will not take much of time in referring to authorities, but will ask the Clerk to read a ruling made by Mr. Speaker Carlisle, when he was Speaker, that follows the ruling in such cases:

"The gentleman from Michigan has raised the point of order that the resolution can not be acted on because the subject is not before the House. The House having disposed of it by further insisting upon its disagreement to the Senate amendment and requesting a conference, and the managers of the conference having been appointed on the part of the House, theoretically, of course, the matter has gone to the Senate and is not in the House.

"Therefore the Speaker did not entertain the motion of instruction."

That is under the ordinary rules of the House. In their operation the motion to instruct conferees always follows after the motion to disagree with the Senate and before the appointment of the conferees. In the case upon which Speaker Carlisle ruled, that was under the ordinary rules of the House. The House had disagreed to the Senate amendments and the conferees had been appointed. Immediately thereafter the Member from Michigan moved the instruction, and Speaker Carlisle, in the opinion which the Chair has had read to the House, held the motion out of order; but the Chair again calls the attention of the House to the fact that this is a proceeding under his rule, which not only by virtue of its adoption nonconcurs in every one of the forty amendments to the bill and asks a conference, but in the language of the rule—

"And the Speaker shall immediately appoint the conferees"—binds the Speaker. The conferees were appointed, and, in the language of Speaker Carlisle, theoretically at least, the House has not the bill; it has gone to the Senate, and therefore, under the provisions of the special order, the Chair sustains the point of order.

6386. Instructions to managers of a conference may not direct them to do that which they might not otherwise do.—On March 3, 1881,[1] Mr. Speaker Randall ruled that the House might not by a resolution of instruction submit to a conference committee any matter not originally submitted to them.

6387. On July 25, 1882,[2] Mr. Speaker Keifer held that it was not in order to recommit a conference report to the conferees with instructions for them to do something which they might not have done in the first instance.

6388. It is not in order to give such instructions to managers of a conference as would require changes in the text to which both Houses have agreed.

As to the propriety of instructing the managers at a first conference.

On February 28, 1891,[3] the House was considering the bill (H.R. 10881) to amend the laws relating to copyrights, with amendments of the Senate thereto, and a request for a conference with the House on the bill and amendments.

Mr. William E. Simonds, of Connecticut, moved that the House nonconcur in the Senate amendments and agree to the conference asked by the Senate.

The House voted to nonconcur and agreed to the conference. Thereupon Mr. Lewis E. Payson, of Illinois, submitted the following resolution of instructions to the conferees:

Resolved, That the conference committee be instructed to insist on engrafting upon the bill in conference the principles involved in the following bill.

[Here followed the text of a new bill.]

Mr. Simonds made the point of order against the instructions proposed: First, that these instructions, if adopted, would do away with the sole text of the bill, to

[1] Third session Forty-sixth Congress, Journal., p. 600.

[2] First session Forty-seventh Congress, Journal, p. 1730; Record, p. 6487.

[3] Second session Fifty-first Congress, Journal, p. 333; Record, pp. 3610, 3611.

which both Houses had already agreed, and were not permissible under the practice and the precedents of the House. Again, that it was not permissible to instruct the conferees in the first instance and before they had met and disagreed.

The Speaker [1] sustained the point of order.[2]

6389. Pending the question on agreeing to a conference report, motions relating to disposal of the individual amendments in disagreement, or for the instruction of conferees at a future conference, are not in order.—On January 29, 1897,[3] the House was considering the conference report on the bill (S. 1832) to define the rights of purchasers under mortgages authorized by an act of Congress approved April 20, 1871, concerning the Atlantic and Pacific Railroad Company.

Pending the question of agreement to the report Mr. William E. Barrett, of Massachusetts, proposed to move certain instructions to the conferees.

The Speaker [1] ruled that the proper course of proceeding in such a case as this was for the House first to vote upon agreeing to the report of the conference committee. If the report be disagreed to, then the House may insist upon its amendments and ask for a new conference; and pending the appointment of the conferees a motion may be made that they be instructed.

The report of the conferees having been disagreed to, the House voted to insist upon its amendments and ask a new conference, after which Mr. Barrett proposed a resolution instructing the conferees to insist upon certain amendments. These instructions, having been amended on motion of Mr. William L. Terry, of Arkansas, were agreed to.

On the succeeding day, January 30, 1897, the Speaker appointed as conferees Messrs. H. Henry Powers, of Vermont; George P. Harrison, of Alabama, and Grove L. Johnson, of California. These gentlemen were also the managers on the part of the House at the previous conference.

6390. On February 17, 1897,[4] the House was considering the conference report on the bill (S. 1501) granting an increase of pension to Lucy Alexander Payne.

Mr. Richard W. Blue, of Kansas, moved that the House disagree to the report of the committee of conference and ask a further conference, and that the conferees be instructed to insist on the House amendment.

The Speaker said:

The regular course would be to pass first upon the question of agreeing to the conference report; that is the question now before the House. If the House refuses to agree to the report, then a motion to insist and to ask a further conference, and also a motion to instruct the House conferees would be in order.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] In ruling the Speaker did not give his grounds for so holding, but ample grounds are found in the first portion of the point of order. As to the second portion, the practice is against the instruction of conferees in the first instance, and this practice is undoubtedly founded on propriety and good sense. Yet the House has instructed conferees in the first instance, as in the case of the agricultural appropriation bill in the closing hours of the short session in 1891. (See Record, pp. 3728, 3747, 3749, second session Fifty-first Congress.) But in this case the House resorted afterwards to a free conference.

[3] Second session Fifty-fourth Congress, Record, pp. 1321, 1322, 1334.

[4] Second session Fifty-fourth Congress, Record, pp. 1940, 1945.

The House having refused to agree to the conference report, Mr. Blue moved that the House, insist on its disagreement, and ask for a further conference, with instructions that the conferees insist on the amendment of the House.

The Speaker[1] said:

The gentleman from Kansas moves that the House further insist upon its amendment and ask for a further conference. * * * The Chair thinks the instructions should be put separately. The question is on the motion to insist and to ask for a further conference.

6391. Instructions to managers may not relate to a part of the bill not in disagreement between the two Houses or to any subject not committed to the conferees.—On July 25, 1882[2] Mr. Horace F. Page, of California, had presented the report of the committee of conference on the disagreeing votes of the two Houses on the river and harbor bill (H.R. 6242), and the previous question had been ordered thereon, when Mr. John A. Kasson, of Iowa, as a parliamentary inquiry, asked if it would be in order to move to recommit the report to the committee of conference with instructions to add the following proviso to the bill:

That the Secretary of War, with the approval of the President, may limit any expenditure provided by this act to any less sum than that authorized therefor during the current fiscal year, in any case where in their opinion the public interest does not require the entire expenditure.

The Speaker[3] said:

The Chair thinks it would not be in order to recommit the report to the conference committee. It is never in order to instruct the conference committee to do that which it could not do under the reference made of the matter to the committee in the first instance.

6392. On July 15, 1882[4] Mr. Joseph G. Cannon, of Illinois, for the committee of conference on the disagreeing votes of the two Houses on the legislative, etc., appropriation bill (H.R. 6244) reported that the committee were unable to agree.

The House having further insisted on its disagreement to the Senate amendments and asked a further conference, Mr. Moses A. McCoid, of Iowa, offered this resolution:

Resolved, That the committee on the part of the House is instructed to agree to such modification of the bill as will equalize the salaries of the Senate and House by an increase of the pay of House employees if necessary.

Mr. George D. Robinson, of Massachusetts, made a point of order that the resolution proposed to instruct the conferees on the part of the House on a subject not submitted to them or in disagreement between the two Houses.

The Speaker[3] said:

The Chair can only say if this resolution is meant to cover all the House employees there is no such question pending before the conference committee in virtue of the fact of there being a disagreement between the two Houses on that question. The resolution, therefore, would not be in order. * * * The Chair is not at present prepared to hold that the House might not instruct the com-

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Forty-seventh Congress, Journal, p. 1730; Record, p. 6487.

[3] J. Warren Keifer, of Ohio, Speaker.

[4] First session Forty-seventh Congress, Journal, pp. 1643, 1644; Record, p. 6101.

mittee to recede or to insist upon some matter which was particularly before it. But this resolution, the Chair thinks, goes further and proposes to instruct the conference committee to take up a new matter not referred to it; and therefore it is not in order.

6393. On March 3, 1881,[1] the House had further insisted on its disagreement to the Senate amendments to the sundry civil appropriation bill (H. R. 7203) and had asked a further conference.

Mr. John H. Baker, of Indiana, submitted the following resolution:

Resolved, That it is the opinion of the House that their conferees yield to the Senate conferees touching the subject of the pay and salaries of the Senate employees.

Mr. Benton McMillin, of Tennessee, made the point of order that the subject referred to in the resolution was not in conference, and that it was not competent to submit to a conference committee any subject not originally submitted to them.

The Speaker[2] sustained the point of order, saying:

That which is in the bill by a vote of the two Houses, being a substantive proposition, can not be changed in the conference.

6394. On June 1, 1880,[3] the House had further insisted on its disagreement to Senate amendments to the legislative, etc., appropriation bill (H.R. 6185) and agreed to the conference, when Mr. Roger Q. Mills, of Texas, offered this resolution:

Resolved, That the conferees on the part of the House on the legislative, etc., appropriation bill be, and are hereby, instructed to fix the salaries of the employees of the House so that the employees of the Senate and the House of the same grade shall receive the same salary.

Mr. William M. Springer, of Illinois, raised a question of order, one branch of which was that the resolution proposed to open to the consideration of the conference committee a portion of the bill which had been agreed to by the two Houses.

The Speaker[2] sustained the point of order, saying that the very words of the message between the two Houses by which a conference was agreed to were that a conference was asked on "the disagreeing votes of the two Houses." Therefore nothing that the two Houses had agreed to could come under the jurisdiction of the conference committee.

Again, on June 9,[4] the conference report on the same bill being under consideration, Mr. Richard W. Townshend, of Illinois, offered a concurrent resolution authorizing, the conferees to take into consideration the question of equalization of salaries of employees of House and Senate.

Mr. George D. Robinson, of Massachusetts, made the point of order that the resolution was not in order, for the reason that it proposed to instruct the conference committee to consider a subject to which both Houses had agreed.

The Speaker sustained the point of order, saying:

The Chair has heretofore ruled upon this proposition, and his ruling is one of the precedents. The Chair has reflected very carefully over his ruling in this respect and adhers to his judgment. * * * To give a committee of conference between two Houses power to rip up a bill where there was no disagreement between the two Houses would be to give a power to a conference committee greater than either of the Houses possesses.

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[1] Third session Forty-sixth Congress, Journal, p. 600; Record, p. 2454.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Second session Forty-sixth Congress, Journal, p. 1361, Record, p. 4047.

[4] Journal, p. 1435; Record, p. 4337.

The Speaker referred to the Manual and citations of former rulings.

6395. Although a conference report may be in disregard of the instructions given the managers, yet it may not be ruled out on a point of order.— On July 31, 1886,[1] the House proceeded to the consideration of the conference report on the river and harbor appropriation bill. The report having been read, Mr. William H. Hatch, of Missouri, had read a series of instructions to the conferees which had been voted by the House, and then made the point of order that the report was in direct violation of every single resolution of the instructions.

After debate, the Speaker[2] I ruled:

The proceedings when there has been a disagreement between the two branches of a legislative body are different in many respects from the proceedings in other cases. The paramount object of all such proceedings is to bring the two branches to an agreement. Therefore either may, without reconsidering previous votes, take action in a directly opposite direction. For instance, the House may refuse to concur in an amendment and may afterwards insist again and again upon its disagreement to the amendment, and yet it may ultimately, without reconsidering any of these votes, recede absolutely from its disagreement or recede from it with an amendment, as its judgment may dictate. And while it is competent under the recent practice of the House to instruct conference committees, still the House in that case, as in the other, may ultimately recede from its disagreement to the very amendment in regard to which it had instructed its conferees to insist on a disagreement; and that may be done with or without a conference report upon the subject.

The whole effect of the conference report in such a case is to bring the matter again directly before the body for its consideration and action. That is the whole effect of this conference report. It does not bind the House at all. The House may refuse to Wee to it, in which case the whole subject is again open; and the House may absolutely recede from its disagreement to the Senate amendment, or recede with an amendment, which is the course recommended by the present managers of the conference on the part of the House. So the Chair thinks the point of order is not well taken.

In a case where the House instructs one of its ordinary committees to report back a proposition with an amendment, it would be a very serious question whether it could report back without that amendment or with that amendment and others. But that is not in this case.

In the case supposed the House instructs its committee what it shall report to the House. In this case the House has not instructed its conferees what they shall report, but has expressed its judgment on the question and directed them to insist upon striking out certain clauses. They have now brought it back to the House in order that it may have an opportunity to recede from that action if it desires to do so, or further to insist upon it if it desires to do so.

6396. Conferees having made a report which was disagreed to by the House as being in violation of their instructions, and a new conference having been requested, the Speaker appointed new conferees.

A conference report having been disagreed to, one of the opponents of the report was recognized to make the motion in relation to the pending amendments.

On the legislative day of June-5, 1900,[3] but the calendar day of June 6, the managers on the part of the House on the disagreeing votes of the two Houses on the amendments of the Senate to the naval appropriation bill, submitted a report on all the amendments in disagreement. The report was signed by all the House conferees—Messrs. George E. Foss, of Illinois, Alston G. Dayton, of West

[1] First session Forty-ninth Congress, Record, p. 7826; Journal, p. 2459.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-sixth Congress, Record, pp. 6848, 6856.

Virginia, and Amos J. Cummings, of New York, all of the Committee on Naval Affairs.

Mr. Joseph G. Cannon, of Illinois, made the point that in relation to the amendment relating to ocean surveys the House conferees had brought in a report in violation of express instructions adopted by the House as follows:

Resolved, That the managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the Senate to the naval bill are hereby instructed to insist on the disagreement of the House to the amendment numbered nine, and to agree to no settlement of said disagreement which shall involve the survey of any of the ocean and lake coasts of the United States or of coasts under the jurisdiction of the United States.

After debate, Mr. Foss moved the previous question on the motion to agree to the conference report.

The House negatived the motion for the previous question, ayes 80, noes 149.

Debate having continued the previous question was again moved by Mr. John F. Shafroth, of Colorado, one of the opponents of the report, and was ordered by the House.

The motion to agree to the conference report was then decided in the negative, ayes 83, noes 131.

The Speaker[1] then said:

The gentleman from Illinois [Mr. Cannon] under all parliamentary practice is recognized, the other gentleman from Illinois (Mr. Foss] surrendering charge of this bill.

Then, on motion of Mr. Cannon, of Illinois, the House further insisted on its disagreement with the Senate on the amendment numbered nine, and also on other amendments in difference.

Then, the House having asked for a further conference, the Speaker appointed the following conferees: Messrs. Joseph G. Cannon, of Illinois, William H. Moody, of Massachusetts, and John F. Shafroth, of Colorado, all representing the opinion expressed by the House by its votes, and none being on the Committee on Naval Affairs.

6397. The Senate, after full consideration, have decided that conferees may not be instructed.—On March 3, 1873[2] the Senate was considering the conference report on the legislative, etc., appropriation bill, when Mr. George G. Wright, of Iowa, moved that the report be committed to the committee of conference with instructions to strike out all that portion relating to the salaries of Senators and Representatives.

Mr. Lyman Trumbull, of Illinois, raised the point of order that it was not competent for the Senate to instruct the committee of conference.

The Presiding Officer[3] overruled the point of order, quoting from Barclay's Digest:

A committee of conference may be instructed like any other committee, but the instructions can not be moved when the papers are not before the House.

An appeal was taken and debated at length and learnedly-the nature, history, and objects of conference committees being explored-notably by Messrs. Sherman,

[1] David B. Henderson, of Iowa, Speaker.

[2] Third session Forty-second Congress, Globe, pp. 2173–2184.

[3] Mr. George F. Edmunds, of Vermont, Presiding Officer.

Bayard, Conlking, and Hamlin. The Senate, by a vote of yeas 11, nays 46, overruled the decision of the Chair.

Mr. Wright then moved to recommit the report without instructions. No point of order was made against this motion, which was negatived, yeas 24, nays 40.

6398. Only in rare instances has the Senate instructed managers of a conference.—On June 6, 1906,[1] in the Senate, a discussion arose as to the propriety of instructing conferees, and Mr. Henry Cabot Lodge, of Massachusetts, said:

I do not desire to press this to a vote of instruction if the conferees will consent to the removal of these lines without bringing it back again to the Senate. But if they desire it, I shall be very glad to take the sense of the Senate on the striking out of those vital words. It is quite within the power of the Senate to instruct conferees. I send to the desk, and ask that there may be printed in the Record two instances which I have marked, where in previous conferences, once on the motion of Senator Sherman, the conferees were instructed; and later, if it seems desirable, I will offer a resolution of instruction.

The matter referred to is as follows:

"Mr. Clark, from the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 649) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1866, reported that the committee having met, after full and free conference, had been unable to disagree.

"The Senate resumed the consideration of the bill (H. R. 649) last mentioned, with the amendments thereto in disagreement between the two Houses; and

"On motion by Mr. Nesmith to recommit the bill, with the amendments thereto in disagreement between the two Houses, to the committee of conference, with instructions to agree to an amendment in the following words:I32"'And the sum of $43,000 is hereby appropriated, to be added to the contingent fund of the House of Representatives, for the purpose of paying such contingent expenses as may be directed by resolution of the House.'

"On motion by Mr. Buckalew to amend the motion of Mr. Nesmith by striking out the part making an appropriation of $43,000 and in lieu thereof inserting 'That the committee be authorized to agree to a provision for the payment of 20 per cent additional compensation to the officers of both Houses for the present session,'

"It was determined in the negative.

"On the question to agree to the motion of Mr. Nesmith,

"It was determined in the affirmative, yeas 21, nays 18.

"On motion by Mr. Trumbull,

"The yeas and nays being desired by one-fifth of the Senators present,

"Those who voted in the affirmative are: Messrs. Anthony, Brown, Carlile, Cowan, Dixon, Doolittle, Foster, Harris, Henderson, Hendricks, Johnson, McDougall, Morrill, Nesmith, Powell, Ramsey, Riddle, Sumner, Van Winkle, Willey, Wright.

"Those who voted in the negative are: Messrs. Buckalew, Clark, Collamer, Conness, Farwell, Hale, Harlan, Howe, Lane of Indiana, Morgan, Nye, Pomeroy, Sherman, Sprague, Ten Eyck, Trumbull, Wilson.

"So it was—

"Resolved, That the bill, with the amendments thereto in disagreement between the two Houses, be recommitted to the committee of conference, with instructions to agree upon an amendment in the following words: 'And the sum of $43,000 is hereby appropriated, to be added to the contingent fund of the House of Representatives, for the purpose of paying such contingent expenses as may be directed by resolution of the House.'

"Ordered, That the Secretary notify the House of Representatives thereof."

[Senate Journal, March 1, 1865, pp. 268, 269.]

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[1] First session Fifty-ninth Congress, Record, pp. 7932, 7933.

"Mr. Sherman submitted the following resolution for consideration:

"Resolved, That the Senate agree to the further conference asked by the House of Representatives on the disagreeing votes of the two Houses on the bill H. R. 207, and that the conferees on the part of the Senate be instructed to recede from the amendments of the Senate to the said bill, except so much of said amendments as relates to imported cotton.

"On motion by Mr. Morton, to amend the resolution by striking out the words 'except so much of said amendments as relates to imported cotton,' and inserting in lieu thereof the words 'and agree to a proposition to suspend the entire tax on cotton during the year 1868, and that the tax on cotton thereafter shall be 1 cent per pound.'

"It was determined in the negative, yeas 18, nays 23.

"On motion by Mr. Morton,

"The yeas and nays being desired by one-fifth of the Senators present,

"Those who voted in the affirmative are: Messrs. Cole, Conkling, Cragin, Drake, Edmunds, Ferry, Fessenden, Harlan, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Ramsey, Sumner, Thayer, Tipton, Wade.

"Those who voted in the negative are: Messrs. Anthony, Bayard, Buckalew, Cattell, Conness, Davis, Dixon, Doolittle, Frelinghuysen, Grimes, Hendricks, Johnson, Morgan, Norton, Patterson of Tennessee, Pomeroy, Sherman, Sprague, Trumbull, Van Winkle, Willey, Williams, Wilson.

"So the amendment was not agreed to; and

"On the question to agree to the resolution, as submitted by Mr. Sherman,

"It was determined in the affirmative, yeas 25, nays 18."

[Senate Journal, January 22, 1868, pp. 119, 120.]

On June 7,[1] the conference report on this subject (relating to the bill H. R. 12987, the railway rate bill) was disagreed to by the Senate.

Messrs. Eugene Hale, of Maine, and Henry Cabot Lodge, of Massachusetts, proposed resolutions of instructions, but withdrew them after debate.

6399. According to the later practice the House does not, when it instructs conferees, inform the Senate of the instructions.—On February 23, 1903,[2] the House voted to insist on its amendments to the bill (S. 3560) to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes," and to ask a conference.

Thereupon a resolution instructing the conferees was agreed to, this being the first conference.

The same day the bill was delivered to the Senate by message, but out of deference to the objections of the Senate in a previous case,[3] no mention of the instructions was made in the message.

6400. The House having instructed its conferees at a second conference, and having by message informed the Senate of the instructions, that body agreed to the conference, although there was protest at the message.—On May 13, 1902,[4] the Speaker had ruled out, on a point of order, the conference report on the bill (H. R. 8587) for the allowance of certain claims for stores and supplies, etc., and the House had voted to further insist on its disagreement to the Senate, and to ask a further conference.

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[1] Record, pp. 7984, 7987, 7988.

[2] Second session Fifty-seventh Congress, Journal, p. 278; Record, pp. 2506, 2519–2522.

[3] See Sec. 6401 of this chapter.

[4] First session Fifty-seventh Congress, Journal, p. 701; Record, p. 5371.

Thereupon Mr. Oscar W. Underwood, of Alabama, moved the following instructions, which were agreed to by the House:

That the conferees be instructed not to agree to what is known as the Selfridge board findings in the Senate amendment.

On the same day [1] these proceedings were brought to the Senate by a message.

A question being raised as to the effect of these instructions, the President pro tempore said:

Of course the Senate is not bound at all by the instructions given by the House of Representatives to its conferees. It may, to a certain extent, deprive it of its character of a full and free conference, but the Senate can insist upon its amendments and go into conference again if it desires to do so. If it does not go into conference, of course the bill is ended.

The subject then went over to another day.

On May 14 [2] the subject was again considered in the Senate, when Mr. Eugene Hale, of Maine, apparently with the acquiescence of the Senate, stated:

The House, I should presume inadvertently, incorporated with its message its instructions to its own conferees. That undoubtedly should not be done. It is not customary, I think; but it was an inadvertence, and I presume the other body will take notice of it and will not fall into this error again. I do not think it is important enough now to make a report to send it back in order that the House may correct it. I think it is proper to call the attention of the Senate, and in this way it will come to the knowledge of the House, that we do not deem it a proper thing where instructions are given to the House conferees to make it a part of the message of the House which asks for a free conference; but, as I have said, I do not ask, and I do not think it would be advisable, to raise the question with the other body by sending back the report from the House to be so corrected.[3]

Thereupon the Senate agreed to the conference and appointed conferees.

On May 16 [4] the conferees reported in the House (the report having previously been agreed on in the Senate). The report presented an agreement as to an amendment of the Senate relating to the title, but as to the other amendment stated that the conferees had been unable to agree. As to this failure to agree the House conferees said in their statement:

That there is a practical agreement to everything except to the Selfridge Board claims. Upon this part of amendment Senate refused to recede, and House conferees, obeying instructions of House, no free conference could be had in relation to same in order to bring the two Houses together.

Thereupon, after debate, the House voted to further insist on its disagreement to the Senate amendment and to ask a further conference.

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[1] Record, pp. 5363, 5364.

[2] Record, pp. 5404–5407.

[3] It is true as stated that in some instances the House has not messaged instructions. Thus, instructions adopted by the House on the following dates were not messaged: June 15, 1878 (second session Forty-fifth Congress, Record, pp. 4663, 4689; Senate Journal, p. 715); January 29, 1897 (second session Fifty-fourth Congress, Record, pp. 1321, 1322, 1334, 1375; Senate Journal, p. 85), and February 17, 1897 (second session Fifty-fourth Congress, Record, pp. 1940, 1945; Senate Journal, p. 132).

[4] But the more general rule seems to have been the other way, as in the following instances where instructions were communicated: On March 2, 1864 (first session Thirty-eighth Congress, Globe, pp. 900, 908; Senate Journal, p. 207); April 15, 1864 (first session Thirty-eighth Congress, Globe, pp. 1639, 1697, 1698; Senate Journal, p. 331); on July 31, 1886, on river and harbor bill (first session Forty-ninth Congress, Record, pp. 7581, 7596, 7601); also in two instances in 1891, on the agricultural and diplomatic appropriation bills (second session Fifty-first Congress, Record, pp. 3747, 3768, 3771, 3855; Senate Journal, p. 218).

[4] Journal, p. 713; Record, pp. 5567–5574.

Then the House voted to instruct its conferees not to agree to that portion of the Senate amendment affecting the so-called Selfridge Board claims.

Then the Speaker reappointed the former conferees.

On the same day the message from the House announced this action in the Senate, the message conveying the instructions to the conferees.[1]

On May 19,[2] the message of the House was taken up in the Senate, and, in the language of the Senator in charge of the matter, "waiving the question of instructions which the House has sent," a motion was made and carried that the Senate agree to the conference asked by the House.

On the same day a report of the conference was submitted in the Senate.

6401. The House having instructed its conferees in the first instance, and having informed the Senate by message of the instructions, the latter body objected to the instructions and to the transmittal of them by message.

A difference arising between House and Senate as to the instruction of conferees, a distinct conference was asked and granted on the subject of difference.

The House having requested a conference and instructed its conferees, the Senate ignored the request of the House, insisted on its amendments, and asked "a full and free conference."

The Senate having asked "a full and free conference" on the differences as to all of its amendments to a bill, the House, ignoring this request, adhered as to two amendments, agreed to a third, and further insisted and asked a conference as to the remainder, which conference was granted.

The House having adhered to its disagreement to a Senate amendment, and the Senate having insisted, the House receded from its adherence and agreed to the amendment with an amendment.

A conference may be had on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves.

On May 20, 1902,[3] Mr. John A. T. Hull, of Iowa, from the Committee on Military Affairs, reported the bill (H. R. 12804) making appropriations for the Army, with Senate amendments thereto, with the recommendation that the House disagree to the amendments and ask a conference with the Senate.

By unanimous consent consideration of the Senate amendments in Committee of the Whole House on the state of the Union was waived, and the House voted to disagree to the amendments and-to ask a conference.

Thereupon Mr. Joseph G. Cannon, of Illinois, moved the following instructions:

Whereas Senate amendments numbered 13, 14, and 15 to the bill (H.R. 12806) making appropriations for the support of the Army for the fiscal year 1903 make the proposed appropriation of $4,000,000

[1] Record, p. 5562.

[2] Record, p. 5619.

[3] First session Fifty-seventh Congress, Record, pp. 5689–5696; Journal, p. 725.

for barracks and quarters available for the construction of such permanent buildings at established military posts as the Secretary of War may deem necessary, and reappropriate from unexpended balances of former appropriations for barracks and quarters $350,000 for construction of necessary garrison buildings, notwithstanding appropriations for said objects are made, in accordance with the rules and practice of the House, in the sundry civil appropriation bill for said year; and

Whereas said amendments are subversive of the rules of the House, duplicate appropriations, arid tend to confusion in the methods of making appropriations for the support of the Government, and will, if agreed to, give rise to a practice that will inevitably result in extravagant and wasteful expenditures: Therefore,

Resolved, That the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12804) are instructed not to recommend an agreement to said amendments numbered 13,14, and 15, or to any modification thereof, that will, under authority of said Army appropriation act, permit the expenditure of any sum for construction of permanent buildings at established military posts, except as authorized by section 1136 of the Revised Statutes.

After debate, which dwelt particularly on the propriety of instructing conferees in the first instance, the House by a vote of ayes 107, noes 50, agreed to the instructions.

Thereupon the Speaker appointed the conferees.

The same day [1] the bill and instructions were received in the Senate by message, and after some debate as to the propriety of the instructions, the subject went over.

On May 23 [2] the subject was discussed in the Senate, but without result. Finally, on May 27,[3] the Senate agreed to the following:

Resolved by the Senate (the House of Representatives concurring), That a committee, consisting of three Senators, be appointed by the Presiding Officer of the Senate to meet with a committee of like number, to be appointed by the House of Representatives, to confer upon the matter of the Message of the House of Representatives on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. 12804, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1903."

The debate showed an objection particularly to the language of the House instructions, and also to the fact that the instructions had been transmitted by message.

On May 29 [4] the House agreed to the resolution of the Senate, and the Speaker appointed as conferees Messrs. John Dalzell, of Pennsylvania; Joseph G. Cannon, of Illinois; and James D. Richardson, of Tennessee. The Senate had previously appointed as their conferees Messrs. John C. Spooner, of Wisconsin; Redfield Proctor, of Vermont; and Edmund W. Pettus, of Alabama. Later, on June 3, Mr. Henry M. Teller, of Colorado, was substituted in place of Mr. Pettus.

On June 16 [5] a proposition in the Senate to take up the Army appropriation bill led to a discussion of the question.

On June 19 [6] the Senate, ignoring the request of the House for a conference, insisted on its amendments and asked a "full and free conference" with the House.

On June 20 [7] the message of the Senate was considered in the House, and Mr. John A. T. Hull, of Iowa, offered the following resolution, which ignored the

[1] Record, pp. 5686, 5687.

[2] Record, pp. 5844–5850.

[3] Record, pp. 5956–5958.

[4] Journal, p. 759; Record, pp. 6118, 6119.

[5] Record, p. 6859.

[6] Record, pp. 7075, 7076.

[7] Journal, p. 833; Record, p. 7113.

request of the Senate for a conference and asked a conference on a portion only of the amendments, leaving out of conference those to which the instructions had related:

Resolved, That the House insist upon its disagreement to the amendments of the Senate to the bill H R. 12804 numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, and request a conference thereon.

That the House adhere to its disagreement to the amendments of the Senate numbered 13 and 14.

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment, insert the following:

"And whenever in the opinion of the President the lands and improvements, or any portion of them, of the military posts or reservations at Indianapolis, Ind., Columbus, Ohio, and Buffalo, N. Y., have become undesirable for military purposes, he may, in his discretion, cause the same to be appraised and sold at public sale at not less than the appraised value, either as a whole or in subdivisions, under such regulations as to public notice and terms and conditions of sale as be may prescribe, and the proceeds to be deposited in the Treasury. And a sum of money not exceeding the proceeds of such sale or sales at each of such places respectively is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purchase of such lands at or in the vicinity of Indianapolis, Ind., Columbus, Ohio, and Buffalo, N. Y., respectively, as may be required for military purposes, and for building barracks or quarters on such lands to be devoted to military purposes; and the Secretary of War is hereby authorized to make such purchases of lands for the establishment of military posts at or in the vicinity of such places, respectively."

Thereupon the Speaker appointed as conferees Messrs. Hull, Capron, and Hay, who had been appointed when the House first asked a conference.

On June 23 [1] the message of the House was considered in the Senate, and on motion of Mr. Redfield Proctor, of Vermont, the Senate voted to recede from its amendment numbered 13.

A question then arose as to the disposition of the remainder of the amendments, especially amendment No. 14. Mr. Henry M. Teller, of Colorado, having expressed an opinion that the amendment would not be within the scope of the conference I asked by the House, the President pro tempore [3] said:

The Chair is of opinion that the Senator from Colorado is entirely right; that the amendment referred to will not be in conference. [Of course the same reasoning would apply to amendment No. 15.]

After some further discussion Mr. Proctor moved that the Senate disagree to the House amendment to Senate amendment No. 15; that the Senate insist upon its amendments disagreed to by the House, and that it agree to the conference asked by the House.

On motion of Mr. Joseph B. Foraker, the words "including No. 14" were inserted after the word "amendments," so as to include that amendment among those insisted on. Then, as amended, the motion was agreed to.

On June 25 [4] Mr. Hull presented in the House the report of the conference committee, which consisted of a settlement of all the matters committed to them.

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[1] Record, pp. 7195–7197.

[2] William P. Frye, of Maine, President pro tempore.

[3] The House has insisted on disagreement to Senate amendments 4 and 5, receded and agreed to another with an amendment, and asked a conference on a series of other amendments to the same bill, without including the first two in the conference. (June 24, 1789, first session First Congress, Journal, pp. 65, 66.) The next day the Senate, in agreeing to the conference charged their conferees to confer also on the amendments numbered 4 and 5.

[4] Record, p. 7387; Journal, p. 848.

This report, which had already been agreed to by the Senate, was agreed to by the House.

There remained then Senate amendments Nos. 14 and 15 to be disposed of. Mr. Hull moved to recede from the House's adherence to its disagreement to amendment No. 14 and agree to the same with an amendment, and to insist on the House's amendment to the Senate amendment numbered 15. After debate these motions were agreed to.

On the same day[1] the bill came up in the Senate, when the Senate voted to agree to the House's amendment to Senate amendment No. 14, and to recede from its disagreement to the House's amendment to Senate amendment No. 15, and agree to the same.

And so the bill was finally passed.

6402. The House having instructed its managers at a first conference, the Senate declined to participate and asked a free conference, which was granted.—On March 2, 1891,[2] the House considered the Senate amendments to the agricultural appropriation bill, and having disagreed to them and voted to agree to the conference asked by the Senate, adopted instructions to the conferees that they should not agree to a certain amendment of the Senate numbered 17.

On March 3[3] the message announcing this action of the House was received in the Senate, and was at once made the subject of debate; and finally, in executive session, the Senate agreed to the following:

Resolved, That the Senate insist upon its amendments to the bill (H. R. 13552) making appropriations for the Department of Agriculture, etc., disagreed to by the House of Representatives, including the amendment numbered 17, referred to in the message from the House, and agree to a free and full conference on the disagreeing votes of the two Houses thereon.

Thereafter, in the House,[4] the chairman of the managers on the part of the House reported that they had met the conferees of the Senate and that the latter had declined to confer, since the managers on the part of the House had come to the conference with their hands tied. So the House managers reported that the conferees had been unable to agree.

Thereupon the House,

Resolved, That the House ask for a free conference.

6403. The House having instructed its managers for a second conference, the Senate declined the conference and asked a free conference.— On March 1, 1864,[5] the conferees of the House on the bill (H. R. 122) to increase the internal revenue, reported that the conferees of the two Houses had been unable to agree. Thereupon, on motion of Mr. Elihu. B. Washburne, of Illinois, the House

Resolved, That the House insist on its disagreement to the Senate amendments to House bill No. 122, and that the House request of the Senate another conference between the committees of conference on the said bill; and it is hereby declared to be the judgment of this House that, in the adjustment of differences between the two Houses on the said bill, there should be an additional duty of not less than 20 nor more than 40 cents per gallon imposed on spirits on band for sale.

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[1] Record, pp. 7365, 7366.

[2] Second session Fifty-first Congress, Record, pp. 3745–3749.

[3] Record, pp. 3860–3863.

[4] Record, pp. 3768–3771.

[5] First session Thirty-eighth Congress, Journal, pp. 327, 334, 335; Globe, pp. 892, 900–908.

The message of the House conveying notice of this action came up in the Senate on March 2 and led to a debate touching on the nature of conferences, in the course of which the Vice-President [1] said:

Conferences are of two characters, free and simple. A free corderence is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is "simple"—is that which confines the committee of conference to the specific instructions of the body appointing it.

The Senate finally decided not to instruct their conferees, but adopted the following:

Resolved, That the Senate disagree to the resolution of the House of Representatives of yesterday's date proposing instructions to the conferees, and ask another free conference on the disagreeing votes of the two Houses on the bill, etc.

The Senate also appointed conferees. The House, when the message was received, agreed to the conference asked and appointed conferees.

6404. On April 15, 1864,[2] the House rejected the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 15) to provide a temporary government for the Territory of Montana.

Then it was ordered that the House further insist on its disagreement to the amendments of the Senate to the said bill, and ask a further conference with the Senate on the disagreeing votes of the two Houses thereon, and that said committee be instructed to agree to no report which authorize any others than free white male citizens and those who had declared their intentions to become such to vote.

In the Senate, on the same day, the message from the House was taken up. The fact developed in the debate that the point on which the House had instructed its conferees was the only point in issue, and the Senate considered the procedure of the House only another way of adhering.

Finally it was voted to decline to agree to the further conference on the terms proposed by the resolution of the House.

On April 18 the message of the Senate was taken up in the House, and the House voted to further insist on its disagreement to the amendments of the Senate, and ask a further conference.

6405. The unusual conference over the revenue bill of 1883.

Instance wherein a House bill returned from the Senate with amendments was taken from the Speaker's table and sent to conference on one motion, through the medium of a special order.

Instance wherein the House referred to the managers of a conference the examination of the question whether or not the Senate amendments in disagreement invaded the House's prerogative of originating revenue bills.

In the absence of joint rules each House may appoint whatever number of managers of a conference it may see fit.

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[1] Hannibal Hamlin, of Maine, Vice-President.

[2] First session Thirty-eighth Congress, Journal, pp. 529, 532, 546; Globe, pp. 1639, 16911, 1698.

While usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time.

On February 27, 1883,[1] the House agreed to a special order which made in order a motion to take the bill (H. R. 5538) "to reduce internal-revenue taxation," with a Senate amendment, from the Speaker's table, "declare a disagreement with the Senate amendment to the same, and ask for a committee of conference thereon, to be composed of five members on the part of the House."

After the adoption of this rule a question was raised as to whether or not the amendment invaded the constitutional prerogative of the House in the origination of revenue bills, and the House agreed[2] to a preamble reciting the opinion of the House that there had been an invasion of its prerogative, with a resolution as follows:

Resolved, That if this bill shall be referred to a committee of conference, it shall be the duty of the conferees on the part of the House on said committee to consider fully the constitutional objections to said bill as amended by the Senate and herein referred to, and to bring the same, together with the opinion of the House in regard thereto, before said conference, and, if necessary, in their opinion, after having conferred with the Senate conferees, said conferees on said committee may make report[3] to the House in regard to the objections to said bill herein referred to.

After the adoption of this resolution the House then voted[4] affirmatively on the motion authorized by the rule; but the Speaker did not immediately appoint the managers of the conference.

On the same day the action of the House was communicated to the Senate by message,[5] and at once a question was raised by Mr. Isham G. Harris, of Tennessee, as to the unusual number of conferees, but it was agreed generally that in the absence of joint rules each House might appoint whatever number of conferees it should think fit.

Mr. M. C. Butler, of South Carolina, raised the question that the House had not informed the Senate that conferees had been named; and Mr. Daniel W. Voorhees, of Indiana, insisted that the message should be returned to the House. But after debate neither of these objections were heeded, and the Senate voted[6] to insist on its amendment and agree to the conference asked. The President pro tempore being empowered to appoint the conferees by vote of the Senate,[7] named Messrs. Justin S. Morrill, of Vermont; John Sherman, of Ohio; Nelson W. Aldrich, of Rhode Island; William B. Allison, of Iowa; Thomas F. Bayard, of Delaware, and James B. Beck, of Kentucky.

On February 27[8] the Speaker appointed Messrs. William D. Kelley, of Pennsylvania; William McKinley, of Ohio; Dudley C. Haskell, of Kansas; Samuel J. Randall, of Pennsylvania, and John-G. Carlisle, of Kentucky.

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[1] Second session Forty-seventh Congress, Record, pp. 3305, 3335.

[2] Record, pp. 3349, 3350.

[3] The managers did not report on this subject.

[4] Record, p. 3350.

[5] Record, p. 3328.

[6] Record, pp. 3332, 3334.

[7] Record, p. 3334.

[8] Record, p. 3356.

6406. The unusual conference over the revenue bill of 1883, continued.

In 1883 the House did not inform the Senate of the fact that it had instructed its managers of a conference to consider an alleged invasion of the House's prerogatives by the Senate amendments in disagreement.

The Senate, having learned indirectly that the House had instructed its conferees, declared that the conference should be full and free, and instructed its own conferees to withdraw if they should find the freedom of the conference impaired.

The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference.

Instance wherein the Senate declined to have read the record of the proceedings of the House, even as the basis of a question of order relating to the rights of the Senate.

On February 28[1] the names of these conferees were transmitted to the Senate by message, but neither this message nor the preceding one on this bill had made any mention of the fact that the question as to the prerogatives of the House had been referred to the managers on the part of the House.

As soon as the message announcing the names of the House managers had been laid before the Senate, Mr. Augustus H. Garland, of Arkansas, sent to the Clerk's desk to be read[2] a portion of the Congressional Record containing a record of the action of the House on the subject of prerogative.

Mr. John J. Ingalls, of Kansas, made the point of order that the record might not be read.

The President pro tempore[3] held the point of order well taken, founding his decision on the paragraph in Jefferson's Manual, declaring it a "breach of order to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there," etc.

Mr. Garland having appealed on the ground that the extract from Jefferson's Manual did not apply to the situation, and the Senate by a vote of yeas 24, nays 26, having declined to lay the appeal on the table, debate proceeded[4] especially with reference to the propriety of instructing conferees, the precedents of the Senate in relation thereto, and the propriety of one House asking the other to a conference without informing it of a condition that would deprive the conference of a full and free character.

The appeal was withdrawn at the conclusion of the debate and the Senate agreed[5] to this resolution:

Resolved, That it is the opinion of the Senate that the conference on House bill No. 5538 should be full and free, and that if the Senate conferees become advised that any limitation has been placed by the House upon the action of their conferees, the Senate conferees shall retire and report to the Senate for its consideration.

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[1] Record, p. 3367.

[2] Record, pp. 3368–3370.

[3] David Davis, of Illinois, President pro tempore.

[4] Record, pp. 3371–3374.

[5] Record, p. 3376.

On March 1[1] Mr. Bayard, rising to a question of privilege, was proceeding to state that he himself, with Mr. Beek, had retired from the conference, because from the instructions to the House conferees, which they had inspected in conference, it appeared that the conference was not full and fair.

Mr. John Sherman, of Ohio, raised the question of order that Mr. Bayard had no right to present this matter unless he acted in behalf of a majority of the Senate conferees, since a minority might not make a report.

Mr. Bayard disclaimed any intention of making a report, and said he was only proposing to make a personal explanation; but proceeded to describe the instructions of the House managers, etc., when Mr. Sherman again raised the question of order, saying:

> The Senator is endeavoring to explain a matter which he cannot properly * * * He should wait until the committee, of which he is in a minority, present their report, and then he can submit his views.

The President pro tempore held that the point was well taken.

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[1] Record, p. 3454.

Chapter CXXXV.

MANAGERS TO CONSIDER ONLY MATTERS IN DISAGREEMENT.

1. **General decisions. Sections 6407, 6408.**[1]
2. **Speaker may rule out a report. Sections 6409–6416.**
3. **Managers may not change the text to which both Houses have agreed. Sections 6417–6420.**
4. **Broad discretion of managers as to differences over substitute amendments. Sections 6421–6425.**
5. **Senate practice in cases wherein managers exceed their authority. Sections 6426–6432.**
6. **Two Houses may add to powers of managers. Sections 6433–6439.**
7. **Time of making of points of order. Sections 6440–6442.**

6407. The managers of a conference may not in their report include subjects not within the disagreements submitted to them by the two Houses.—On June 23, 1812,[2] Mr. Robert Wright, of Maryland, from the managers appointed on the part of the House to attend a conference with the managers on the part of the Senate upon the subject-matter of the disagreeing votes of the two Houses on the amendments of the Senate to the bill "for the more perfect organization of the infantry of the Army of the United States" made a report, which was read and declared by the Speaker[3] to be out of order, inasmuch as the conferees had discussed and proposed amendments which had not been committed to them by either of the Houses.

6408. On March 3, 1893,[4] Mr. Thomas C. McRae, of Arkansas, submitted the report of the committee of conference on the bill (H. R. 7028) "to protect settlement rights where two or more persons settle upon the same subdivision of agricultural public lands before survey thereof."

The report having been read, Mr. Charles Tracey, of New York, made the point of order that the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate had exceeded their authority and jurisdiction in recommending the injection into the bill of new matter not in dispute between the two Houses and not germane to the bill or amendments thereto.

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[1] Instance wherein managers originated a bill. (See. 1485 of Vol. II.)

[2] First session Twelfth Congress, Journal, p. 383.

[3] Henry Clay, of Kentucky, Speaker.

[4] Second session Fifty-second Congress, Journal, pp. 137–139; Record, pp. 2573–2578.

After debate, the Speaker[1] sustained the point of order, holding as follows:

The question for the Chair to determine is whether the amendment which has been agreed to and reported by the conference committee is germane to the amendment of the Senate or to the original bill. The amendment may not be germane to the original bill, yet if it is germane to the Senate amendment the conference committee might report it.

The Chair thinks that the practice of enlarging the powers of conference committees beyond the strict letter of the rule was wrong; that conferees ought to be held to the rule, and that amendments they propose in conference reports shall be germane either to the original text or to the amendment. The portion of the Senate amendment which the gentleman from Arkansas [Mr. McRae] claims justifies and authorizes the amendment which the conference committee have reported in this case is as follows:

"That the agents appointed by the Department of the Interior to investigate claims under the swamp-land act approved September 28, 1850, shall have the power to administer oaths and to compel the attendance of witnesses both on behalf of the State and of the United States, and witnesses swearing falsely before them shall be deemed guilty of perjury, and shall, on conviction, be punished as now prescribed by law."

In the opinion of the Chair, conference committees should keep strictly within the rule, which is that any original amendment which they may recommend to the two Houses must be germane either to the original bill or to the amendments which are in dispute.

The Chair understands that the subject of this Senate amendment is the administration of oaths by special agents of the Interior Department in the investigation of frauds under the swamp-land act. The Chair understands that the amendment reported by the committee goes beyond any questions of the duties of such agents, and provides for the adjustment, under the swamp-land act, between the several States and the United States Government, of a large number of claims that are unadjusted. The Chair decides that this conference report goes beyond the power and jurisdiction of a conference committee and can not be received by the House.

Mr. McRae appealed from the decision of the Chair. On motion of Mr. James H. Blount, of Georgia, the appeal was laid on the table.

6409. In the later, but not the earlier practice, the Speaker rules a conference report out of order, on a question being raised.

Under the later practice, when a conference report is ruled out of order, the Senate is informed by message that the report has been rejected.

While the managers may perfect by germane amendments propositions committed to them, they may not, under the later practice, go beyond the differences of the two Houses in so doing.

On April 19, 1871,[2] Mr. Henry L. Dawes, of Massachusetts, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House No. 19 (deficiency appropriations), submitted a report thereon in writing.

Mr. William S. Holman, of Indiana, made the point of order that the report contained matter not a subject of difference between the two Houses. Mr. Holman specified that there were incorporated in the report two propositions which were new, a provision making appropriation for the Sutro tunnel and another for the Agricultural Department. These matters, he submitted, were not referred to the committee of conference at all. He understood that the committee of conference was not authorized to consider matters which had been neither incorporated in Senate amendments nor brought before the House.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Forty-second Congress, Journal, pp. 190, 191; Globe, p. 796.

The Speaker[1] said:

The rule is as broad as the gentleman from Indiana states it, with this reservation: New propositions may be introduced, but there must be something in the bill to make them germane as amendments. The power of a conference committee, which, as gentlemen well know, the two Houses have been in the habit of considerably enlarging, fairly includes the power to incorporate germane amendments. If the gentleman from Indiana makes the point that the amendments he specifies are not germane, the Chair will examine the question; but the mere fact that the propositions embrace matters which were not originally before the House or Senate would not be sufficient to require them to be ruled out.

After further debate, during which it was shown that the Sutro-tunnel appropriation was not in the bill when it went to conference, but, as Mr. Dawes stated, was put in to reconcile the Senate conferees to the striking out of an appropriation for the Carson mint, the Speaker said:

The point of order lies against the conference report, but during the experience of the Chair on this floor he has never known a conference report ruled out on a point of order. The report of a conference committee is always received as embodying the conclusions of both Houses, or the representatives of both branches of Congress. The Chair will, therefore, submit the point of order to the House.

The point of order, being put to the House, was sustained by a vote of 82 ayes to 33 noes.

The report having been thus ruled out, the Speaker said that he was at a loss to know what message to send to the Senate. It was suggested that the report, having not been received, was still with the committee, and that the committee might, therefore, make a new report. Mr. Nathaniel P. Banks, of Massachusetts, moved to send a message to the Senate informing them that the report had been ruled out, but subsequently withdrew this motion. Finally, on motion of Mr. James A. Garfield, of Ohio, it was voted to recommit the report to the conference committee.

6410. On May 2, 1898,[2] Mr. John F. Lacey, of Iowa, called up the conference report on the bill (H. R. 5975) extending the homestead laws and providing for a right of way for railroads in the district of Alaska.

Mr. Eugene F. Loud, of California, made a point of order against the report.

During the debate it was developed that among the Senate amendments was a provision relating to the fishery question between Canada and the United States. To this the conferees added a provision for a commission to consider the differences between Canada and the United States in regard to trade relations.

The Speaker[3] ruled:

The Chair dislikes to pass upon such matters as this, but it is a well-established principle that no conference committee can introduce a new subject, one that was not in dispute between the two Houses; and it is evident that everybody in the House realizes that this amendment which has been presented is really beyond the power of the committee of conference. That being so, and the point being made, there is no other course but to sustain the point of order, which the Chair accordingly does.

On June 20, 1898,[4] Mr. Joseph W. Babcock, of Wisconsin, submitted a conference report on the bill (H. R. 6148) to amend the charter of the Eckington and Soldiers' Home Railway Company and the Maryland and Washington Railway, etc.

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[1] James G. Blaine, of Maine, Speaker.

[2] Second session Fifty-fifth Congress, Record, p. 4.514.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-fifth Congress, Record, p. 6165.

Mr. William P. Hepburn, of Iowa, made the point of order that the committee of conference had inserted matter over which it had no jurisdiction. A Senate amendment had proposed to extend to other roads a privilege enjoyed by one. The conferees had added an amendment striking out this extension of privilege to others and also taking away the privilege enjoyed by the one.

During the debate it was urged on the one side that the conferees had jurisdiction only on the subject of the disagreeing votes, and that the repeal of this privilege was not in disagreement. On the other hand, it was argued that the Senate had introduced the subject-matter by their amendment and that it was proper for the conferees to amend it.

The Speaker [1] sustained the point of order, saying:

If we were to adopt the idea that when once the subject-matter was introduced that was to control, and not the differences between the two bodies, we should be likely to enlarge the powers of the committee of conference rather beyond what was intended by the House. To the Chair it seems the point of order is well taken, and therefore the Chair sustains it.

A question arising as to the effect of ruling out a conference report in this way, and as to whether or not a motion to recede and concur in the Senate amendment would be in order, the Speaker said:

The Chair thinks that according to the action of the House hitherto the sustaining of a point of order on a conference report has been regarded as equivalent to a rejection of the report. * * * The present view of the Chair, contrary to his first impression, is that in the present condition of things the motion would be in order. * * * The Chair so rules.

This motion having failed, and the House having voted to further insist and ask a further conference, a message [2] was sent to the Senate announcing that "the House had disagreed to the report of the committee of conference," had further insisted, had asked a further conference with the Senate, and had appointed certain conferees.

6411. On March 3, 1871,[3] the House was considering the report of a committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 2816) making appropriations for the support of the Army, when Mr. Fernando Wood, of New York, raised a question of order as to a provision relating to certain claims. One of the Senate amendments to which the House had disagreed was a provision to refer the matter of the claims in question to the Quartermaster-General and the Commissary-General. The conferees reported a provision to constitute a commission to deal with the subject.

The Speaker [4] ruled:

The Senate inserted a provision in this appropriation bill on this subject, and the provision reported by the conference committee is a germane modification of that provision, and therefore it comes strictly within the purview and power of the committee of conference. If it were entirely new matter the Chair would have no hesitation in ruling it out.

6412. On May 26, 1870,[5] the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the amendment

[1] Thomas B. Reed, of Maine, Speaker.

[2] See Record, p. 6140, Senate proceedings, June 20, 1898, second session Fifty-fifth Congress.

[3] Third session Forty-first Congress, Globe, p. 1916.

[4] James G. Blaine, of Maine, Speaker.

[5] Second session Forty-first Congress, Journal, pp. 859, 860; Globe, pp. 3854, 3855.

of the Senate to the bill (H. R. 1293) to enforce the right of citizens of the United States to vote in the several States of this Union who have hitherto been denied that right on account of race, color, or previous condition of servitude.

Mr. Samuel S. Cox, of New York, made the point of order that the report contained new matter, two new sections having been added.

The Speaker[1] said:

It is not necessary that the matter reported by the committee of conference should have been considered in either branch if it be germane and in the nature of an amendment which may reconcile the difference between the two branches. It is just as much in order for a conference committee to report such matter as for a Member to move it on the floor of either House. It is only when they introduce absolutely new matter—which would not be germane to the matter under consideration, and could not be entertained in either branch in the form of an amendment—that the point of order raised by the gentleman from New York could be entertained. The Chair overrules the point of order.

6413. On the calendar day of March 3, 1901,[2] but the legislative day of March 1, the House was considering the following Senate amendment to the sundry civil appropriation bill:

Provided, That the Secretary of the Interior is hereby authorized and directed to exchange a tract of land containing 60 acres, more or less, east of Nichols avenue and south of Congress Heights, for 60 acres, more or less, adjoining the grounds of the Government Hospital for the Insane on the south, to be selected by said Secretary, the exchange to be made acre for acre: *And provided further,* That a roadway 90 feet wide be reserved out of and on the south side of the land so acquired as a public highway from Nichols avenue to the river.

On motion of Mr. James M. Robinson, of Indiana, the House concurred in the Senate amendment with the following amendment:

And the Secretary of the Interior is further authorized, if in his judgment advisable, to exchange such portion as he may deem equitable of the agricultural land now owned by the Government, or of the farm opposite Alexandria and known as Godding Croit, for 80 acres, more or less, lying immediately adjoining this said 59½ acres and south of the present building site of the hospital. In case such exchange is made, the Secretary is also authorized, in his discretion, to grant a roadway along the south side of said tract, from Nichols avenue to the river, 90 feet in width.

On the calendar day of March 4,[3] same legislative day, the report of the conference committee was presented to the House, and included in the agreement as to the propositions above, the following:

Any of the buildings authorized in the sundry civil appropriation act approved June 6, 1900, for the Government Hospital for the Insane may be erected on land now owned or that may be acquired hereunder by the United States for the Government Hospital for the Insane.

Mr. Robinson made the point of order that this provision changed a law, and that such change was not within the jurisdiction of the conferees.

After debate the Speaker[4] said:

The Chair will state that often conferees bring in entirely new provisions, and so long as within the theme discussed it is not subject to the point of order. The Chair thinks in this case the conferees have remained completely within their jurisdiction.

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[1] James G. Blaine, of Maine, Speaker.

[2] Second session Fifty-sixth Congress, Record, p. 3573.

[3] Record, pp. 3599, 3600.

[4] David B. Henderson, of Iowa, Speaker.

6414. It is only in later years that the Speakers have assumed authority to determine whether or not the managers of a conference have transcended their powers.[1]

Both House and Senate have always been adverse to receiving reports in cases where the managers have exceeded their powers.

On July 11, 1862,[2] Mr. Speaker Grow declined to rule out a conference report on the point that it contained matter not in difference between the two Houses and not committed to the conferees. He held that the presence of such matters might be reason for the rejection of the report by the House. At the same time, however, he ruled as to the propriety of the report in what it contained in another way.

6415. On May 26, 1870,[3] the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 1293) to enforce the right of citizens of the United States to vote, etc., when a point of order was made that the committee of conference had incorporated new matter in their report.

Mr. Horace Maynard, of Tennessee, rising to a parliamentary inquiry, asked if the Speaker might, under the rules, pass upon a conference report and determine if its provisions were in order.

The Speaker[4] said:

It is quite within the province of the Chair to rule whether a conference committee have or have not transcended the powers of a conference committee.

6416. On January 17, 1834,[5] the House had before it the bill (H. R. 36) "making appropriations, in part, for the support of the Government for the year 1834," and disagreed to the following amendment of the Senate:

Strike out the following words of the bill. viz: "And no part of this appropriation [for the payment of contingent expenses of the Senate and House of Representatives] shall be applied to any printing other than of such documents or papers as are connected with the ordinary proceedings of either of the said Houses ordered during the session and executed by the Public Printer agreeably to his contract, except such printing and books as may have been heretofore ordered by the House."

The differences over this amendment being committed to conference, on January 30[6] the report of the conferees was presented to the House, the managers recommending the following:

Strike out all of the bill from the sixteenth line of the engrossed bill, viz, the following words: "The two sums last mentioned to be applied to the payment of the ordinary expenditures of the Senate and House of Representatives, severally, and to no other purpose. And no part of this appropriation shall be applied to any printing," etc. [following the language above exactly], and insert the following:

"And be it further enacted, That neither the Senate nor House of Representatives shall subscribe for or purchase any book unless an appropriation shall be made specially for that purpose. And the sum of $5,000 is hereby appropriated, to be paid out of any money in the Treasury not otherwise

[1] See, however, Sec. 6407 of this chapter, and also Sec. 6409.

[2] Second session Thirty-seventh Congress, Globe, p. 3267.

[3] Second session Forty-first Congress, Globe, p. 3854.

[4] James G. Blaine, of Maine, Speaker.

[5] First session Twenty-third Congress, Journal, p. 211.

[6] Journal, pp. 263, 264; Debates, pp. 2557–2560.

appropriated, annually, for the purchase of books for the Library of Congress, in addition to the sum of $5,000 heretofore annually appropriated for that purpose.

"And be it further enacted, That all books already purchased or ordered by either House shall be paid out of any money in the Treasury not otherwise appropriated."

Objection was made' to this report on the ground that the conferees had exceeded their authority, striking out a portion of the text of the bill which was not in disagreement, and introducing new matter [1] not in the original bill or committed to the conferees. Mr. John Quincy Adams, of Massachusetts, who objected most strenuously, did not make a point of order,[2] but urged the House to defeat the conference report.[3]

The question was then put on.agreeing to the report of the conferees, and decided in the negative. So the report was rejected.

On February 7,[4] a motion to reconsider this vote failed, and the House then receded from its disagreement.

6417. The managers of a conference must confine themselves to the differences committed to them.

Managers of a conference may not change the text to which both Houses have agreed.[5]

On March 7, 1904,[6] Mr. Henry H. Bingham, of Pennsylvania, called up the conference report on the legislative appropriation bill.

Thereupon Mr. James R. Mann, of Illinois, made the point of order that the managers of the conference had exceeded their authority in relation to a certain paragraph of the bill which, with the Senate amendments (which are italicized) appeared as follows in the printed copy:

No part of any money appropriated by this *or any other* Act shall. be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for [herein] *by this or any other Act* other than the President of the United States, the heads of Executive Departments, and the Secretary to the President.

The managers had inserted between the words "personal" and "use" the words "or official." Mr. Mann insisted that this amendment of the text to which both houses had agreed was beyond the power of either House, and consequently beyond the power of the conferees, citing the precedent of April 23, 1902.[7]

After debate, the Speaker [8] withheld his decision.

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[1] Mr. Polk, in presenting the conference report, said it contained a new matter of expenditure for the library, and would therefore have to be considered in Committee of the Whole. The report was then referred to Committee of the Whole. (Journal, p. 256; (Debates, p. 2543.) This is not the modern practice.

[2] On a previous day, January 27 (Debates, p. 2543), Mr. Adams had made the point of order, and the Speaker, while admitting that the introduction of new matter not in disagreement was out of order, had seemed disinclined to rule.

[3] Mr. Adams was precluded from making a point of order by the statement of Mr. Speaker Stevenson that.he considered it for the House and not the Speaker to decide whether the report was in order or not. (Debates, p. 2543.) In recent cases the Speaker has decided.

[4] Journal, pp. 290, 291; Debates, pp. 2683–2685.

[5] See also Secs. 6420, 6433–6436 of this volume.

[6] Second session Fifty-eighth Congress, Record, pp. 2931, 2932.

[7] See section 6181 of this volume.

[8] Joseph G. Cannon, of Illinois, Speaker.

On March 8,[1] the Speaker ruled:

On yesterday, upon the conference report on the legislative, executive, and judicial appropriation bill, the gentleman from Illinois [Mr. Mann] made the point of order that the conferees had exceeded their jurisdiction in substance as follows: That Senate amendment numbered 235 inserted these words: "or any other;" and again to the amendment numbered 236 the Senate inserted these words: "by this or any other act." The House provision which the Senate amended is as follows:

No part of any money appropriated by this act shall be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for herein other than the President of the United States, the heads of Executive Departments, and the Secretary to the President."

The conference report takes the matter in difference to which the Chair has referred, accepts the Senate amendments, and inserts "or official;" so as to make it read "for the personal or official use of any officer provided for by this or any other act other than the President of the United States, etc." It is objected that the insertion of the words "or official" is aliunde to the matter that was in difference between the two Houses, and prevents, if enacted, the use of appropriations in this or any other appropriation bill for paying the expenses of horses and carriages, or drivers therefor, for the personal or official use of any officer, etc. It is evident from the reading of the amendments that the insertion of the words "or official" inserts that within the conference report that was not proposed by the House or he Senate.

It is true that if the whole paragraph in the bill as it passed the House had been stricken out and a substitute therefor proposed by the Senate, or if the Senate had stricken out the paragraph without proposing a substitute, and the House had disagreed to the amendments of the Senate, then the conferees might have had jurisdiction touching the whole matter and might have agreed upon any provision that would have been germane. But that is not this case. This provision in the conference report inserts legislation that never was before the House or before the Senate, and it was quite competent for the conferees, if they could do this, to have stricken out the whole paragraph and inserted anything that was germane. They could have stricken out these words, "other than the President of the United States, the heads of Executive Departments, and the Secretary to the President," and while there were but two words inserted, the provision, if enacted into law, would be far-reaching and would run along the line of the whole public service.

As to the wisdom of such a provision, the Chair is not called upon to intimate any opinion. It is for the House and the Senate to determine upon the wisdom of it, and, as the House and the Senate never have considered that proposition, the Chair is of opinion that the conferees exceeded their power, and therefore sustains the point of order.

6418. On April 1, 1904,[2] Mr. John A. T. Hull, of Iowa, presented a conference report on the disagreeing votes of the two Houses on the army appropriation bill.

The report having been read, Mr. James A. Hemenway, of Indiana, made the point of order that in two specific instances the managers had included in their report matters not in difference between the Houses. The first instance was as to amendment No. 43, wherein the Senate had stricken out the following House text:

All the money herein before appropriated for pay of officers and men on the active list shall be disbursed by the Pay Department as pay of the Army, and for that purpose shall constitute one fund, but shall be accounted for and reported in detail: *Provided,* That hereafter all payments to the militia under the provisions of section fifteen of the act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage and other items of expenditure for the support of the Army, except as above provided, shall be made solely from the sums herein appropriated for such purposes.

And had inserted the following:

All the money herein before appropriated for pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall

[1] Journal, p. 404; Record, p. 2994.

[2] Second session Fifty-eighth Congress, Record, pp. 4110, 4111; Journal, pp. 523, 524.

constitute one fund: *Provided,* That hereafter all payments to the militia under the provisions of section fifteen of the act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes: *And provided further,* That all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit.

The managers in their report dealt with this amendment as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment as follows: After the word "audit," in line 14 of said amendment, insert the following: "and the Secretary of War may hereafter authorize the assignment to duty in the office of the Paymaster-General of such paymasters' clerks, now authorized by law, as may be necessary for that purpose; "and the Senate agree to the same.

The second objection related to amendment No. 55, wherein the Senate had added to a paragraph appropriating generally for army hospitals, the following:

of which sum not to exceed fifty thousand dollars may be used to build a modern hospital at Fort Riley, Kansas; thirty thousand dollars to build a modern hospital at Fort Totten, New York; thirty thousand dollars to enlarge the hospital at Fort Leavenworth, Kansas; twenty-five thousand dollars to enlarge the hospital at Fort Snelling, Minnesota; twenty-five thousand dollars to enlarge the hospital at Fort Sheridan, Illinois, and thirty thousand dollars for the erection of a modern hospital at Fort Clark, Texas.

The managers of the conference dealt with this amendment as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment as follows: Strike out all the matter inserted by said amendment and insert in lieu thereof the following: ": *Provided,* That of the appropriation for construction and repair of hospitals not more than $40,000 shall be used for the enlargement or construction of a hospital at any one post;" and the Senate agree to the same.

After debate the Speaker [1] said:

By the act of August 5, 1882, it is provided as follows:

"And thereafter"

The date of the act—

"all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited."

This provision of law is sweeping and covers the detail of civil officials in the service outside of the District of Columbia to the service in the Departments in the District of Columbia. The Senate amendment is as follows:

"All the money hereinbefore appropriated for the pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall constitute one fund: *Provided,* That hereafter all payments to the militia under the provisions of section 15 of the act of Congress approved January 21, 1903, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes: *And provided further,* That all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of-the Army before said accounts are forwarded to the Treasury Department for final audit."

To that amendment the House disagreed, and also disagreed to the striking out of the House provision by the Senate amendment. On the disagreement between the two bodies a conference was had. The conferees of the House and Senate, in lieu of Senate amendments, agreed as follows:

"That the House recede from its disagreement to the amendment to the Senate numbered 43, and agree to the same with an amendment as follows: After the word 'audit,' in line 14 of said amendment, insert the following: 'and the Secretary of War may hereafter authorize the assignment to duty in the

[1] Joseph G. Cannon, of Illinois, Speaker.

office of the Paymaster-General of such paymasters' clerks, now authorized by law, as may be necessary for that purpose;' and the Senate agree to the same."

Under the act first referred to, of 1882, which is existing law, such detail is prohibited. In the Senate amendment there is no legislative provision repealing the act of 1882 or covering the detail of paymasters' clerks for duty in the Paymaster-General's office, nor does anything of that kind appear in the House text which was stricken out by the Senate. It seems quite plain to the Chair that the subject matter of a repeal of the law of 1882 by an express provision or by implication, which contravenes the law of 1882, was not submitted to the conferees as a matter of difference between the House and the Senate. The Chair, therefore, will sustain the point of order as to that amendment.

The Chair thinks it proper, and, without objection, will also dispose of the other point of order.

Under the head of "Construction and repair of hospitals" the Senate amends the House provision by striking out $475,000 and inserting in lieu thereof $380,000, with the following addition:

"of which sum not to exceed $50,000 may be used to build a modern hospital at Fort Riley, Kans.; $30,000 to build a modern hospital at Fort Totten, N.Y.; $30,000 to enlarge the hospital at Fort Leavenworth, Kans.; $25,000 to enlarge the hospital at Fort Snelling, Minn.; $25,000 to enlarge the hospital at Port Sheridan, Ill., and $30,000 for the erection of a modem hospital at Fort Clark, Tex."

Section 1136 of the Revised Statutes is as follows:

"Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed $20,000, shall be erected unless by special authority of Congress."

Under that provision there can not be expended, without special authority from Congress, a sum exceeding $20,000 for the construction of a hospital at any post. The Senate amendment to the House provision does provide specially for the construction of hospitals at four or five different posts at a cost in excess of $20,000. The following is the agreement of the conferees:

"That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment as follows:

"Strike out all of the matter inserted by said amendment and insert in lieu thereof the following:

"'*Provided,* That of the appropriation for construction and repairs of hospitals not more than $40,000 shall be used for the enlargement or construction of a hospital at any one post;'

"And the Senate agree to the same."

By necessary implication this provision, if enacted into law, would amend section 1136 and permit the expenditure of $40,000 instead of $20,000 for the erection of a hospital at any army post. So far as the Chair can discover, there is nothing in the House provision or in the Senate amendment to the House provision that placed in conference the repeal or amendment of section 1136. The only thing that was in conference touching the erection of hospitals at a cost exceeding $20,000 was as to the four or five posts the designations of which have been read by the Chair.

The Chair has no difficulty in arriving at the conclusion that the point of order is well taken, both as to amendment 43 and as to amendment 55. The point is sustained.

6419. A conference committee may not include in its report new items, constituting in fact a new and distinct subject not in difference, even though germane to questions in issue.

When a conference report is ruled out on a point of order it is equivalent to a negative vote on the report.

On May 13, 1902,[1] Mr. Thaddeus M. Mahon, of Pennsylvania, presented the conference report on the disagreeing votes of the two Houses on the Senate amendment to the bill (H. R. 8587) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the conferees had included in their report matters not in issue between the two Houses.

[1] First session Fifty-seventh Congress, Journal, p. 701; Record, pp. 5365–5368.

The Senate had amended the House bill, which was a so-called "omnibus bill" covering a number of claims, by striking out all after the enacting clause and inserting a new text which was in the nature of a new "omnibus "bill. Mr. Underwood called attention to the fact that the conferees had inserted in their report items for the payment of claims not found in either the original House bill or the Senate amendment.

After debate and the citation of precedents, the Speaker [1] said:

The Chair is ready to rule on the question, and is impressed with the importance of it. There are but few countries, as the Chair now recalls, that have conference committees in their national legislative bodies; certainly none that have perfected them as we have in the United States. It is one of the vital instrumentalities in bringing the two Houses together and securing joint legislation. But there must be no abuse of that power. It will not do to allow matters not in contemplation by the two Houses, that are foreign to the questions being considered, to be inserted by the conference committee.

The decisions here are conflicting. The one just referred to by the gentleman from Tennessee [Mr. Gibson], in reference to the Freedmen's Bureau, is "the widest open," so to speak, of the decisions; and yet in that case the new bill treated of the subject-matter of the original propositions, which was how to handle the interests of the freedmen. and one can readily see that the Chair might allow that to come in without being a violation of the rule.

Now, what are the facts in this particular case? We have incorporated here, according to the statement of the gentleman from Pennsylvania, in charge of the bill, three entirely new items, not known to the action of the House, not considered in the action of the Senate. One is the Hancock item, which we find was known as Senate bill 52, and in the House as House bill 11208; another is the Horner item, known as H. R. 12590, and the other the Dashiaell item, known as H. R. 13223, entirely separate and distinct bills, presenting different rights and different questions for the consideration of the Congress. Now, the gentleman from Pennsylvania, in his ingenious argument, seeks to avoid the force of the objection made by the gentleman from Alabama because they were claims. But there are different claims. The House might be well pleased to insert and allow one claim and wholly opposed to another claim, and for the conference committee to step into outside matters, not before it by the action of the two Houses, and bring in a new claim that had never been considered by either House on the ground of its being germane, it seems to the Chair would open a very dangerous pathway to unwise legislation.

Now, while the Chair believes that the conference committee is a great instrumentality to bring the two Houses together, still the Chair would be very loath to open the door to allow any conference committee to usurp the prerogatives of either House; and while he has examined with care the several decisions, the weight of authority is in the line of his own feelings on this question; and even when submitted to a vote of the House, as was done in one case, the House sustained the views of the objecting party, Judge Holman.

The Chair is strongly of the opinion that to secure wise legislation caution should be observed in not allowing abuse of the powers of the conference committee, and this view invites sustaining the point of order in this case. The functions of a conference committee are such that they must consider a matter laid before them by the Congress. If it involves an amount of money, they may increase it or cut it down; they may put limitations upon it. The functions of a conference committee are great and can be of infinite benefit to the House of Representatives. The feeling of the Chair is, then, that the door should not be opened beyond the scope and purpose of a conference committee. That is clear; and the Chair sustains the point of order made by the gentleman from Alabama. Therefore that brings us to the next thing for consideration.

Where does this leave this conference report? It has to be treated as a whole. The point of order defeats the conference report just exactly as if it were rejected by the House. That has already been held in one case—I think by Mr. Speaker Reed—that a point of order sustained against a conference report is equivalent to a rejection of the report by the House of Representatives on a vote. And it seems to the Chair that is where this conference report now stands.

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[1] David B. Henderson, of Iowa, Speaker.

6420. The managers of a conference may not in their report change the text to which both Houses have agreed.[1]—On March 2, 1907[2] Mr. James W. Wadsworth, of New York, presented the conference report on the agricultural appropriation bill, whereupon Mr. John J. Fitzgerald, of New York, rising to a question of order, said:

Mr. Speaker, I wish to make the point of order against the conference report on the ground that the conferees have inserted on page 40 language in an item which was not in dispute between the two Houses. On page 40, line 24, the conferees have changed the text in the language agreed to by both Houses by inserting after the word "forest," the words "in the District of Columbia or elsewhere."

The Speaker[3] held:

The gentleman from New York [Mr. Fitzgerald] makes the point of order that the conferees have exceeded their authority by changing the text to which both Houses have agreed by inserting, after the word "forest," the words "in the District of Columbia or elsewhere." And the report states that such is the case. * * * The Chair sustains the point of order.

6421. Where one House strikes out all of the bill of the other after the enacting clause and inserts a new text and the differences over this substitute are referred to conference, the managers have a wide discretion in incorporating germane matters and may even report a new bill on the subject.[4]—On March 3, 1865,[5] Mr. Robert C. Schenck, of Ohio, from the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 51) entitled "An act to establish a bureau of freedmen's affairs," reported that the Senate had receded from their amendment, which was a substitute, and the committee had agreed upon, as a substitute, a new bill, entitled "An act to establish a bureau for the relief of freedmen and refugees."

As soon as the report had been read, Mr. William S. Holman, of Indiana, made the point that the report did not come within the scope of the conference committee. It did not report the proceedings of the Senate, or an agreement by the committee on an amendment to the Senate's amendment to the House bill, but it reported an entire substitute for both the original bill and the substitute adopted by the Senate, and it established a department unprovided for by either of the other bills.

The Speaker[6] said:

The Chair understands that the Senate adopted a substitute for the House bill. If the two Houses had agreed upon any particular language, or any part of a section, the committee of conference could not change that; but the Senate having stricken out the bill of the House and inserted another one, the committee of conference have the right to strike out that and report a substitute in its stead. Two separate bills have been referred to the committee, and they can take either one of them, or a new bill entirely, or a bill embracing parts of either. They have a right to report any bill that is germane to the bills referred to them.

On an appeal the Chair was sustained, yeas 89, nays 35.

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[1] See also secs. 6417, 6433–6436 of this volume.

[2] Second session Fifty-ninth Congress, Record, p. 4483.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] See also secs. 6426, 6463–6467 of this volume.

[5] Second session Thirty-eighth Congress, Journal, p. 414; Globe, p. 1402.

[6] Schuyler Colfax, of Indiana, Speaker.

6422. On August 3, 1886,[1] the House had under consideration the report of the committee of conference on the river and harbor bill.

Mr. William M. Springer, of Illinois, made the point of order that the conferees had included new matter in their report.

The Speaker[2] ruled:

The House passed a bill to provide for the improvement of rivers and harbors and making an appropriation for that purpose. That bill was sent to the Senate, where it was amended by striking out all after the enacting clause and inserting a different proposition in some respects, but a proposition having the same object in view. When that came back to the House it was treated, and properly so, as one single amendment and not as a series of amendments as was contended for by some gentlemen on the floor at the time.

It was nonconcurred in by the House and a conference was appointed upon the disagreeing votes of the two Houses. That conference committee having met, reports back the Senate amendment as a single amendment with various amendments, and recommends that it be concurred in with the other amendments which the committee has incorporated in its report. The question, therefore, is not whether the provisions to which the gentleman from Illinois alludes are germane to the original bill as it passed the House, but whether they are germane to the Senate amendment which the House had under consideration and which was referred to the committee of conference. If germane to that amendment the point of order can not be sustained on the ground claimed by the gentleman from Illinois. The Chair thinks they are germane to the Senate amendment, for, though different from the provisions contained in the Senate amendment, they relate to the same subject; and therefore the Chair overrules the point of order.

6423. On February 25, 1901,[3] Mr. Gilbert N. Haugen, of Iowa, presented the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. 2799) to carry into effect the stipulations of article 7 of the treaty between the United States and Spain, concluded on the 10th day of December, 1898.

The conferees recommended that the House recede from its amendment, which was in the nature of a substitute, striking out all after the enacting clause and inserting a new text; and they further recommended that the House agree to the Senate text with certain specified amendments.

Mr. Oscar W. Underwood, of Alabama, made a point of order that the conferees had exceeded their authority and incorporated in their report matters not in difference between the two Houses. The House text had substituted reference to the Court of Claims instead of to the commission proposed by the Senate text. The conferees not only recommended the adoption of the Senate text, but had enlarged the provisions of it, making the number of commissioners five instead of three, although, he asserted, there was no issue between the two Houses on this point; and also materially changing the Senate text in those portions relating to the right of appeal.

After debate the Speaker[4] held:

The current of authorities in regard to the action of the conferees is that they must be held strictly to the consideration of such matters as are in issue between the two Houses. That is the general governing principle, and a most valuable one, and a necessary one. In this case, however, the Chair sees

[1] First session Forty-ninth Congress, Record, p. 7932; Journal, p. 2515.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Fifty-sixth Congress, Journal, p. 271; Record, pp. 3002–3004.

[4] David B. Henderson, of Iowa, Speaker.

no difficulty. As stated by the gentleman from Pennsylvania [Mr. Mahon], the Senate presents a proposition for a commission; the House turns that down, so to speak, and adopts an amendment, by way of substitute, providing that these Spanish claims shall be referred for determination to the Court of Claims. In other words, the Senate contends for a commission, the House for the Court of Claims. The method of treating these Spanish claims is thus put in issue. The House, when it sent over to the Senate its amendment by way of substitute, said: "We will not entertain your method; we have a better one; we offer you a substitute, whereby these matters shall be referred to the Court of Claims instead of a commission." That puts in issue every question bearing upon this controversy between the two Houses. The able remarks of the gentleman from Alabama (Mr. Underwood) have not suggested a single question that is not brought in issue between the two Houses in the present position of this question. The conferees have not gone beyond the matters in issue. On this point the Chair will ask the Clerk to read from the Parliamentary Precedents of the House of Representatives, section 1420, a decision made by Mr. Speaker Colfax.

The section having been read, the Speaker concluded:

The House will readily see that the precedent just read beam strongly on this question, although in the present case the conferees have not gone so far as they did in that case. There is nothing here that is not germane to the main issue. In reference to no matter in controversy between the two Houses have the conferees attempted to trench upon or change a single expression that the two Houses had agreed upon. The Senate sends to this House a bill for which the House presents a substitute, and the report of the conferees seeks only to treat the matters in issue. The Chair feels clear that he is justified in overruling the point of order. The question is on agreeing to the report.

6424. Where the disagreement is as to an amendment in the nature of a substitute for the entire text of a bill the managers have the whole subject before them and may exercise a broad discretion as to details.

A point of order against a conference report should be made or reserved after the report is read and before the reading of the statement.

On February 18, 1907,[1] Mr. William S. Bennet, of New York, submitted the report of the managers of the conference on the bill (S. 4403) entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March 3, 1903."

Before the report was read, Mr. John L. B. Burnett, of Alabama, proposed to reserve a point of order.

The Speaker[2] said:

The Chair will state to the gentleman from Alabama, who desired to reserve points of order, that it is the impression of the Chair that the point of order, if any is made, is in time after the report is read; but if the gentleman desires, out of abundant caution, he may reserve at this time points of order. * * * All points of order are reserved. The proper time to reserve points of order, as the Chair is informed, on conference reports, is after the conference report is read and before the statement is read.

The report having been read, a point of order was made by Mr. Burnett, who insisted that the managers had exceeded their authority in inserting the following provisions:

Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the Presi

[1] Second session Fifty-ninth Congress, Record, pp. 3210–3220.

[2] Joseph G. Cannon, of Illinois, Speaker.

dent may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

And in another portion of the report the following:

SEC. 42. It shall not be lawful for the master of a steamship or other vessel wherein immigrant passengers, or passengers other than cabin passengers, have been taken at any port or place in a foreign country or dominion (ports and places in foreign territory contiguous to the United States excepted) to bring such vessel and passengers to any port or place in the United States unless the compartments, spaces, and accommodations hereinafter mentioned have been provided, allotted, maintained, and used for and by such passengers during the entire voyage; that is to say, in a steamship, the compartments or spaces, unobstructed by cargo, stores, or goods, shall be of sufficient dimensions to allow for each and every passenger carried or brought therein 18 clear superficial feet of deck allotted to his or her use, if the compartment or space is located on the main deck, or on the first deck next below the main deck of the vessel, and 20 clear superficial feet of deck allotted to his or her use for each passenger carried or brought therein if the compartment or space is located on the second deck below the main deck of the vessel: *Provided,* That if the height between the lower passenger deck and the deck immediately above it is less than 7 feet, etc. [continuing in detail].

After debate, the Speaker held:

The Senate during the last session passed an act entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,'" etc.

This Senate bill was broad in its provisions and substantially amended the immigration laws then in force. It was very general in its nature, as will be found upon examination. The bill came to the Home. The House struck out all of the Senate bill after the enacting clause, by way of amendment, and passed a substitute therefor. So that the House entirely disagreed with every line, with every paragraph, with every section of the Senate bill—everything except the enacting clause—and proposed a substitute therefor, and this substitute on examination is found to be a complete codification and amendment of existing immigration laws, and incidentally the labor laws connected therewith, especially those dealing with contract labor, and with many other questions to which it is not necessary to refer. And in the final clause of the House substitute there is the provision:

"That the act of March 3, 1903, being an act to regulate the immigration of aliens into the United States, except section 34 thereof, and the act of March 22, 1904, being an act to extend the exemption from head tax to citizens of Newfoundland entering the United States, and all acts and parts of acts inconsistent with this act are hereby repealed.

"*Provided,* That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons," etc.

So that not only does the House by its substitute amendment codify and amend all the laws touching immigration, but incidentally changes those relating to labor, especially contract labor. The House substitute is found to be abounding in section after section with the prohibition of contract labor in connection with immigration, and with various other provisions of a similar nature.

The House substitute, by way of amendment, went to the Senate. The Senate disagreed to every line, paragraph, and section of the House provision I and with that disagreement to the Senate provision, and with the House provision in effect a disagreement to the original Senate bill, the whole matter went to conference. That is, by this action there was committed to conference the whole subject of immigration, and, as connected therewith, the prohibition of immigration by way of contract labor in the fullest sense of the words. * * * The Chair has not had time to hunt up all the provisions of the immigration laws of the country, but the repealing clause, with the exception as proposed by the House and the disagreement of the Senate, sent this whole matter, in the opinion of the Chair, to the conferees.

Now, then, there is but one provision that is seriously contended for in the point of order that is made, and that is to be found on page 2 of the House conference report, No. 6607, and is as follows:

"That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may

refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone."

Now, then, one of the principal efforts in legislation heretofore has been to exclude labor that is brought in under contract or is promoted, so to speak; and the very reason of that legislation has been and is that the labor conditions in the United States should not be affected unfavorably. Three sections of the House substitute deal expressly with that question. It is not like unto the precedent cited by the gentleman from Mississippi, which was made by the ruling of Mr. Speaker Henderson. The only thing there was a disagreement between the House and the Senate as to certain specified claims, and between the Senate and House as to certain other specified claims. The conferees in that case, taking in the whole sea or ocean of claims, from the birth of Christ to the supposed death of the man with hoofs and horns, picked out a number of claims that the House or Senate never had heard of or dealt with and put them in the conference report, and Mr. Speaker Henderson properly sustained the point of order to the conference report. The Chair has no difficulty nor any hesitation in holding that this is germane first; and, second, that it comes within the scope of the disagreement between the House and Senate as affects immigration on the one hand and the interest of labor on the other, and therefore overrules the point of order.

Mr. Burnett having appealed, the appeal was laid on the table on motion of Mr. Sereno E. Payne, of New York, by a vote of yeas 198, nays 104.

6425. A Senate amendment having provided an appropriation to construct a road, and conferees having reported in lieu thereof a provision for, survey, it was held that the provision was within the differences.—On April 18, 1904,[1] Mr. John A. T. Hull, of Iowa, presented the report of he managers of the conference on the disagreeing votes of the two Houses on the Senate amendments to the army appropriation bill.

Mr. James Hay, of Virginia, made a point of order that the managers had exceeded their authority. It appeared that the Senate had added to the bill the following amendment:

For continuing the construction of a military wagon road from Valdez by the most practical route to Fort Egbert, or Eagle, on the Yukon River, in the district of Alaska, $250,000; said wagon road to be surveyed, located, and constructed by and under the direction of the Secretary of War.

The managers in lieu thereof reported the following:

Strike out all of the matter inserted by said amendment and insert in lieu thereof the following:

"For a survey and estimate of cost of a wagon road from Valdez to Fort Egbert, on the Yukon River, to be made under the direction of the Secretary of War, $25,000, to be immediately available; said survey and estimate herein provided shall be submitted to Congress at the earliest practicable day."

After debate the Speaker[2] said:

The Senate amendment, which, if it had been offered in the House, probably would have been subject to the point of order—it is unnecessary for the Chair to pass upon that, however—was "for continuing the construction of a military wagon road from Valdez by the most practical route to Fort Egbert, or Eagle, on the Yukon River, district of Alaska, $25,000; said wagon road to be surveyed, located, and completed by and under the direction of the Secretary of War."

To that amendment the House disagreed, and upon that amendment and disagreement thereto a conference was had. The conferees reported as follows:

"Strike out all of the matter inserted by said amendment and insert in lieu thereof the following:

"'For the survey and estimate of cost of a wagon road from Valdez to Fort Egbert, on the Yukon River, to be made under the direction of the Secretary of War, $25,000, to be immediately available; said survey and estimate herein provided shall be submitted to Congress at the earliest practicable day.'"

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[1] Second session Fifty-eighth Congress, Record, pp. 5022, 5023; Journal, p. 622.

[2] Joseph G. Cannon, of Illinois, Speaker.

Now, this is for something less than was contained in the Senate amendment, and provides for a survey of a road over and between the points of Valdez and Fort Egbert. It appropriates $25,000 in lieu of $250,000, and provides for a survey and report to Congress of the same. It does seem to the Chair that the greater includes the less, and that the whole matter of the construction of the road and the appropriation therefor was in difference between the House and the Senate. This provides for a survey for the road and estimates and a report to Congress. It seems to the Chair the point of order is not well taken, and the Chair therefore overrules the point of order.

6426. In the Senate a conference report is not ruled out on a point of order that it contains matter not within the differences, but the question must be taken on agreeing to it.

Form of conference report wherein an entirely new text is reported in place of an amendment in the nature of a substitute.

On February 13, 1907,[1] in the Senate, the following conference report was presented:

The committee of conference on the disagreeing votes of the two Houses to the bill (S. 4403) entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March third, nineteen hundred and three," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: Strike out all of said amendment and insert in lieu thereof the following:

An act entitled "An act to regulate the immigration of aliens into the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid a tax of four dollars for every alien entering the United States, etc. * * *

* * * * * * *

SEC. 44. That this act shall take effect and be enforced from and after July first, nineteen hundred and seven: *Provided, however,* That section thirty-nine of this act and the last proviso of section one shall take effect upon the passage of this act and section forty-two on January first, nineteen hundred and nine.[2]

WILLIAM P. DILLINGHAM,
H. C. LODGE,
A. J. MCLAURIN,
Managers on the part of the Senate.
BENJ. F. HOWELL,
WILLIAM S. BENNET,
Managers on the part of the House.

On February, 14,[3] in the Senate, when this report came up for consideration, Mr. Benjamin R. Tillman, of South Carolina, called attention to the following provision in the new text reported by the managers:

Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

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[1] Second session Fifty-ninth Congress, Record, pp. 2811–2817.

[2] This report is defective in that there should be added the words "And the House agree to the same," referring to the Senate amendment to the House amendment.

[3] Record, pp. 2939–2943.

Mr. Tillman then raised this question:

I make the point of order, Mr. President, that this is entirely new and extraneous matter; that it was never considered by either House; that it does not appear in either bill as it was passed by the Senate or by the House; that the conferees have exceeded their authority, and that they are entirely outside of their jurisdiction in having brought into this Senate a matter which has no business here.

Mr. Henry Cabot Lodge, of Massachusetts, said:

In this case the Senate bill was stricken out by the House and a single amendment was made in the nature of a substitute—a long act covering every section of the existing immigration law. Therefore both bills in their entirety were open to the conferees and were subject to any modification which they might choose to make. Technically there can be no doubt that in a situation like that the powers of the conferees are very large, if not unlimited.

In the second place, Mr. President, this amendment is not out of order in itself. It is a mere modification of a section which provides for certain exceptions in regard to admission to this country and for collection of a head tax. It is merely the application of the exceptions, such as are stated previously in the bill as to persons coming from Canada or from Mexico. It is a simple extension to meet another case in which entry to this country must necessarily be defined.

Mr. President, I do not desire to consume the time of the Chair or of the Senate on that point. It was held, formally decided by the Senate, no longer ago than last session that a point of order did not lie against a conference report. I contended for the House view and for the House position, which is that a point of order may be made against a conference report and the report, without a vote, be thrown out on the point of order. It was held by the Chair—correctly, as I now believe, in view of the precedents in the Senate—and sustained by the Senate that under the rules and practice of the Senate a point of order did not lie against a conference report, that the only vote possible was on the acceptance of the report—it could be either accepted or rejected—and that there was nothing else open to the Senate.

After further debate the Vice-President [1] held:

The Chair has heretofore had occasion to rule on a point of order raising precisely the same question in principle that is now raised by the point of order made by the Senator from South Carolina [Mr. Tillman]. The Chair, when the subject was first presented to his attention, examined with some considerable care the practice of the Senate in the premises. He came to the conclusion then that the practice of the Senate for some time past, at least, differed somewhat from the practice which obtained in the House. The Chair is of the opinion that the objections made to the report and challenged by the point of order are entirely proper for the Senate itself to consider when voting upon the question of agreeing to the report. On the 11th of last June the Chair ruled as follows:

"The Chair is of the opinion, as he his previously held, that under the usual practice of the Senate a point of order will not lie against a conference report. The matter in the report challenged by the point of order interposed by the Senator from Texas may be considered by the Senate itself when it comes to consider the question of agreeing to the report. The only question under the usual practice of the Senate, in the opinion of the Chair, is, Will the Senate agree to the conference report?"

The Chair holds that the point of order is not well taken, and therefore overrules the point of order.

On February 15, 1907,[2] the consideration of the report being continued, Mr. Charles A. Culberson, of Texas, said:

Mr. President, I ask the Chair to submit to the Senate the point of order made by the Senator from South Carolina [Mr. Tillman] to the provision of section 1 of the bill, which I will read:

"*Provided further*, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone."

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[1] Charles W. Fairbanks, of Indiana, Vice-President.

[2] Record, p. 3039.

The Senator from South Carolina has made the point of order that this provision is new matter, incorporated without authority, and in violation of the rules of the Senate, not having been considered or passed upon by either House of Congress, and that it is therefore subject to the point of order. I ask the Chair to submit that question to the Senate for its determination.

I will read the rule of the Senate as announced by the Senator from Massachusetts [Mr. Lodge], although it has been read once or twice. It will, however, bear repetition:

"The Presiding Officer (Mr. Lodge in the chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House."

The Vice-President said:

The Chair has hitherto shown that a point of order will not lie against a conference report. If such point of order were to be sustained, it would have the effect of amending the report. This, under the well-settled practice of the Senate, can not be done. This is in entire harmony with the decision of Vice-President Hobart, to which reference is made. As the Chair has hitherto shown, he is clearly of the opinion that the objectionable matter, if such there is, may be considered by the Senate when it comes to vote upon the question of agreeing to the report. The Chair is clearly of the opinion that the request of the Senator from Texas is not sanctioned by either the rules or practice of the Senate, and can not be entertained by the Chair.

On February 16[1] Mr. Culberson proposed the following resolution, to which Mr. Lodge made a point of order:

Resolved, That the conferees on the part of the Senate on the bill S. 4403 be instructed to present to the conferees an amendment providing for the exclusion of Japanese laborers and coolies from the United States and their Territories and insular possessions and the District of Columbia, to be effective January 1, 1908.

The Vice-President held:

The Senator from Massachusetts [Mr. Lodge] made the point of order that nothing can take precedence of the question of concurrence in the conference report. The Chair sustains the point of order.

Mr. E. W. Carmack, of Tennessee, having appealed from the decision of the Chair, the appeal was laid on the table—yeas 45, nays 24.

The conference report was then agreed to.

6427. On March 20, 1906,[2] in the Senate, Mr. C. D. Clark, of Wyoming, submitted a conference report on the bill (H. R. 10129) relating to departmental information affecting markets, of which the following was a part:

That the House recede from its disagreement to the amendment of the Senate numbered 8 and agree to the same with an amendment, as follows: On page 2, line 14, after the word "thereof," insert "and every Member of Congress;" and the Senate agree to the same.

The committee of conference is in some doubt as to its authority to insert this amendment, but, believing that the object and purpose of the bill will not be completely effected without it, recommends the insertion of the amendment, and asks the judgment of the two Houses thereon.

A question of order being suggested by Mr. Henry M. Teller, of Colorado, Mr. Clark said:

The bill as passed both Houses provides a punishment for the disclosure of knowledge and for speculation in matters affected by that knowledge which has been acquired in an official capacity. It was discovered by the conferees that Members of Congress in either House were not included. It was further ascertained that judicial decisions have held time and again that Members of Congress

[1] Record, P. 3099.

[2] First session Fifty-ninth Congress, Record, pp. 4023–4027.

are not officers of the United States, but are officers of the State governments. Therefore, while doubting their real power as a conference committee to insert this provision, they thought the objects and purposes of the bill clearly demanded such a provision, so they inserted "and Members of Congress," and ask the judgment of the two Houses upon that amendment.

After debate the Vice-President [1] said:

The Chair does not think that a point of order would lie against a conference report. * * * It is a matter for the acceptance or rejection of the Senate. If the Chair sustained or overruled the point of order, it would find itself in the position of determining matters entirely within the control of the Senate. In the opinion of the Chair the question is on agreeing to the report submitted.

The report then went over to the succeeding day.

On March 21,[2] in the Senate, the report was withdrawn for elimination of the objectionable clause.

6428. On March 28, 1906,[3] in the Senate, Mr. Moses E. Clapp, of Minnesota, called up the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 5976) to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes.

Mr. Thomas M. Patterson, of Colorado, made the point of order that the managers had changed a provision of the bill to which both Houses had agreed. He said:

This is the proviso as it left the House and was approved of by the Senate:

"*Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided further*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation whose cases are now pending in the Supreme Court of the United States."

The conference committee struck that out bodily and substituted for it the following:

"*Provided*, however, That the decision of the Commissioner to the Five Civilized Tribes on a question of fact shall be final."

During the debate the following occurred as to the actual question in issue as related to the matter which had been changed:

Mr. PATTERSON. I want to call the attention of the Senator from Maine [Mr. Hale] to what has been changed or for what the new matter has been substituted. This is the proviso, commencing on line 10:

"*Provided*, That the rolls of the tribes affected by this act shall be fully completed on or before the 4th day of June—"

"June "was stricken out and "March" inserted—"nineteen hundred and six."

"Nineteen hundred and six" was stricken out and made "1907." So the amendment up to that point simply changes the time for the completion of the roll.

Mr. HALE. That is, they deal simply with the question of when the thing shall be done and take effect. That is all.

Mr. PATTERSON. Yes. Then they proceed to change the rule of evidence, striking out an entire proviso that had no reference whatever to the rule of evidence and that had received the approval of both bodies of Congress and substituting a new rule of evidence by which thousands of cases are to be governed.

Mr. HALE. That is precisely to what I was going to call the attention of the Senator from Minnesota [Mr. Clapp], who is a good lawyer and who will see the force of it. The only thing that was brought into controversy by the amendments were the dates. "March" was substituted for "June" and "seven"

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[1] Charles W. Fairbanks, of Indiana, Vice-President.

[2] Record, p. 4076.

[3] First session Fifty-ninth Congress, Record, pp. 4384, 4385, 4397.

for "six"—that is, the time when the provision should take effect. That is the only real question that was raised.

Mr. CLAPP. I submit, if the Senator will pardon me, that the second proviso was also involved in that change. That was the expression of the wish of the House if the time were limited to June, 1906. Of course, it ceased to be their wish if it was extended to 1907.

Mr. HALE. I see the force of that. How far does that go? Does it follow that because of a change of date the conditions are changed, and that the conferees had a right to put in, instead of the proviso which was left in the bill by both Houses, absolutely a new rule, which is—

"That the decision of the Commissioner to the Five Civilized Tribes on a question of fact shall be final?"

I think, Mr. President, the conference committee has exceeded its power in putting that in, though I see the force of what the Senator says, that the whole subject-matter may have been changed by the change of date. I should like the Senator to explain that; otherwise it should be very clear that introducing this new rule of evidence in place of the proviso that had been left untouched by both Houses is clearly transcending the power of the conferees.

After further debate the conference report went over to another day.

On April 3,[1] after debate, Mr. Clapp was permitted to withdraw the report.

On April 10, 1906,[2] Mr. Clapp presented a new conference report, from which the objectionable matter had been eliminated. In this case the House had asked the conference, and as the original report had been presented first in the Senate, it had been possible after its withdrawal to return to conference without action by the House of Representatives. When Mr. Clapp presented the second report, Mr. Benjamin R. Tillman, of South Carolina, objected that Mr. Clapp had not had authority to withdraw the original report.

After debate the Vice-President[3] held:

The Chair understands that the Senator from Minnesota, as chairman of the conferees on the part of the Senate, has the right to withdraw the conference report in the absence of the yeas and nays having been ordered.[4]

This was a case in which the report was made first in the Senate.

6429. On June 6, 1906,[5] in the Senate, Messrs. Thomas M. Patterson, of Colorado; Henry Cabot Lodge, of Massachusetts; and Eugene Hale, of Maine, discussed the Senate usage as to conference reports in which the managers are alleged to have exceeded their authority:

Mr. PATTERSON. Mr. President, we have been listening for nearly a day to a discussion on the subject of new matter introduced by the pending conference report. Is there anything to prohibit, or, in other words, is it not, after all, a matter for the Senate to pass upon? The Senator from Maine [Mr. Hale] shakes his head and the Senator from Massachusetts [Mr. Lodge] shakes his head. I desire to call the attention of the Chair and of the Senate to what I find in the Senate report upon the subject of conferences and conference reports. I have discovered upon reading it that the Senator from Massachusetts [Mr. Lodge] played a very important part in having the rule to which I cal1 the attention of the Senate established. This matter is found on page 16 of that report in reference to conferences and conference reports:

"29. Conferees may not include in their report matters not committed to them by either House. (1414–1417.) (Fiftieth Congress, first session, Senate Journal, pp. 1064, 1065; Fifty-fourth Congress, second session, Senate Journal, pp. 90, 91, 96.)

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[1] Record, p. 4656.

[2] Record, p. 4991.

[3] Charles W. Fairbanks, of Indiana, Vice-President.

[4] Later the Senate came to the conclusion that a conference report might not be withdrawn in this way. (See sec. 6459 of this volume.)

[5] First session Fifty-ninth Congress, Record, pp. 7928, 7929.

That is Rule XXIX.

"In the House, in case such matter is included, the conference report may be ruled out on a point of order. (See Rule 50, below.)

"In the Senate, in case such matter is included, the custom is to submit the question of order to the Senate."

Then there is the following note:

"NOTE.—In the Fifty-fifth Congress, first session, Vice-President Hobart, in overruling a point of order made on this ground against a conference report during its reading in the Senate, stated that the report having been adopted by one House and being now submitted for discussion and decision in the form of concurrence or disagreement, it is not in the province of the Chair during the progress of its presentation to decide that matter has been inserted which is new or not relevant, but that such questions should go before the Senate when it comes to vote on the adoption or rejection of the report. (Fifty-fifth Congress, first session, Senate Journal, pp. 171, 172; Congressional Record, pp. 2780–2787.) See also Congressional Record, p. 2827, Fifty-sixth Congress, second session, when the Presiding Officer (Mr. Lodge in the chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted, the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House. No formal ruling was made in this case, however, as the conference report, after debate, was, by unanimous consent, rejected. (Fifty-sixth Congress, second session, Congressional Record, pp. 2826–2883.)"

As I read this, it can have no other meaning than that if the point is raised that something that is found in a conference report is new matter, when called to the attention of the Senate, the Senate itself acts upon it.

Mr. HALE. Undoubtedly.

Mr. PATTERSON. And if the Senate decides it is not, or whatever may be the reason or motive of the Senate, the Senate has it in its power to retain that matter in the bill.

Mr. HALE. Undoubtedly. That is only a matter of procedure; but the fundamental proposition which the Senator from Colorado has raised is that there shall be no new matter inserted. Our processes are different from those of the House. I think, in the prevailing tendency of conferees to usurp power, that we have got to adopt—and I hope we shall do so before this session ends—the House rule, that such insertions shall be subject to a point of order and ruled out; but we have not gone as far as that. We have said the conferees should not put in new matter and that the question shall be submitted to the Senate; but it does not change the underlying and absolutely necessary proposition that no new matter shall be incorporated by the conferees. * * *

Mr. LODGE. The general parliamentary law and also the practice of both Houses is, of course, that there shall be no new matter in a conference report—that is, no matter which has not been adopted by one of the two Houses.

In the House of Representatives the point of order lies, and the Chair decides. If the Chair decides that the matter is new matter, and therefore out of order, the conference report is rejected by that finding of the Chair. All that any parliamentary body can do with a conference report is to accept it or reject it. It can not amend it. It must be either accepted or rejected.

The point of order, when it lies in the House and is ruled on by the Speaker and sustained, carries with it the rejection of the report, just as when the Chairman of the Committee of the Whole in the House sustains a point of order against a clause in an appropriation bill it carries with it the rejection of that clause.

Here, if the point of order is made, it has been held by Vice-President Hobart, in a ruling which I sustained later when I happened to be in the chair, that the point of order must be submitted to the Senate. Therefore, it comes down to the Senate as a question whether they shall reject the conference report on the ground that there is new matter contained in it.

That is the state of the parliamentary law, as I understand it, in this body; but that does not change the fundamental parliamentary proposition that conference committees have no right to put into conference reports matter which has not been adopted by either House.

Mr. PATTERSON. Mr. President, to a certain extent, and to a very considerable extent, the Senator from Massachusetts is right; but, after all, the ruling by the Senate recognizes, if not the right, at least the power of conference committees to insert new matter in a measure.

Mr. LODGE. Not at all.

Mr. PATTERSON. I beg your pardon. It is simply reaching a conclusion by different processes. Even in the other House, Mr. President, I imagine, should the Speaker sustain the point of order that a proposition contained in a conference report is new matter, that decision might be appealed from.

Mr. LODGE. The House could accept new matter by unanimous consent undoubtedly, and we could accept new matter by a majority vote; but that does not make it in order.

Mr. PATTERSON. Very well, then, so far as the House is concerned. In other words, both the Senate and the House can accept, if they choose, new matter of legislation.

Mr. LODGE. Undoubtedly.

Mr. PATTERSON. While the rule is a good rule and should as a general proposition be enforced, I have no hesitation in maintaining in a case of this kind, and as to a bill of this character, that when the conferees meet for the purpose of discussing a matter and reaching an agreement, if they discover that there is something needed to make a measure effective as a whole, they have not only the power, but it is their duty to insert that, and then submit it both to the House and to the Senate.

Mr. HALE. But, Mr. President, does the Senator not see the far-reaching, dangerous, and disastrous results of his proposition? Legislation is matured here and in the House of Representatives. Conferees are not a legislative body. They are to confine themselves to disagreements between the two Houses and to report only as to those.

Mr. PATTERSON. I understand precisely.

Mr. HALE. But when the Senator says the conferees have a right, when they believe that in order to make a measure effective they may put in new propositions, he is transferring the legislative power, which ought to be confined to the two bodies, to a conference committee that is only appointed and constituted not to newly legislate but to consider differences between the two Houses.

The Senator is not a radical Senator; he is a conservative Senator, and he ought to see the wide and far-reaching and dangerous proposition which he has made, that the conferees can take upon themselves the power of legislation that only inheres in the two bodies.

Mr. PATTERSON. Mr. President, it is right there that I disagree with the Senator from Maine. It is not a case of a conference committee taking upon itself legislative power; it is simply a conference committee reviewing the measure as it is sent to them, discovering that there is a defect or something that ought to be in to make the bill effective, and then in their report suggesting it to the Senate and also to the House. It is utterly impossible for the conference committee to legislate. It can only in its report refer the matter back to the Senate, and then the matter that is suggested is before the Senate to be discussed, to be considered, to be voted upon, to be rejected, or to be adopted. That is all there is of it. It is not a usurpation in any sense of the word; and I sincerely hope that the conference committee, if the conference committee believes that there are omissions in the bill, and that some slight amendments will make the bill more effective, will stand by them, and let the Senate as a body, after full discussion, determine whether they shall be a part of the measure.

It is simply another method of legislation, a different method of initiation, and, after all, passed upon as solemnly and as deliberately by the Senate and by the House as though the proposition had been originally introduced and sent to a committee, or as though the amendment had been originally offered in open Senate while the bill was under discussion.

For that reason, Mr. President, leaving this standing, I could not comprehend why so much time was taken up in attempting to establish that this proposition or that proposition or another proposition was new matter. The conferees have brought subjects connected with this great legislation before the Senate and asked the view of the Senate upon them, and if the Senate stands by the conference committee, provided the House agrees, their recommendations will be incorporated into the body of the bill.

On June 7[1] the conference report on this subject (the bill H.R. 12987, the railway rate bill) was disagreed to by the Senate, no effort being made to have the Chair rule the report out of order.[2]

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[1] Record, p. 7998.

[2] For an instance wherein the rejection of a report under these circumstances caused great chagrin to an old and experienced Senator, see second session Thirty-seventh Congress, Globe, pp. 2862, 2863. A report was also rejected in the Senate for this reason on February 22, 1901.

On June 18[1] a proposition of Mr. Joseph W. Bailey, of Texas, that the question of conferees exceeding their authority be passed on by itself, was referred to the Committee on Rules.

6430. On June 11, 1906,[2] in the Senate, the conference report on the Indian appropriation bill was under consideration when Mr. Joseph W. Bailey, of Texas, made the point of order that as to a certain provision the managers had introduced a matter not a subject of difference between the two Houses.

The Vice-President[3] said:

The Chair is of the opinion, as he has previously held, that under the usual practice of the Senate a point of order will not lie against a conference report. The matter in the report challenged by the point of order interposed by the Senator from Texas may be considered by the Senate itself when it comes to consider the question of agreeing to the report. The only question under the usual practice of the Senate, in the opinion of the Chair, is, Will the Senate agree to the conference report?

The report was agreed to, yeas 30, nays 16.

On June 12,[4] Mr. Jacob H. Gallinger, of New Hampshire, referring to the decision of the day before, cited in confirmation of that decision one by Vice-President Garrett A. Hobart on July 21, 1897,[5] as follows:

The VICE-PRESIDENT. The Chair has not the opportunity to look up any of the precedents that may exist on similar points of order made heretofore to the relevancy of items like the one in question contained in a conference report. The present occupant of the chair feels that it would be an unwelcome task if he is obliged to decide as to whether any or every amendment made in conference is germane to the original bill, or germane to the amendments made in either House or both Houses, or whether a conference report as submitted to the Senate contains new and improper or irrelevant matter.

The rules of the Senate certainly do not provide for such action, and the Chair calls the attention of the Senator from Arkansas and of the Senate to the fact that this conference report has been adopted by one House in this perfected shape, and that this report is now submitted here as a whole for parliamentary discussion and decision in the form of concurrence or disagreement.

All arbitrary ruling on a point of order like this after the bill has been fully passed by one House and approved by it can not be within the power of any Presiding Officer.

He can not decide while such a report is being discussed and during the progress of its presentation that matter has been inserted which is new or not relevant, and thus decide what should or should not have been agreed upon. It is not the province of the Chair.

All such questions are such as should go before the Senate when it votes upon the adoption or rejection of the report, which is the only competent and parliamentary action to be taken.

If the Senate itself can not amend this report, and it admittedly can not, the Chair can not do more in that respect than the Senate itself. The Senator from Arkansas asks the Chair by its decision to do that which the Senate itself can not do, to amend this conference report. It is not possible to amend by such a method. The Senate must decide for itself as to the competency of this report in all particulars and the relevancy of all amendments.

No rule or practice permits the Presiding Officer to annul the action of a conference committee, and thus indirectly to amend it. The Chair has not the power to thus negative the action of a free conference and send a passed bill back to a new conference without a vote. Only the action of the Senate upon the vote taken upon concurrence has that power.

The effect of such a decision, if made, can only be surmised. Where would the bill go if thus amended? Not to the conference committee, for that has been dissolved upon the making of its report

[1] Record, p. 8669.

[2] First session Fifty-ninth Congress, Record, p. 8263.

[3] Charles W. Fairbanks, of Indiana, Vice-President.

[4] Record, pp. 8307, 8308.

[5] First session Fifty-fifth Congress, Record, pp. 2786, 2787.

to the other House and acceptance there. Not to the Senate conferees, for they have concluded their action also. Possibly to the Senate Finance Committee, where the bill started many months ago. Such a decision, therefore, that paragraph No. 396, contained in the conference report, contains new matter or new legislation, or is not germane or relevant, might be tantamount to indefinite postponement of the bill. Surely the Chair has no such power, and if exercised would be arbitrary in the highest degree.

The Chair decides that the point is not well taken.

6431. On June 5, 1906,[1] the Senate was considering the conference report on the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, when a question arose as to several particulars in which it was alleged that the managers of the conference had considered matters not within the differences committed to them.

Mr. Benjamin R. Tillman, of South Carolina, one of the managers, admitted that such was the case, saying:

In our desire to make the bill workable, and in order to make it clearly understood and to make it a matter that would not be subject to litigation, we did undertake to put in, in three or four places, words where we had no authority to put them in.

If Senators will kindly follow me, each Senator can learn what we have done and what we had no rightful power to do. On the top of page 12 of the last print—June 2—the words "transportation or facilities" were inserted after the word "traffic" at the end of the preceding line. It is not necessary to state the reason why those words were put in, but it seemed to us that it was necessary to clarify the matter with respect to contracts, agreements, or arrangements which are to be filed with the Commission. If the point of order is made against those words in the Senate, or whether or not it is, I think the conferees will take them out. I for one will vote to take them out. We had no right to put them in.

Page 21, line 9: The words "or transportation" are inserted where we had no authority or right to put them in. The reason why we put those words in will be found in line 17, where we inserted the words "rates or." This was all one sentence, and it related to a general and specific subject, and the word "rates" being in the first place and the word "transportation" being in the second place, the conferees thought it best to make it uniform, so that the two allusions should be to the same subject. As I said a while ago, knowing we had no right to put them in, but endeavoring to make the bill workable, we put them in, and we take the responsibility. There can be no pretense of any deception, and if the Senate wants to take them out, I shall be glad to have them taken out.

That makes three words that have gone in.

Mr. Augustus O. Bacon, of Georgia, inquired here as to the insertions on page 21, and elicited the reply that the matter on page 21 had been in no wise amended by the Senate, and therefore it followed that on this page the managers had changed the text to which both Houses had agreed.

Mr. Tillman then continued:

The next amendment, which we knew we had no authority to put in, or at least as to which we were doubtful of our authority, is on page 40. We there inserted the words:

"Said Commission shall appoint a secretary, who shall receive $5,000 compensation annually, and an assistant secretary, who shall receive $4,000 compensation annually."

I have consulted the clerk of the Appropriations Committee, who has had a good deal to do with making up conference reports and with the compilation of all the rules that we have got on that subject—in other words, the manual reported May 15, 1902, by Mr. Allison, from the Committee on Appropriations, and prepared by Mr. Cleaves. I asked Mr. Cleaves whether or not the amendment on page 40, the words I have just referred to, was amenable to the point of order. He said frankly, "I do not know." But the reason for putting those words in was this: Section 24, the whole section, relating to the composition

[1] First session Fifth-ninth Congress, Record, pp. 7834–7836.

and salary of the Commission, was stricken out by the Senate. In it the number of the commissioners was seven and the salary was $10,000, an increase of two commissioners over the number agreed to by the Senate and an increase in salary of $2,500 each. * * * Taking into consideration the fact that the change involved in this law will vastly increase the work of the Commission and that the dignity and power of the commissioners are recognized by an increase of salary, the Senate conferees felt that the responsibility of this additional labor at least warranted an increase in salary in this direction. Appreciating the fact that the secretary would be the responsible officer necessarily charged with a great many duties that the commissioners would not be able to see after, we felt that if $10,000 was a proper salary for a commissioner, it was almost necessary that there should be an increase in the salary of the secretary.

Here Mr. Eugene Hale, of Maine, interrupted:

I think there is where the conference committee has gone beyond its power. When you come to the commissioners, the matter was fairly in issue between the two Houses on the compensation of the commissioners and the additional number. The House put in two more commissioners and increased the salary. The Senate struck it out, and left only five commissioners at the old salary. But as to the secretary, neither House had increased the salary. The Senate declined to increase it. * * * Then the committee has created a new office absolutely. [Referring to the assistant secretary at $4000.]

This conference report was temporarily laid aside, and later on the same day was considered further without decision as to the question of order.

On June 6,[1] the action of the managers was again discussed in the Senate between Messrs. John C. Spooner, of Wisconsin, Charles A. Culberson, of Texas, Henry M. Teller, of Colorado, and Benj. R. Tillman, of South Carolina:

Mr. CULBERSON. I should like to ask the Senator in this connection what is probably more a parliamentary question than otherwise, and that is this: The House bill containing no prohibition against the issuance of passes, and the bill as it passed the Senate containing a prohibition, are not the conferees bound to accept one or the other?

Mr. SPOONER. I think they are.

Mr. CULBERSON. The House bill or the bill as it passed the Senate?

Mr. SPOONER. I think so.

Mr. CULBERSON. They can not amend either?

Mr. SPOONER. No.

Mr. CULBERSON. Under the rules of the Senate it is possible to accept the amendment as brought in by the conferees in this case, because that is neither the House bill nor the bill as it passed the Senate, but it is an amendment of the bill as it passed the Senate in that respect. I say it is more a parliamentary question than otherwise. I should like to be informed about it.

Mr. TILLMAN. The inquiry of the Senator from Texas opens an entirely new phase. I was under the impression, based upon the little experience I have had on conference committees, that where disagreements have been had, the conferees are not limited to adopting one provision or the other, but they can arrange a compromise proposition. They are not estopped from changing the language.

Mr. SPOONER. I think that is true.

Mr. CULBERSON. I simply inquired for information in order to know what the rule was.

Mr. SPOONER. I think the matter was open.

Mr. CULBERSON. As a matter of fact, the conferees have brought in a recommendation that has not passed either House.

Mr. SPOONER. That often happens. I think the subject was open to the conferees. The Senate had passed an antipass provision; the House disagreed to it, and in that status the conferees were appointed. The conference committee could have recommended that the House recede. It could modify the proposition passed by the Senate and recommend that the Senate concur. They have done that. I do not think their hands are tied as to the precise provision upon a subject which we submit to them as an open proposition which they may recommend, each to the body which appointed them.

Mr. TELLER. I think the Senator from Wisconsin has laid down the rule correctly. I only want to emphasize what he said.

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[1] Record, pp. 7924, 7926, 7931.

It was in the power of the conference committee to modify what the Senate had put in which was new. I think in this case, as the Senator from Texas says, they went beyond their power when they repealed, practically, the act existing to-day, which our amendment did not repeal, but only modified.

A little later in the same discussion, Mr. Spooner discussed with Mr. Eugene Hale, of Maine, Mr. Henry Cabot Lodge, of Massachusetts, and Mr. Tillman another feature:

Mr. SPOONER. Now, Mr. President, I pass for a moment from that to another provision in this conference report. It has been criticised as beyond the power of the conference committee. I do not think that is a just criticism. It is to be found on pages 6 and 7 of the conference report. As we passed it, it provided that—

"Any common carrier subject to the provisions of this act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same."

The conference committee inserted "any lateral branch line of railroad, or of." Then follow the words: "Any shipper tendering interstate traffic for transportation." That is all qualified by the language before that in the section. It deals with precisely the same subject. It simply enlarges the class so as to take in the lateral branch lines of railroads with the shipper. I think it was open to that modification and that the committee of conference did not exceed its authority in incorporating it.

Moreover, Mr. President, I think it is a wise provision to incorporate in the bill. I think—and I have had in my life some opportunity to form an accurate opinion about it—it is a very important provision. Many times I have known short lines of railroad connecting with a trunk line or a long line of railroad, constructed for some special purpose and a common carrier.

I fancy that my friend from Minnesota [Mr. Clapp] has known of the same thing—to carry lumber, if you please, or some other commodity, to reach raw materials to be developed into finished products and find somewhere a market. But, Mr. President, it has very often happened that the men who put their money into the construction of such railroads have found themselves at one end of it practically in a pocket. They would be denied connections and prorating upon any fair basis. They have been frozen out repeatedly of their ownership because of the impossibility of operating under the unfair restrictions, and have been obliged in the end to sell their railroads at a great loss to the single company with whose road they were connected.

Mr. LODGE. I do not think I disagree with the Senator as to the merits, which he has been discussing of this amendment, but on the point of its being new matter, this proposition, which is a substantive proposition, was taken up as a separate matter when the bill was before the Senate. It was discussed and voted upon and voted down. It seems to me that that constitutes it a distinct and a new proposition. It was not in the bill as it passed the House. It did not come to us from the House. We took it up as a separate proposition from the switches and spur tracks and decided that we would not put it in the bill. It seems to me if the conference committee is going to be able to take a substantive proposition that the Senate voted down and put it into a bill it enlarges their powers very much.

Mr. SPOONER. If the Senator will permit me a minute, it is no more a substantive proposition than the proposition in regard to passes, which was proposed by the House conferees and accepted reluctantly by the Senate conferees.

Mr. LODGE. But the Senate did not vote down the pass proposition.

Mr. SPOONER. I do not think the Senate, by voting down an amendment proposed to a section, thereby prevents the conferees on the part of the House from proposing it as a modification of the Senate proposition.

Mr. HALE. I think the Senator is correct to a certain extent, but if the House has not brought forward any proposition upon this matter and the Senate seeks to put in a new proposition and that proposition fails then certainly there is nothing for the conferees to consider.

Mr. SPOONER. I think when the House of Representatives refused to agree to this section which the Senate had proposed, it was open when it was sent to conference—

Mr. LODGE. It was not properly open to new matter.

Mr. SPOONER. The Senator from Massachusetts says that it was not properly open to new matter. That begs the question.

Mr. HALE. What was before the conferees? It may be that I do not know the facts, but if the House had nothing in the bill that covered this matter and the Senate voted down everything covering the matter, what had the conferees to consider?

Mr. SPOONER. This is what the Senate did—

Mr. HALE. It is not a question of what the Senate did, but the fundamental thing in a conference report is that nothing shall be put in that neither House has considered or adopted. If there is nothing put in by either House, then clearly the conferees have no jurisdiction.

Mr. SPOONER. On page 6, amendment 6, if I may have the attention of the Senator from Maine, the provision is that—

"Any common carrier subject to the provisions of this act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same."

Now, that is in a section which was in the bill as passed by the House and which the Senate amended. It is precisely the same subject-matter. It relates to a compulsory connection upon fair terms.

Mr. LODGE. That was not in the bill as passed by the House. It was our amendment.

Mr. HALE. Was that provision in the bill as passed by the House?

Mr. SPOONER. I think it was. I am not sure. The argument is all the stronger if it were not.

Mr. HALE. I agree, if that proposition was in the bill as passed by the House, and was therefore before the conferees, they had a right to consider it. But if it was not in the bill as passed by the House and an amendment was offered in the Senate and voted down, then clearly it was beyond the jurisdiction of the conferees.

Mr. TILLMAN. On a paragraph of new matter relating to connections between railroads and a private side track, we will say, and there are no side tracks unless those side tracks come from something—some man who has some factory or some mine or something to take the product—does the Senator from Maine contend that the House conferees have no right to say to us, "You want connection with a private side track. We will grant you that provided you will put in here a provision that there shall be connection between spur railroads?"

Mr. HALE. No; I do not. If the Senate had voted in an amendment and had made it a part of the business of the conferees, then, undoubtedly, they would have jurisdiction.

Mr. TILLMAN. That is exactly what we did.

Mr. HALE. But if the House did not put anything in and the Senate voted down the proposition, then the conferees had no jurisdiction.

Mr. TILLMAN. Then the Senator from Maine entirely misunderstands the situation, because if he will examine the amendment numbered 6 at the bottom of page 6 and the top of page 7, the Senate amendment relating to this very subject, he will see what the Senate put in. All the House did was to ask us to incorporate the words "any lateral branch line of railroad," so as to make the provision put in by the Senate, which was applicable to private side tracks, applicable to spur railroads and lateral railroads.

Mr. TELLER. Of course, in the House the Speaker determines whether it is new matter, and that ends the controversy. Here the rule has been—I think for a good many years—that the Senate determines those questions. A question of this kind a good many years ago was determined one way by the Presiding Officer, who was then Mr. Edmunds. That was as to instructions, and not as to this vital question whether the committee has put new matter in a bill. In that case it was whether there should be instructions. The Presiding Officer held, as I recollect, that there could not be instructions, and the Senate held there could be. I think it will be found that the Senate has held both ways on that subject. I think there can be instructions myself. I do not think that is a matter of very great concern, except as to when the instructions are made.

Senators will remember that not long ago—within the last two years—the House appointed conferees and before they had had any conference with the Senate conferees the House instructed their conferees what to do and what not to do; whereupon the Senate refused to confer with the House conferees until they receded from that position.

I regard the question whether there shall be new matter put into a bill by the agency of a conference committee as the most important one which can be raised here in reference to the orderly proceeding of this body. In the great majority of cases we accept a conference report nem. con. We pay little attention to it. We believe the committee have done the best they could. Where they have taken what was in the House bill and what was put in by the Senate, and arranged them in any way consistent with the fact that both had been passed upon by the Senate, we have accepted them.

I dare say that in the whole history of the Senate—it ought to be said of every legislative body, and I believe it is true of the Parliament of Great Britain—there never has been a case where the conferees have put in new legislation, and it was apparent that it was new legislation, and it was admitted to be new legislation, that the House has accepted it as a part of the transaction.

There are a great many cases that come before us where it is difficult to determine whether or not it is new legislation. I am disposed myself to believe that the provision in this bill concerning passes goes beyond the power of the conference committee, but Senators in whose judgment I have great confidence tell me I am wrong, and very likely I am, although upon a question of that kind the Senate might divide. The Senate might determine that I was wrong, and that would be the end of the controversy.

But we have in this report several things that the conference committee say they knew were new, but they thought it would improve the bill if they put them in. That is not the province of a conference committee, speaking with all due respect for the committee. They are not empowered to do that. They are simply to determine what was the mind of the Senate on one proposition and what was the mind of the House on the same proposition, and, if possible, to reconcile the differences between the two. That they can do. But when they come to say, "We thought it would be a good thing to put in this provision, and therefore we have put it in, although neither body had ever considered it," such a proceeding would lead to interminable confusion, and it would be the duty of every Senator—he would be compelled to watch with the greatest care—to see that these things were not done. We have a right to suppose when a conference committee go out that they will confine themselves to the custom that has been in vogue in this country and in England, and that new matter shall not be put in.

I speak with some feeling on this subject, because we have been condemning this practice for some time. I have myself been on a good many conference committees where there has been an attempt to change the text of a bill and to put in some new matter, and I will say for myself that I have never consented to that, and I do not recall now that I was ever a party to a conference committee that did agree to it. I know the members of the Appropriations Committee have stood inflexibly against the slightest change that was not justified by the rule.

Mr. HALE. I want to bear testimony to what the Senator is just saying. There is no committee in this body that deals with so many subjects affected by legislation as does the Committee on Appropriations, of which the Senator from Colorado is an old, experienced, and most valuable member. The practice of that committee is to report the result of a conference to the Senate. It mentions amendments by number. It declares what amendments have been added. In twenty years I have hardly ever known, or ever known, a question to arise as to whether new legislation was embodied in those reports. The reason is that the Committee on Appropriations sets its face sternly against all new matter. As an old member of that committee, I would hold myself delinquent if I ever consented, in the numerous matters that come before that committee, to anything that involves new matter. I would consider myself, as the Senator from Colorado would consider himself, delinquent in my duty to this body if I did so.

I hope the rule of that committee will be maintained not only in that committee, but in reports from all other conference committees. This discussion, Mr. President, is not without its great uses.[1]

On June 7,[2] after a discussion which went also to the merits of propositions contained in the report, the Senate without division disagreed to the report and asked a new conference.

6432. On March 2, 1895,[3] in the Senate, objection was made that the conferees on the Indian appropriation bill had exceeded their authority in bringing

[1] For reference to earlier case see remarks of Mr. Howe, of Wisconsin, in Senate. (Second session Thirty-seventh Congress, Globe, pp. 2862, 2863.)

[2] Record, p. 7998.

[3] Third session Fifty-third Congress, Record, pp. 3057–3059.

into the report matters not in issue between the two Houses, and by consent of the Senate the report was withdrawn.

6433. The text to which both Houses have agreed may not be changed except by the consent of both Houses.

A provision changing the text to which both Houses have agreed has been appended to a conference report and agreed to by unanimous consent after action on the report.

On July 27, 1866,[1] the conferees on the disagreeing votes of the two Houses on the bill (H. R. 780) to protect the revenue reported a change of the original text of the bill. The Senate conferees appear from the Globe to have made this change the subject of a paragraph at the end and outside of their signed report. And when the report was acted on in the Senate, separate action was taken on the change of text, the President pro tempore[2] holding that it could be agreed to only by unanimous consent. So when the Senate notified the House of their agreement to the report, they sent a distinct notification of their agreement to the change of the text. The House conferees made the change of text a part of their report, and there was only one question put on agreeing to the report.

6434. On March 2, 1867,[3] the conferees on the disagreeing votes of the two Houses on the bill (H. R. 234) to incorporate the National Capital Insurance Company made a report dealing with the differences of the two Houses. This report was duly signed. Following it, but accompanying it, they submitted a statement recommending a series of amendments to the text of the bill. This statement was signed by the same conferees who signed the report.

When the report, with the appended statement, came up in the House for action, the Speaker[4] said:

> It will require unanimous consent to change the text of the bill.

Thereupon the report was agreed to by unanimous consent, the statement included.

6435. On June 16, 1862,[5] the conference report on the bill (H. R. 413) for the payment of bounties to volunteers came before the Senate, and the Vice-President, Hannibal Hamlin, of Maine, called the attention of the Senate to the fact that the conferees had changed the text of the bill, to which both Houses had agreed. The subject was debated at length on this and the succeeding day, and for this reason the report was rejected—yeas 20, nays 17—on a motion to disagree. A second conference was had, and as the conferees found that a perfect bill could not be obtained without changing the original text they decided to report a disagreement, with the purpose of abandoning the bill. This was done.[6]

6436. On June 9, 1880,[7] Mr. Speaker Randall held that the House might not consider a proposed concurrent resolution authorizing conferees on the legislative

[1] First session Thirty-ninth Congress, Journal, pp. 1162, 1165, 1166; Globe, pp. 4225, 4266.

[2] LaFayette S. Foster, of Connecticut, President pro tempore.

[3] Second session Thirty-ninth Congress, Journal, p. 589; Globe, p. 1764.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Thirty-seventh Congress, Globe, pp. 2722–2724, 2746–2748.

[6] Globe, p. 2847.

[7] Second session Forty-sixth Congress, Journal, p. 1435; Record, p. 4337.

appropriation bill to take into consideration a subject included in the text to which both Houses had agreed. The Speaker said that under the parliamentary law neither House might change the text to which both Houses had agreed, and, in his opinion, conferees might not be endowed with power greater than either of the Houses possessed.

6437. By concurrent resolution managers of a conference are sometimes authorized to include in their report subjects not in issue between the two Houses.—On March 2, 1901,[1] the conference report on the legislative, executive, and judicial appropriation bill was before the House, and contained this statement:

The action taken by the committee of conference and recommended in this report with reference to amendments of the Senate numbered 16, 17: 18, and 19, whereby new matter and certain provisions of law are inserted affecting the officers and employees of the House of Representatives, is based upon the authority expressed in the concurrent resolution of the two Houses adopted February 27, 1901, and which is as follows:

"Resolved by the House of Representatives (the Senate concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12291) making appropriations for legislative, executive, and judicial expenses are authorized to include in their report such alterations, changes, and recommendations as they may deem proper with reference to so much of the text of said bill as relates to the officers. and employees of the House of Representatives."

Mr. William P. Hepburn, of Iowa, made the point of order that the conferees had exceeded their authority in reporting this amendment:

The library of the House of Representatives shall hereafter be under the control and direction of the Librarian of Congress, who shall provide all needful books of reference therefor. The librarian, two assistant librarians, and assistant in the library, above provided for, shall be appointed by the Clerk of the House, with the approval of the Speaker of the House of Representatives of the Fifty-sixth Congress, and thereafter no removals shall be made from the said positions except for cause reported to and approved by the Committee on Rules.

The Speaker[2] overruled the point of order, holding that the conferees had received full power in this respect.

6438. On June 7, 1902,[3] on motion of Mr. Joseph G. Cannon, of Illinois, the House agreed to the following:

Resolved by the Howe of Representatives (the Senate concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the sundry civil appropriation bill (H. R. 13123) are authorized to consider and recommend the inclusion in said bill of necessary appropriations to carry out the several objects authorized in the "act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," approved June 6, 1902.

On June 18[4] the Senate agreed to this resolution.

6439. On April 12, 1906,[5] in the Senate, Mr. Charles A. Culberson of Texas, said:

Several weeks ago the House of Representatives passed a bill, H. R. 10129, amending section 5501 of the Revised Statutes. The Senate after receiving the bill passed it with an amendment and it went to conference. The conferees reported to each of the Houses among other things an amendment to add,

[1] Second session Fifty-sixth Congress, Record, pp. 3455–3459.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Fifty-seventh Congress, Journal, p. 784 Record, pp. 6449, 6450.

[4] Record, p. 6974.

[5] Record, p. 5122.

after the word "thereof," on page 2, line 14, of the bill, the words "and every Member of Congress." The report of the conference committee stated frankly that in the judgment of the committee this amendment was contrary to the rule of the two Houses because it had not passed either of the Houses. On objection by several Senators the report was withdrawn. The Senator from Massachusetts [Mr. Lodge] suggested that the matter could be cured by the adoption of a concurrent resolution authorizing the committee of conference to make the amendment to which I have called attention. In order that that may be done I offer the concurrent resolution which I send to the desk:

"Resolved by the Senate (the House of Representatives concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 10129) to amend section 5501 of the Revised Statutes of the United States be, and the same is hereby, authorized to agree to an amendment on page 2, line 14, of the bill, by inserting after the word 'thereof' the words 'and every Member of Congress.'"

By unanimous consent the resolution was considered, and was agreed to.

On April 13,[1] the concurrent resolution was considered in the House by unanimous consent, and was agreed to.

6440. A point of order as to a conference report should be made before the consideration of the report has began.—On March 3, 1899,[2] the House was considering the conference report on the disagreeing votes of the two Houses on the river and harbor appropriation bill (H. R. 11795).

The statement of the conferees was read, and the reading of the report was dispensed with by unanimous consent, except as to certain portions, which were read.

Debate having begun, Mr. William P. Hepburn, of Iowa, proposed to raise a point of order against the portion of the report relating to the Nicaragua Canal.

Mr. Theodore E. Burton, of Ohio, raised the point of order that the point of order of the gentleman from Iowa came too late.

The Speaker[3] said:

The Chair thinks the point of order was not taken at the proper time. Nothing is better settled than that a point of order must be raised prior to discussion.

6441. A point of order against a conference report should be made before the statement is read.—On May 13, 1902,[4] Mr. Thaddeus M. Mahon, of Pennsylvania, presented the conference report on the disagreeing votes of the two Houses on the Senate amendment to the bill (H. R. 8587) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act, and for other purposes.

The report having been read, and the Clerk being about to read the statement, Mr. Oscar W. Underwood, of Alabama, proposed to make a point of order against the report.

The Speaker[5] held that the point of order should be made before the statement was read, since, if the point of order should be sustained, the reading of the statement would be unnecessary.

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[1] Record, p. 5235.

[2] Third session Fifty-fifth Congress, Record, p. 2925; Journal, pp. 271, 274.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session, Fifty-seventh Congress, Record, p. 5366.

[5] David B. Henderson, of Iowa, Speaker.

6442. A conference report having been agreed to, it is too late to raise, as a matter of privilege a question as to whether or not the managers have exceeded their authority.—On March 8, 1902,[1] Mr. Thetus W. Sims, of Tennessee, claiming the floor for a question of privilege, alleged that the conferees on the bill (H. R. 10308) for the establishment of a permanent census bureau, had exceeded their authority by changing the text of the bill to which both Houses had agreed.

Mr. Eugene F. Loud, of California, made the point of order that no question of privilege could be raised because the conference report had been agreed to by both Houses, and the bill had become a law.

The Speaker[2] said:

The point of order has been made by the gentleman from California that this is not a question of privilege, because the matter has been disposed of by the House. There is no question but what this would have been a proper matter, possibly, to have considered when the conference report was before the House, because the report was before the House and was read.

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[1] First session Fifty-seventh Congress, Record, pp. 2527, 2528.

[2] David B. Henderson, of Iowa, Speaker.

Chapter CXXXVI.

PRIVILEGE AND FORM OF CONFERENCE REPORTS.

1. Rule as to privilege of. Sections 6443–6446.
2. Decisions illustrating high privilege of. Sections 6447–6457.
3. Condition and practice as to reports. Sections 6458–6467.[1]
4. Earlier practice as to form, etc., of. Sections 6468–6480.[2]
5. Signing of, by the managers. Sections 6481–6498.[3]
6. Forms of in present practice. Sections 6499–6504.[4]
7. The accompanying statement. Sections 6505–6513.
8. Forms of statements. Sections 6514, 6515.

6443. The presentation of a conference report is always in order, except when the Journal is being read, when the roll is being called, or when the House is dividing.

Each conference report shall be accompanied by a detailed statement sufficiently explicit to explain the effect of the provisions of the report.

History of the rule giving a privileged status to conference reports, Rule XXIX, section 1.

Rule XXIX, in section 1, provides as follows in regard to conference reports:

The presentation of reports of committees of conference shall always be in order, except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition. And there shall accompany every such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions will have upon the measures to which they relate.

This rule was adopted exactly in this form in the revision of 1880.[5] It was a new rule at that time. The Committee on Rules reported only the first portion, giving privilege, offering this statement in explanation:

Rule XXIX merely crystallizes into a rule the practice of the House since the Thirty-first Congress, when Speaker Cobb decided that the report of a committee of conference was so highly privileged as to be in order pending a motion for a call of the House. Since that time it has been the practice

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[1] Minority of the managers may not submit a report. (Sec. 6406 of this volume.)

[2] Early instance wherein the managers made to their respective Houses reports not identical. (See. 1506 of Vol. II.)

Instance wherein managers originated a bill. (See. 1485 of Vol. II.)

[3] See also sections 6328, 6538 of this volume.

[4] See also section 6323 of this volume.

Form of report in a case wherein the disagreement is as to an amendment in the nature of a substitute. (Sec. 6426 of this volume.)

Form in a case wherein the managers report inability to agree. (See. 6322 of this volume.)

[5] Second session Forty-sixth Congress, Record, pp. 203, 1202, 1203.

of the House to receive a conference report at any time as a question of high privilege, and it proceeds upon the theory that as such reports usually settle the differences between the two Houses and perfect legislation so far as Congress can, they should have precedence of new or proposed legislation. It may also be added that giving a conference report precedence over all other business is a parliamentary courtesy to the Senate, which may desire to promptly dispose of the subject and is prevented by non-action of the House, it being necessary that the report should be first made to the House agreeing to the conference.

The second portion of the rule was added during the debate on suggestion of Mr. Charles G. Williams, of Wisconsin.

The statement of the Committee on Rules in 1880 is not in all respects accurate as to the history of the procedure. On January 30, 1834,[1] conference reports were not privileged, as is shown by the fact that Mr. James K. Polk, of Tennessee, after unanimous consent to take up such a report had been refused, accomplished the purpose by a motion to suspend the rules. On September 21, 1850,[2] Mr. Thomas H. Bayly, of Virginia, proposed a rule to permit conference committees and the Ways and Means Committee to report at any time. The House agreed to the rule only after adding an amendment restricting its operation to the remainder of the existing session. And it was on September 28, 1850,[3] while this temporary rule was in operation, that Speaker pro tempore Armistead Burt, of South Carolina (not Mr. Speaker Cobb, as stated by the Committee on Rules), held that a report from a conference committee was so highly privileged as to be in order pending a motion for a call of the House. The Journal shows, however, that the absence of a quorum had not been disclosed,[4] and it is manifest that neither a conference report nor any other legislative business would be in order after the absence of a quorum had been disclosed.[5] In succeeding Congresses the principle of giving conference reports privilege seems to have been followed on the strength of the decision of 1850, the fact that the decision was in pursuance of a temporary rule being overlooked or neglected.

6444. The rule giving high privilege to conference reports is an affirmation of the former practice of the House.—On March 3, 1837,[6] in the closing hours of the Congress, Mr. John Bell, of Tennessee, asked the general consent of the House to present the report of the conference committee on the fortifications appropriation bill.

6445. On March 17, 1852,[7] Mr. George W. Jones, of Tennessee, proposed to present the conference report on the bill (S. 146) to make land warrants assignable.

Objection being made to the presentation of the report, Mr. Jones stated that he remembered no case where a report of a conference committee had been excluded by an objection, and it seemed to him that it should not be so excluded, as it was the business nearest perfection. He therefore asked the opinion of the Chair.

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[1] First session Twenty-third Congress, Journal, p. 263; Debates, p. 2557.

[2] First session Thirty-first Congress, Journal, p. 1499; Globe, p. 1899.

[3] First session Thirty-first Congress, Journal, p. 1590.

[4] Formerly a call of the House was sometimes ordered that the members might be present to vote, even although a quorum were present.

[5] It appears that once, on March 3, 1879 (third session Forty-fifth Congress, Journal, p. 663; Record, p. 2380), the ruling of Speaker pro tempore Burt was so misunderstood as to be held to justify the taking up of a conference report when the lack of a quorum had been ascertained. See also sec. 6456 of this chapter.

[6] Second session Twenty-fourth Congress, Debates, p. 2149.

[7] First session Thirty-second Congress, Globe, p. 776.

The Speaker[1] said:

The Chair does not recollect of any instance where objection was made to the introduction of the report of a committee of conference, and there is no rule giving the report of such a committee preference over the report of any other committee. * * * The Chair would state to the House that * * * the Chair would be strongly inclined to decide (as the practice, in the opinion of the Chair, has been that way) that it would be in order for a committee of conference to report at any time.

Thereupon, under this decision, Mr. Jones presented the report and it was acted on.

6446. On July 6, 1870,[2] the Speaker[3] made the following statement to the House:

The Chair desires to state to the House, in order that there may be no misunderstanding, that conference reports will be regarded as privileged above all other matters that may come before the House, even to the extent of taking any Member from the floor, although he may occupy it upon another subject, if the Member having charge of a conference report shall so desire. That is the way the Chair will rule in reference to conference reports.

6447. While a conference report may not be presented while the House is dividing, it may be presented after a vote by tellers and pending the question of ordering the yeas and nays.

A ruling presupposing the theory that a division means the actual voting rather than the whole process of ascertaining the will of the House by several methods of voting.

On May 29, 1896,[4] during the consideration in the House of the contested election case of Johnston *v.* Stokes, from South Carolina, Mr. Thomas Settle, of North Carolina, moved to adjourn, and after a division asked for tellers, which were ordered.

Before the vote by tellers had been announced, Mr. Charles A. Boutelle, of Maine, proposed to call up the conference report on the naval appropriation bill.

Mr. Samuel W. McCall, of Massachusetts, having made a point of order, the Speaker ruled that the conference report could not be called up when the House was dividing, since that was one of the express exceptions of the rule.

The tellers having reported ayes 54, noes 106, Mr. Settle called for the yeas and nays.

At this point Mr. Boutelle presented his conference report.

Mr. Benton McMillin, of Tennessee, made the point that, the yeas and nays having been demanded, the House was still dividing, and that the vote was not yet complete.

The Speaker[5] held that there was a distinction between the different methods of making the count, and that the conference report could come in now, it being in order to take the yeas and nays on the question after the conference report had been disposed of.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] Second session Forty-first Congress, Globe, p. 5241.

[3] James G. Blaine, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 5916.

[5] Thomas B. Reed, of Maine, Speaker.

6448. The presentation of a conference report may interrupt the reading of a bill.—On July 2, 1888,[1] a bill (H. R. 10681) providing for the control and regulation of certain railroads acquired by the United States, etc., had been presented and was being read when Mr. Perry Belmont, of New York, presented the report of a conference committee on the disagreeing votes of the two Houses on the bill (H. R. 6833) making appropriations for the consular and diplomatic service.

Mr. A. R. Anderson, of Iowa, made the point of order that the submission of the report was not in order during the reading of the bill.

The Speaker pro tempore[2] overruled the point of order, since under the rule the presentation of a conference report was always in order, except during the reading of the Journal, while the roll was being called, or while the House was dividing.

6449. A conference report has precedence of a report from the Committee on Rules on which the yeas and nays and previous question have been ordered.—On the calendar day of March 4, 1901,[3] but the legislative day of March 1, the House was considering a joint resolution providing for a commission to visit the island possessions of the United States, reported from the Committee on Rules; and, the previous question being ordered, the yeas and nays were ordered on the question of engrossment and ordering to a third reading.

Thereupon Mr. Joseph G. Cannon, of Illinois, proposed to submit a conference report on the sundry civil appropriation bill.

Mr. James D. Richardson, of Tennessee, made a point of order that the report of the Committee on Rules had precedence.

The Speaker[4] overruled the point of order, saying:

The Chair reminds the gentleman from Tennessee that a conference report has often been called up when a special order was under consideration.

6450. A conference report is in order pending a demand for the previous question.—On January 20, 1899,[5] Mr. Charles N. Brumm, of Pennsylvania, had moved to close general debate in Committee of the Whole House on the bill (H. R. 3754) for the relief of William Cramp & Sons, and on this motion and pending amendments Mr. Alexander M. Dockery, of Missouri, had demanded the previous question.

Thereupon Mr. George W. Ray, of New York, asked recognition in order to present a conference report.

Mr. Henry H. Bingham, of Pennsylvania, as a parliamentary inquiry, asked if the conference report was in order pending a demand for the previous question.

The Speaker[6] said:

The rule on the subject is:

"Presentation of reports of committees of conference shall always be in order except when tile Journal is being read, the roll is being called, or the House is dividing on any proposition."

The gentleman will submit his report.

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[1] First session Fiftieth Congress, Journal, p. 2252; Record, p. 5852.

[2] James B. McCreary, of Kentucky, Speaker pro tempore.

[3] Second session Fifty-sixth Congress, Record, p. 3594.

[4] David B. Henderson, of Iowa, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 867.

[6] Thomas B. Reed, of Maine, Speaker.

6451. When the motion to fix the day to which the House should adjourn had the highest privilege the consideration of a conference report was held to displace it.

While the presentation of a conference report has precedence of a motion to adjourn, yet the motion to adjourn may be put and decided pending consideration thereof.

A conference report may be presented for consideration while a Member is occupying the floor in debate.

On January 11, 1889,[1] immediately after the approval of the Journal, Mr. J. B. Weaver, of Iowa, moved that when the House adjourn it adjourn to meet on Monday next.[2]

Thereupon Mr. Samuel Dibble, of South Carolina, presented a conference report.

Mr. Weaver made the point of order that his own motion had precedence.

The Speaker[3] said:

Undoubtedly a conference report may be submitted at any time, even pending a motion to adjourn; it is always in order, except when the Journal is being read, or when the yeas and nays are being taken, or the House is actually dividing on some question.

The conference report having been presented and read, Mr. Weaver called for a vote on his motion to fix the day to which the House should adjourn.

The Speaker ruled:

The Chair has decided under the rules of the House the conference report has precedence over a motion to adjourn, and it has been even held a conference report can be made when a Member is occupying the floor; that he can be taken off the floor for that purpose.[4] Of Course, the rule that a conference report can be presented and displace a motion to adjourn would amount to nothing practically if a vote upon the motion to adjourn can be immediately insisted upon.

The motion to adjourn over was pending, but the conference report had to be disposed of before it could be put. The Speaker also said:

The House makes its own rules, and the House has made a rule which has been in force many years, by which a conference report is in order even pending a motion to adjourn.

Now, the House always has the whole subject under its own control. In the first place, before any proceeding was taken on the report the question of consideration could have been raised against it. In the second place, if the House desires to adjourn before it proceeds further with the consideration of the report it may postpone the report to another time and adjourn. But while the report is before the House and is under consideration the Chair can not put the question on the motion that when the House adjourns it adjourn to meet on Monday next. That is the very question which was displaced.

Mr. Thomas B. Reed, of Maine, here asked the Chair whether he would rule that, the consideration of a conference report having been entered upon, the House could not adjourn until it had acted upon the report in some way.

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[1] Second session Fiftieth Congress, Record, pp. 678, 683; Journal, p. 207.

[2] The motion to fix the day at this time had higher privilege than the motion simply to adjourn. See section 5301 of this volume.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] On February 26, 1864 (First session Thirty-eighth Congress, Globe, p. 850), Mr. Speaker Colfax had held that a conference report might interrupt a gentleman in the midst of debate and take him off the floor.

The Chair replied:

The Chair prefers not to decide questions of order until they are presented, especially upon so important a matter. All the Chair now decides is that the presentation of the conference report, no question of consideration having been raised against it, takes precedence over other motions, even the motion to adjourn or to fix a day to which the House shall adjourn.

Later the Chair reconsidered its ruling, and ruled as follows:

The nineteenth rule of the House provides that the presentation of reports of committees of conference shall always be in order except when the Journal is being read, while the roll is being called, or while the House is dividing on any proposition. Under this rule it has been held that the presentation of such reports is in order pending a motion to adjourn (although that motion is not mentioned in the rule), and that it is in order while a Member is occupying the floor; and the practice of the House is that when it is in order to present a matter at any time it is in order to consider the matter at that time, subject, of course, to the right of any Member upon the floor to raise the question of consideration and to the right of the House to determine that it will or will not consider the matter. This morning, when the gentleman from Iowa [Mr. Weaver] insisted upon his motion to adjourn, the House had not only received the report of the committee of conference, but had actually entered upon its consideration; and the Chair then held that the matter had reached such a stage in its progress as a privileged matter that the motion of the gentleman from Iowa could not be put. Now, however, the House has not determined to consider this conference report. The literal terms of the rule have been complied with, the report has been presented to the House, and the gentleman from Iowa raises the question of consideration against it, and then moves that the House adjourn. Suppose the Chair holds that motion of the gentleman from Iowa [Mr. Weaver] is now out of order, or that it can not now be voted on, and the House determines that it will consider the report, when can the House adjourn?

That is a dilemma in which the House may find itself whenever it actually enters upon the consideration of a conference report before the motion to adjourn is put; and that is one of the features of the case which raised a doubt in the mind of the Chair this morning. The Chair thinks that to hold now that the gentleman's motion to adjourn should not be put before the House has entered upon the consideration of the conference report when the question of consideration has been raised would be to extend the privilege of the report beyond what was done this morning, and the Chair had doubts then whether he did not go too far. The Chair thinks the motion to adjourn can be put now, and thus the House will determine whether it will adjourn or will proceed to consider the report. The question is upon the motion to adjourn.

6452. On July 2,1890,[1] Mr. Louis E. McComas, of Maryland, as a privileged question from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 3711) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1891, and for other purposes, submitted a report in writing thereon.

Before the reading of the report, Mr. W. C. P. Breckinridge, of Kentucky, moved that the House adjourn, which motion the Speaker[2] held to be out of order at the time, on the ground that the presentation of a conference report took precedence of such motion.

The Clerk proceeded to read the report.

6453. On July 29, 1890,[3] Mr. Louis E. McComas, of Maryland, as a privileged question, called up the report of the committee of conference on the disagreeing

[1] First session Fifty-first Congress, Journal, p. 822; Record, pp. 6941, 6942.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, p. 904; Record, p. 7880.

votes of the two Houses on the amendments of the Senate to the District of Columbia appropriation bill.

After debate on the question of order raised by Mr. W. C. P. Breckinridge, of Kentucky, as to the priority of the motion to adjourn over a motion to consider a conference report,

The Speaker [1] held that the report heretofore made was still pending as a privileged report and could be called up at any time, and whenever pending was subject to a motion to adjourn.

The motion of Mr. Breckinridge to adjourn was then put and agreed to.

6454. A special order merely providing that the House should consider a certain bill "until the same is disposed of," it was held that the consideration of a conference report might intervene.

Under the general principles of parliamentary law a bill so far advanced as to become the subject of a conference report is entitled to a certain priority over ordinary business in an earlier stage.

The priority of a question of privilege which relates to the integrity of the House as an agency for action evidently may not be disputed by a question entitled to priority merely by the rules relating to the order of business.

On June 1, 1897,[2] the House was acting under the following special order:

Resolved, That upon the adoption of this resolution the House proceed to consider Senate bill 1886, "A bill to adopt regulations for preventing collisions upon certain harbors, rivers, and inland waters of the United States," until the same is disposed of.

During consideration of this bill Mr. Joseph G. Cannon, of Illinois, proposed, as a question of the highest privilege, to present the conference report on the sundry civil appropriation bill.

Mr. Sereno E. Payne, of New York, made the point of order that the conference report was not in order.

After debate the Speaker [1] said:

The Chair thinks that a conference report has given to it a very high position of privilege, not merely by the rules of the House, but upon the principles of parliamentary law. Bills upon which the two Houses, through conference committees, have reached an agreement are, of course, much further advanced than any bill which is simply being considered by either House. In the opinion of the Chair, the rule of the House but registers the general principle of parliamentary law upon this subject and while very high privilege is accorded to a report of the Committee on Rules, and to what may take place under a rule reported by that committee and adopted by the House, yet such a rule must be construed with reference to the standing rules of the House and the general principles of parliamentary law, unless the express language of the special rule requires another construction.[3]

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-fifth Congress, Record, pp. 1396, 1397.

[3] Of course the high privilege of a conference report is derived from the rules, and a special order, being in its nature a change of the rules, might have such provisions as would exclude conference reports. In one instance, on September 25, 1890 (first session Fifty-first Congress, Journal, p. 1082; Record, pp. 10444, 10445), Mr. Benjamin A. Enloe, of Tennessee, rose to a question of privilege and proposed to present a preamble and resolution relating to certain alleged misconduct on the part of the postmaster of the House.

Mr. Lewis E. Payson, of Illinois, proposed to submit a conference report.

After debate the Speaker (Thomas B. Reed, of Maine, Speaker) held that the conference report had precedence.

It has been held in the House that when, upon a report of the Committee on Rules, a bill is being considered by the House, it does not give way to even a question of privilege; but it has always seemed to the Chair that that was not a wise view; that, on the contrary, there might arise questions of privilege, properly so called, concerning the condition of the House and its capacity for action, which would be superior to the consideration even of a question ordered to be considered by the House itself. Notwithstanding the strong language used in the present order, the Chair thinks it must be construed with reference to the general system of doing business between two legislative bodies. Hence, in the opinion of the Chair, a conference report being now presented, it is his duty to receive it.

6455. A conference report has precedence during a time set apart by a special order for a particular class of business.—On February 28, 1899,[1] the House was proceeding under the terms of a special order which devoted the day to the consideration of a class of bills for the construction of public buildings.

The bill (H. R. 5974) for the construction of a public building at Bluefield, W. Va., was under consideration when Mr. Eugene F. Loud, of California, demanded the floor for the presentation of the conference report on the post-office appropriation bill.

Mr. James D. Richardson, of Tennessee, made the point of order that the special order would exclude the conference report.

The Speaker pro tempore[2] held:

The Chair will say that notwithstanding the fact that the special rule does not make exception of conference reports, still it has been held that they are in order, and the point of order is overruled. The gentleman from California is recognized.

6456. A conference report may be presented during a call of the House if a quorum be present.[3]—On the calendar day of March 1, 1903[4] (legislative day of February 26), a call of the House had been ordered and the roll had been called, showing the presence of a quorum.

Thereupon Mr. J. T. McCleary, of Minnesota, presented a conference report on the District of Columbia appropriation bill.

Mr. Oscar W. Underwood, of Alabama, made the point of order that until the call had been dispensed with it was the duty of the House to proceed with the call.

The Speaker[2] said:

A conference report has been held in order even pending a motion for a call of the House, that being a case when the absence of a quorum had not been ascertained. A quorum has been ascertained in this case, and the conference report is of the highest privilege and may be presented. * * * A quorum has been ascertained, and the conference report is called up. The Chair will have to overrule the point of order.

The conference report having been considered and agreed to, a motion was made to dispense with further proceedings under the call and was agreed to.

6457. A conference report was held to have precedence of the question on the reference of a Senate bill, even though an attempt had been made to take the yeas and nays and had failed from lack of a quorum on a preceding day.—On July 5, 1892,[5] the House was considering the reference

[1] Third session Fifty-fifth Congress, Record, p. 2589.

[2] David B. Henderson, of Iowa, Speaker pro tempore.

[3] See also sec. 6443 of this chapter.

[4] Second session Fifty-seventh Congress, Record, p. 2855.

[5] First session Fifty-second Congress, Journal, pp. 259, 263; Record, pp. 5774, 5802.

of the Senate bill (S. 51) to provide for the free coinage of gold and silver bullion, and the yeas and nays were ordered on the motion that it be referred to the Committee on Banking and Currency.[1] No quorum voted on this motion, and the House adjourned.

On the next day Mr. Newton C. Blanchard, of Louisiana, called up the conference report on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. 7820, pending when the House adjourned on Saturday last.

Mr. Richard P. Bland, of Missouri, submitted the question of order whether the consideration of the reference of Senate bill No. 51, to provide for the free coinage of silver and for other purposes, pending when the House adjourned on the preceding day, was not first in order.

The Speaker[2] held that the presentation of a conference report being in order at any time, its consideration had precedence over the question of reference of the Senate bill.[3]

The House proceeded to the consideration of the conference report.

6458. Before the managers of a conference may report the other House must be notified of their appointment and a meeting must be held.—On June 9, 1880,[4] the conference report on the river and harbor appropriation bill was presented in the House and agreed to. Before the report was agreed to by the Senate a few verbal errors were discovered, and the Senate decided to disagree to the report, as the better way of reaching a correction. Accordingly the report was disagreed to, and a new conference was asked of the House.

On the same day this request of the Senate for a conference came up in the House and the House agreed to the request and appointed conferees.

Immediately Mr. John H. Reagan, of Texas, chairman of the House conferees, proposed to report to the House, explaining that the verbal corrections had been made, the conferees having met.

The Speaker[5] declined to allow the report to be made, saying:

> The usual parliamentary practice would be for the conference committee to again meet, and in addition it is necessary that the Senate should be notified of the appointment of the conferees upon the part of the House just announced. The conferees certainly could not have anticipated their appointment. * * * The Chair has appointed the same conferees it is true, but he thinks they ought to have a formal meeting after due notification to the Senate of the new appointment of the conference committee.

6459. Instances wherein the Senate expressed doubt of the right of conferees to withdraw a conference report after it had been presented and before action thereon.[6]—On June 12, 1906,[7] in the Senate, Mr. Albert J. Beveridge, of Indiana, proposed to withdraw the conference report on the bill

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[1] Bills are now referred from the Speaker's table under the rule.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] The previous question had not been ordered on the motion to refer, which under a rule then existing was not debatable. Therefore it would seem that the further consideration of the motion would come up in the place assigned by the order of business at that time. This would constitute an additional reason why the conference report should have precedence.

[4] Second session Forty-sixth Congress, Record, pp. 4315, 4346.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] See sec. 6428 of this volume.

[7] First session Fifty-ninth Congress, Record, pp. 8308, 8309.

(H. R. 12707) "to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States."

This report had been submitted on a previous day in the Senate, the report being made first in the Senate, which had been the body agreeing to the conference report.

Mr. J. S. C. Blackburn, of Kentucky, made the point of order that a conference report might be withdrawn only with the consent of the Senate.

Mr. Thomas H. Carter, of Montana, said:

With reference to the practice of the Senate, I beg to cite the Senator's attention to the holding of the Chair in the Senate on the 10th of April, in the case of the conference report on the bill relating to the Five Civilized Tribes. If I recall, the Senator from South Carolina [Mr. Tillman] upon that occasion questioned the right of the Senator from Minnesota [Mr. Clapp] to have withdrawn the conference report, which withdrawal occurred on the 3d of April. The Chair held, upon the question thus raised by the Senator from South Carolina, that it was the right of the conferees upon the part of the Senate to withdraw a report at any time before the Senate took action upon it.

I think there is reason for that rule, Mr. President. The conferees might be conscious the moment after making a report that an error, typographical or otherwise, had been made, an error appearing upon the face of the report itself.

Mr. Henry Cabot Lodge, of Massachusetts, said:

My own impression, Mr. President, was that the view taken by the Senator from Kentucky [Mr. Blackburn] was the proper interpretation of the statement made in the Manual of Law and Practice in regard to conferences and conference reports, that such withdrawal required in the Senate and in the House unanimous consent; but it is worded;

"59. A conference report may be withdrawn in the Senate on leave, and in the House by unanimous consent."

I have looked at the authorities to make sure as to just what could be done, and I find that the phrase "on leave" means by vote of the Senate.

In the Thirty-second Congress, second session, January 28, 1853, on page 141 of the Journal of the Senate, I find this:

"On motion by Mr. Hamlin,

"Ordered, That the committee of conference on the part of the Senate have leave to withdraw their report."

Of course it can be done by unanimious consent; but it is perfectly obvious from the single precedent which I cite that leave to withdraw a conference report can be granted on motion.

Mr. Beveridge, "in order to avoid any controversy," moved that leave be granted to withdraw the conference report.

The motion was agreed to.

The report was accordingly withdrawn. No message as to this action was sent to the House, where the report had not been acted on; and the conferees reassembled and agreed to a new report, which was presented in the Senate later on the same day.[1]

6460. Managers of a conference may make a partial report, settling some of the disagreements and leaving others unsettled.

[1] Record, p. 8333.

Where managers of a conference make a partial report, leaving some disagreements unsettled, each House, after agreeing to the report, recedes, insists, or adheres as to the unsettled disagreements.

An early instance wherein the managers of a conference made a partial report.

On August 10, 1846,[1] a message received from the Senate announced that that body had agreed to the report of the conference on the part of the Senate upon the disagreeing votes of the two Houses on the amendments to the bill (No. 51) making appropriations for the naval service for the year ending the 30th of June, 1847; and they had receded from the eighth of the said amendments; and insisted on the ninth of the said amendments, upon which the conference failed to agree.

Mr. James J. McKay, of North Carolina (by unanimous consent),[2] from the conference on the part of the House on this bill, made the following report:

> The conferees on the part of the House have met the conferees on the part of the Senate upon the disagreeing votes of the two Houses upon the amendments to the bill making appropriations for the naval service, etc.; and, after free and full conference on the subject of the said disagreeing votes, the conferees have agreed to recommend, and do recommend, to their respective Houses, that the House recede from their disagreement to the first amendment of the Senate, and agree to the same, amended by striking out all thereof after the word "employed," in line 6; that the House recede from its amendment to the third amendment of the Senate, and agree thereto; that the House recede from its amendment to the tenth amendment of the Senate, and agree thereto; and the conferees have not been able to agree upon the eighth and ninth amendments of the Senate to the said bill disagreed to by the House of Representatives.

On motion of Mr. McKay, the House (by unanimous consent) proceeded to consider the message from the Senate announcing the agreement of the Senate to the conference report, and the report was also agreed to by the House. The House then proceeded to consider the amendments still at issue between the Houses.

6461. Managers may report an agreement as to a portion of the amendments in disagreement, leaving the remainder to be disposed of by subsequent action.—On September 28, 1850,[3] the conferees on the disagreeing votes of the two Houses on the Senate amendments to the civil and diplomatic appropriation bill made a report which included an agreement on a portion of the amendments, and inability to come to an agreement as to others. The House agreed to the report, and then further insisted on the disagreement to the remaining amendments.

6462. On August 10, 1846,[4] Mr. James J. McKay, of North Carolina, from the committee of conference on the disagreeing votes of the two Houses on the amendments to the naval appropriation bill, made a report stating the agreements of the conferees on several amendments, and concluding:

> and the conferees have not been able to agree upon the eighth and ninth amendments of the said bill disagreed to by the House.

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[1] First session Twenty-ninth Congress, Journal, p. 1302; Globe, p. 1222.

[2] This was before conference reports were given a privileged character in the House; hence the unanimous consent was required to make the report out of the regular time allowed for reports.

[3] First session Thirty-first Congress, Journal, p. 1573.

[4] First session Twenty-ninth Congress, Journal, p. 1302.

The House agreed to the report of the conferees, and then took up and considered the remaining amendments.

6463. On June 8, 1880,[1] in the Senate, Mr. H. G. Davis, of West Virginia, presented the conference report on the disagreeing votes of the two Houses on the amendments to the legislative appropriation bill. This report consisted of agreement as to some of the amendments, and reported inability to agree on a long series of other amendments.

The President pro tempore[2] raised the question that the adoption of the report would be to adopt a conference report piecemeal, and said he was not aware that such a procedure had ever taken place. Mr. James G. Blaine,[3] of Maine, said:

> The only usage that I have ever known which justifies a partial report of this kind is where it gives the one body or the other a ground for receding if it chooses. If its judgment is that the only point of disagreement left is not worth insisting upon, it recedes; but if it is worth insisting on it simply asks another conference. That is all there is of it; and these partial reports are often made merely to let the body to which they are communicated judge whether on the whole it will further insist.

The President pro tempore therefore did not put the question on agreeing to the report, but on further insisting on the amendments.

On June 9, in the House, the same question arose, and Speaker Randall said:

> The Chair concurs in the opinion expressed on yesterday by the President pro tempore of the Senate, that when contested a report must be complete in order to be concurred in by the two Houses. * * * The Chair thinks the legitimate parliamentary mode of procedure would be to follow the example which has been cited, and for the House either to insist as the Senate did on yesterday on its disagreement, or for the House to say that in their opinion the conferees should recede. In that case the same conferees would go back and they would come to the House again with a complete report on the entire bill, which would be technically a compliance with the parliamentary practice. In that way the Chair thinks the parliamentary law would be executed without any confusion.

It nevertheless appears, from the Journal of the House, that the two Houses acted on the partial report, leaving the amendments still in disagreement for a further conference.

6464. On February 15, 1881,[4] the conference report on the Indian appropriation bill was presented to the House. This report constituted an agreement on all the disagreements but two, and in relation to these two the conferees reported inability to agree.

Mr. Omar D. Conger, of Michigan, made the point of order that the House might accept only a complete agreement.

The Speaker pro tempore[5] said:

> The Chair thinks there are many precedents where the House has accepted reports of conference committees agreeing in part and disagreeing as to the remaining matters in dispute. The Chair knows of no rule which would deny to the House the power to accept such a report. He thinks that this report of the committee of conference is in order, but should it be adopted the two Houses will only stand agreed upon such matters as the committees of conference of the two Houses have united upon. The other matters will still be left pending between the two Houses.

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[1] Second session Forty-sixth Congress, Journal of House, pp. 1430, 1434–1437; Record, pp. 4282, 4283, 4336.

[2] Allen G. Thurman, of Ohio.

[3] An ex-Speaker.

[4] Third session Forty-sixth Congress, Record, p. 1664.

[5] J. S. C. Blackburn, of Kentucky, Speaker pro tempore.

6465. Under certain circumstances managers may report an entirely new bill on a subject in disagreement; but this bill is acted on as a part of the report.[1]—On April 23, 1858,[2] the committee of conference on the disagreement of the two Houses on the amendment of the House to the bill of the Senate (No. 161) entitled "An act for the admission of the State of Kansas into the Union," made a report stating that they had agreed to an amendment in the nature of a substitute for the House amendment to the Senate bill. And they earnestly recommended the adoption of this amendment to the House bill. The conferees making this report were Senators James S. Green, of Missouri; R. M. T. Hunter, of Virginia; and William H. Seward, of New York (Mr. Seward signed the report, but indorsed his dissent from the measure); and Representatives William H. English, of Indiana; Alexander H. Stephens, of Georgia; and William A. Howard, of Michigan. Mr. Howard, like Mr. Seward, indorsed his dissent from the matter, but not from the parliamentary form of the report.

The House amendment to the Senate bill had been in the form of a substitute, striking out all after the enacting clause and inserting a new text.[3]

The new substitute proposed by the conferees was in the form of a complete bill,[4] complete in form, with a preamble and enacting clause. It was not included in the body of the report of the conferees, but accompanied it "and made a part of their report," in the language of the House Journal.

This conference report was made in the House of Representatives on April 23, and was agreed to on April 30.[5] The question put at that time was on agreeing to the report, and no other question was put on the accompanying substitute bill, which passed the House by virtue of the agreeing to the report.

6466. On August 2, 1861,[6] the conferees on the disagreeing votes of the two Houses on the bill (H. R. 54) to provide increased revenue from imports to pay interest on the public debt, and for other purposes, reported an agreement that the Senate recede from their amendment, and that the two Houses agree to a substitute bill. This report was agreed to and the bill became a law.

6467. On July 11, 1862,[7] Mr. Thomas D. Eliot, of Massachusetts, made a report from the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate (in the nature of a substitute) to the bill (H. R. 471) "to confiscate the property of rebels for the payment of the expenses of the present rebellion, and for other purposes." This report provided that the House recede from its disagreement to the Senate substitute, and agree to the same with certain specified amendments.

Mr. Samuel S. Cox, of Ohio, made the point of order that, the question between the two Houses being as to the adoption of the bill or the substitute, the committee of conference could only report the bill or substitute.

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[1] See secs. 6421, 6426 of this volume.

[2] First session Thirty-fifth Congress, Journal of House, pp. 674, 675; Globe, p. 1765.

[3] House Journal, pp. 574–582.

[4] House Journal, p. 675.

[5] House Journal, p. 1858.

[6] First session Thirty-seventh Congress, Journal, p. 200.

[7] Second session Thirty-seventh Congress, Journal, p. 1046; Globe, p. 3267.

The Speaker[1] overruled the point of order.

Mr. Cox having appealed, the appeal was laid on the table.

6468. In the very early practice conference reports were merely suggestions for action, and were neither identical in the two Houses nor acted on as a whole.—It is evident that it was the old practice of the House to consider the report of conferees as recommendations, and that votes were taken on the motions to recede, insist, or adhere, as recommended by the conferees, instead of simply agreeing to the conference report as one matter as at present. In the proceedings of February 12, 1799,[2] on a bill "respecting balances reported against certain States," etc., the House, after considering the conference report—

Resolved, That this House do so far recede from their amendment to the said first amendment as to agree to the same, with a modification and amendment thereof, agreeably to the report of the joint committee of conference thereon.

6469. The earlier method of settling differences by conferences is illustrated by the following message received from the Senate on March 24, 1812:[3]

The Senate having taken into consideration the report of the joint committee of conference on the disagreeing vote of the two Houses upon the amendments proposed by the Senate to the bill "concerning the Naval Establishment," have agreed to the amendments proposed by the said committee of conference to the amendments proposed by the Senate to the bill, and have modified the said bill accordingly, and I am directed to ask the concurrence of the House in the said modification.

On the succeeding day the House—

Resolved, That the House do so far recede from their disagreement to the said amendments of the Senate, agree to the amendments proposed by the joint committee of conference, and that the said bill be modified accordingly

6470. An excellent illustration of the old form of conference report is afforded by that submitted on December 27, 1814,[4] when the conferees reported four recommendations in relation to disagreeing votes of the two Houses on the House amendments to the Senate bill "to authorize the President of the United States to call upon the several States and Territories thereof for their respective quotas of 80,000 militia for the defence of the frontiers against invasion."

These recommendations were taken up separately, the motion being in each case to "concur with the committee of conference in their recommendation."

In this case the House disagreed to the first and second recommendations and agreed to the third and fourth. Thereupon the House resolved to insist on its disagreements to the first and second recommendations, and ask a further conference. Thereupon the former conferees were reappointed.

6471. On July 13, 1822,[5] Mr. William Drayton, of South Carolina, from the managers appointed to conduct the conference on the subject-matter of the disagreeing votes of the two Houses on the amendments of the Senate to the bill

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] Third session Fifth Congress, Journal, p. 162; also May 1, 1802, first session Seventh Congress, Journal, p. 236; also February 9, 1804. first session Eighth Congress, Journal, p. 402.

[3] First session Twelfth Congress, Journal, pp. 264, 266 (Gales and Seaton ed.).

[4] Third session Thirteenth Congress, Journal, pp. 618, 620 (Gales and Seaton ed.).

[5] First session Twenty-first Congress, Journal, p. 1158; Debates, p. 3912.

(H. R. 584) entitled, "An act to alter and amend the several acts imposing duties on imports," reported—

That the conferees had performed the duty assigned to them, and that, after a full and free conference between the committees upon all the matters submitted to them, the committee on the part of the Senate agreed to recommend to the Senate to recede from their several amendments which were disagreed to by the House, and to concur in the amendments which were made by the House to the amendments of the Senate.

No action was taken on this report by the House and it was laid on the table. In the Senate [1] the amendments were acted on separately in accordance with the recommendation of the conferees, and so the bill was passed.

6472. In the early practice it was not essential that conference reports should be either signed or printed in the Journal.

The practice of acting on the conference report as a whole began in 1828, but did not at once become invariable.[2]

On May 14, 1828,[3] Mr. George McDuffie, of South Carolina, one of the managers on the differences between the two Houses on the Senate amendments to the bill (H. R. 119) "making appropriations for internal improvements" made the following report:

The managers agree to recommend to their respective Houses the following compromise, to wit:

That the House of Representatives do recede from its vote on the fifth amendment of the Senate; and

That the Senate do consent to modify the third amendment by striking out all after the words "defraying the expenses," in the first line, and inserting "incident to carrying on the examinations and surveys for internal improvements under the act of the 30th of April, 1824, thirty thousand dollars: *Provided,* That this appropriation shall not be construed into a legislative sanction of any examination or survey which shall not be deemed of national importance, or within the provisions of the aforesaid act of the 30th of April, 1824." [4]

This report being considered on May 15, the question was put as follows: "Will the House concur in the recommendations contained in the report of the managers as aforesaid?"

The report was not signed by the managers, even of those on the part of the House.

The report of the Senate conferees, while of course [5] the same in substance as that of the House conferees, was presented in the form of two resolutions:

Resolved, That the Senate adhere to the fifth amendment.

Resolved, That the Senate recede from all that part of the third amendment after the word "expenses," in the first line, and that the same be modified, etc.

The question was put in the old way, on each of the resolutions separately, instead of upon agreeing to the report of the conferees as a whole.

6473. On March 2, 1829,[6] the committee of conference on a bill relating to a treaty with the Winnebagoes, reported—

That the joint committee of conference agreed to recommend to the respective Houses the following resolution:

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[1] Debates, pp. 1274–1293.

[2] See secs. 6530–6533 of this volume for the present practice.

[3] First session Twentieth Congress, Journal, pp. 741, 749; Debates, p. 2674.

[4] This report appears in the Journal in full.

[5] House Journal, p. 746; Debates, p. 787.

[6] Second session Twentieth Congress, Journal, p. 380.

Resolved, That the Senate so far recede from their amendment as to reduce the appropriation for the object in controversy from twenty to ten thousand dollars; and that the House of Representatives so far recede from their vote of disagreement as to agree to the amendment of the Senate thus modified.

The motion made and carried by the House was that the House disagree to the report of the managers.

6474. On May 18, 1830,[1] the House had before it a conference report on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 71) "for the relief of the city council of Charleston, South Carolina."

The Senate had already informed the House that it had agreed to the modifications proposed by the conferees.

The House, instead of taking a vote on agreeing to the report, as had recently been the practice, considered and agreed to this resolution:

Resolved, That this House do recede from their vote to insist on their said amendment and do agree to the modification of the same as proposed by the managers appointed to conduct the conference on the disagreeing vote of the two Houses on the said amendment.

The Journal, which does not give the report, has this entry, "and so the said bill passed both Houses of Congress."

6475. On July 5, 1838,[2] a message was received from the Senate announcing that the "Senate have concurred in the report of the committee of conference on the subject-matter of the disagreeing votes of the two Houses on the amendments of the House of Representatives to the bill of the Senate (No. 29) entitled, 'An act making appropriations for certain roads in the Territory of Wisconsin,' and have resolved that the said bill do pass accordingly."

On the same day Mr. Charles F. Mercer, of Virginia, from the committee of conference presented the report of the conferees in the House; whereupon—

Resolved, That the House do agree to said report and that the said bill do pass accordingly.

This report does not appear in the Journal.

6476. In 1838[3] a conference report was presented in the Senate, and after being agreed to there, was presented in the House in identical form and agreed to. The report was on disagreeing votes on amendments to the bill H. R. 595. The report was presented and acted on in the Senate on March 8, 1838, and in the House on March 9. In each House the only question put was on agreeing to the report. This report appears in both the Senate and House Journals, but is not signed by any of the conferees.

6477. On May 16, 1842,[4] Mr. Millard Fillmore, of New York, made a report from the managers on the part of the House to conduct the conference on the disagreeing votes of the two Houses on the amendments to the bill (H. R. 74) making appropriations for the civil and diplomatic expenses of the Government. This report is in the modern form, recommending in separate paragraphs the actions necessary on the part of each House to end the various disagreements. The report was not signed. It appears in full in the Journal.

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[1] First session Twenty-first Congress, Journal, p. 667.

[2] Second session Twenty-fifth Congress, Journal, pp. 1244, 1250.

[3] Second session Twenty-fifth Congress, Senate Journal, p. 277; House Journal, p. 570.

[4] Second session Twenty-seventh Congress, Journal, pp. 824–826; Globe, p. 505.

When the question was put on agreeing to the report, a discussion arose as to the method in which the vote should be taken, with the result that the Speaker[1] finally decided that the question should be taken on agreeing to each recommendation of the committee separately. The House agreed to all the recommendations, so the bill was finally passed, the Senate also having agreed to the report.

6478. On August 8, 1842,[4] the managers of the conference on the bill relating to the organization of the Army made a report, and on August 9 this report was disagreed to. On neither of these days does this report appear on the Journal.

But on August 16[3] a report was made, which was agreed to, and this appears in full in the Journal.

6479. On August 16, 1842,[4] the report of the committee of conference on the bill (H. R. 75) making appropriations for the support of the Army and of the Military Academy, was considered in Committee of the Whole House on the state of the Union. When the report was considered in the House the question was put separately on the several recommendations of the managers.

6480. On July 25, 1848,[5] the question was put on the conference report on the Indian appropriation bill, on concurring with the Senate in the report. This report had been made in the Senate and agreed to before it was taken up in the House.

6481. Since 1846 conference reports have generally been signed and appear in the Journal.—On April 23, 1846,[6] the Journal has in full the conference report on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution of the House of Representatives entitled "Joint resolution of notice to Great Britain to annul and abrogate the convention between Great Britain and the United States of the 6th of August, 1827, relative to the country on the northwest coast of America, westward of the Stony Mountains, commonly called Oregon." This report is signed by "Charles J. Ingersoll, Robert Dale Owen, Henry Hilliard, committee on the part of the House; John Macpherson Berrien, Thomas Corwin, William H. Haywood, jr., committee on the part of the Senate." The same report, signed in the same way, except that the signatures of the Senate conferees were placed first, was presented and agreed to in the Senate. This is one of the first, if not the very first, instance of a conference report signed by the conferees, or at least printed with their signatures attached in the Journal of the House and the Globe.

On June 11 another conference report is printed with the signatures.[7] On June 16[8] also a report is printed with the signatures of two of the three conferees of the two Houses. It is evident that the third conferees did not sign because they dissented from the report. On August 10, 1846,[9] a report was made and printed in

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[1] John White, of Kentucky, Speaker.

[2] Second session Twenty-seventh Congress, Journal, pp. 1234, 1248.

[3] Journal, p. 1299.

[4] Second session Twenty-seventh Congress, Journal, p. 1301.

[5] First session Thirtieth Congress, Journal, p. 1110.

[6] First session Twenty-ninth Congress, Journal, pp. 706, 707; Globe, p. 716.

[7] Journal, p. 941.

[8] First session Twenty-ninth Congress, Journal, p. 973; Globe, pp. 984, 985.

[9] Journal, p. 1300.

the Journal to which no signatures are attached. Also on August 1[1] a report that the conferees had been unable to agree was made without any signatures.

6482. On May 17, 1848,[2] the conference report on the amendments to the bill (H. R. 39) was signed by the chairmen only of the respective committees of the House and Senate.

This report also had annexed to it a letter from the Solicitor of the Treasury, setting forth reasons for the adoption of a certain proviso contained in the report. This annexed document does not appear in the Journal, where the report is printed in full; but a footnote says:

> For said letter see manuscript report.

On March 3, 1849,[3] the Journal has the conference report on the Indian appropriation bill, which does not bear the signatures of the conferees, although at this time the practice of appending the signatures to the report was quite firmly established.

6483. By July 31, 1848,[4] it had become the general practice for the conference reports to be signed by the conferees; but on that date a report appears in the Journal—the report of the conferees on the naval appropriation bill—unsigned.

6484. In the Thirty-first, Congress there was a varied usage in regard to conference reports. The Journal shows that on May 20, 1850,[5] on the bill for taking the Seventh Census, the conference report is signed by the three House conferees, but not by the Senate conferees. On August 28, 1850,[6] the conference report on the supplemental census bill is not signed at all. On September 28, 1850,[7] the conference report on the civil and diplomatic appropriation bill appears signed by the conferees of both Houses. On September 28, 1850,[8] a further report on the same bill appears signed only by two of the House conferees, and on the same day the report on the Indian appropriation bill appears signed by the chairman on the part of the House and the chairman on the part of the Senate.[9]

On September 19, 1850,[10] the conferees on the mileage deficiency bill reported an inability to agree. The report is not signed and does not appear to have been made in writing.

On September 28, 1850,[11] the conference report on the Indian appropriation bill was disagreed to by the House, but it nevertheless appears in full in the Journal, although such had not generally been the practice in the case of reports disagreed to.

6485. In the second session of the Thirty-first Congress two of the conference reports are signed by the conferees and the other two are not signed.[12]

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[1] Journal, p. 1199.

[2] First session Thirtieth Congress, Journal, p. 811; Globe, p. 774.

[3] Second session Thirtieth Congress, Journal, p. 648.

[4] First session Thirtieth Congress, Journal, pp. 1138, 1139.

[5] Journal, p. 947.

[6] Journal, p. 1319.

[7] Journal, p. 1573.

[8] Journal, p. 1590.

[9] Journal, pp. 1590, 1591.

[10] Journal, p. 1496.

[11] Journal, p. 1576.

[12] Second session Thirty-first Congress, Journal, pp. 362, 421, 449, 453.

6486. On March 3, 1853,[1] several conference reports appear in the Journal, and none of them are signed by the conferees.

6487. On February 2, 1853,[2] the conference report on the Indian appropriation bill appears in the Journal without the signatures of the conferees, although at this time the practice of having the reports signed had become well established.[1]

6488. The name of an absent manager may not be affixed to a conference report; but the House and Senate may authorize him to sign the report after it has been acted on.—On February 20, 1907,[3] Mr. William S. Bennet, of New York, offered the following resolution, which was considered by unanimous consent and agreed to:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House and the Secretary of the Senate are hereby authorized and directed to permit Jacob Ruppert, jr., as one of the House managers, to affix his name to the report of the managers of conference on the disagreeing votes of the two Houses on the bill (S. 4403) regulating immigration.

On the same day the resolution was agreed to by the Senate. The report had already been agreed to by the two Houses.

6489. Sometimes a manager indorses the conference report with a conditional approval or dissent.—On August 1, 1861,[4] the conference report on the bill for the better organization of the Army is signed by all the conferees, but before the name of Mr. John Sherman, of Ohio, appears this indorsement:

I agree to this report except to the proposed increase of the staff of the Army.

6490. On March 2, 1861,[5] the report of the conferees on the Indian appropriation bill was presented to the House. This report was signed by all three of the House conferees, but before the name of Mr. John S. Phelps, of Missouri, are the words:

I dissent.

6491. On July 9, 1862,[6] the conference report on the naval appropriation bill appears in the Journal signed by all the conferees, but before the name of Mr. Elihu B. Washburne, of Illinois, appear the words:

I dissent from this report.

6492. On February 23, 1864,[7] the report of the conference on the bill (H. R. 122) to increase the revenue was made in the House. It was signed by all the conferees of the House, but Mr. Elihu B. Washburne, of Illinois, indorsed before his name as follows:

I dissent from this report.

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[1] Second session Thirty-second Congress, Journal, pp. 392, 394, 407, 419.
[2] Third session Thirty-fourth Congress, Journal, p. 595.
[3] Second session Fifty-ninth Congress, Record, pp. 3449, 3456.
[4] First session Thirty-seventh Congress, Journal, p. 195.
[5] Second session Thirty-sixth Congress, Journal, p. 457.
[6] Second session Thirty-seventh Congress, Journal, p. 1023.
[7] First session Thirty-eighth Congress, Journal, p. 295.

6493. On January 5, 1853,[1] Mr. William H. Polk, of Tennessee, submitted the report of the committee of conference on the disagreeing votes of the two Houses on the bill of the Senate (S. 32) for the relief of Margaret L. Worth. This report was signed by all the conferees on the part of both the House and Senate, but one of the House conferees, Mr. Isham G. Harris, of Tennessee, accompanied his signature with this indorsement:

I dissent from the above report.

6494. On February 21, 1855,[2] the House considered the report of the committee of conference on the disagreeing votes of the two Houses over the bill (S. 96) to provide for the payment of certain creditors of the late Republic of Texas.

This report was signed by all the conferees of both House and Senate, but Mr. George W. Jones, of Tennessee, of the House managers, accompanied his signature with this indorsement:

I do not concur in the above recommendation and report.

6495. On April 23, 1858,[3] all the conferees on the disagreeing votes of the two Houses on the bill (S. 161) for the admission of the State of Kansas into the Union signed the report, but over each of the signatures of Mr. William A. Howard, of the House, and Mr. William H. Seward, of the Senate, appears this indorsement:

The undersigned, one of the managers on the part of the House (Senate), does not agree to the foregoing report.

6496. On April 25, 1904,[4] the conference report on the Post-Office appropriation bill was presented in the House for printing in the Record. One of the managers of the conference, Mr. John A. Moon, of Tennessee, signed the report with the following indorsement:

I concur in this report except as to [Senate amendments] Nos. 42 and 43.

6497. A point of order being made that a conference report, which was duly signed by a majority of the managers, was not authorized, the Speaker submitted the question of its reception to the House.

A conference report is received if signed by a majority of the managers of each House.

On February 27, 1863,[5] Mr. Thaddeus Stevens, of Pennsylvania, presented the conference report on the bill (H. R. 591) to indemnify the President and other persons for suspending the writ of habeas corpus and acts done in pursuance thereof. This report was signed by two of the House conferees. The third, Mr. George H. Pendleton, of Ohio, had not signed the report, and when it was presented made a point of order that the report was not as ordered by the committee.

It appeared from the debate that the committee had approved as a part of the report a paragraph; but that this was not to be inserted if an investigation should show that it would involve a certain question of order. After this point had been ascertained, the chairman saw the conferees individually and the paragraph which

[1] Second session Thirty-second Congress, Journal, p. 106; Globe, p. 230.

[2] Second session Thirty-third Congress, Journal, p. 425; Globe, p. 863.

[3] First session Thirty-fifth Congress, Journal, p. 675.

[4] Second session Fifty-eighth Congress, Record, p. 5538.

[5] Third session Thirty-seventh Congress, Journal, p. 514; Globe, p. 1355.

had been provisionally approved was dropped. The point of order made was that a committee of conference, like any other committee, could report only what had been determined in an actual assembly of the committee.

After debate the Speaker[1] said that it had always been held that that was the report of a committee of conference which was signed by a majority of the conferees. The Manual provided:

> If it is disputed that a report had been ordered in by a committee, the question of reception must be put to the House.

Therefore he put the question "Shall the report be received as the report of the committee?" and there appeared, yeas 88, nays 42. So the report was received.

6498. On June 19, 1878,[2] Mr. John D. C. Atkins, of Tennessee, who was chairman of the managers of the conference on the sundry civil appropriation bill, did not sign the conference report, which carried $5,500,000 to pay the Halifax fisheries award. Mr. Atkins was also chairman of the Committee on Appropriations. The report came to the House signed by the two remaining members of the managers, Messrs. Abram S. Hewitt, of New York, and Eugene Hale, of Maine. No question was raised as to the reception of the report.

6499. Form of conference report wherein the House recedes from its amendment to a Senate bill.—On February 28, 1907,[3] in the Senate, Mr. Porter J. McCumber, of North Dakota, presented this conference report, which was agreed to:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 7840) granting an increase of pension to Lewis A. Towne having met, after fall and free conference have agreed to recommend and do recommend to their respective Houses as follows:
>
> That the House recede from its amendment.
>
> P. J. McCumber,
> N. B. Scott,
> Jas. P. Tallaferro,
> *Conferees on the part of the Senate.*[4]
> John C. Chaney,
> E. S. Holliday,
> *Conferees on the part of the House.*

6500. Form of conference report wherein the Senate recedes from certain of its amendments to a House bill, while the House recedes from its disagreement as to others and agrees to certain others with amendment.

The signature of a majority of the managers of each House is sufficient for a conference report.

On February 9, 1907,[5] in the Senate, Mr. Eugene Hale, of Maine, presented a conference report as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24538) making appropriations for the diplomatic and consular service for the

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] Second session Forty-fifth Congress, Record pp. 4887, 4889.

[3] Second session Fifty-ninth Congress, Record p. 4248.

[4] The word "managers" is more properly used instead of "conferees" in drawing a report. In debate either word is used.

[5] Second session Fifty-ninth Congress, Record, p. 2631.

fiscal year ending June 30, 1908, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, and 3.

That the House recede from its disagreement to the amendment of the Senate numbered 4, and Wee to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment as follows: Strike out the sum named in lines 5 and 6 of said amendment and insert in lieu thereof the following: "one hundred thousand dollars;" and the Senate agree to the same.

EUGENE HALE,
S. M. CULLOM,
Managers on the part of the Senate.[1]
R. G. COUSINS,
C. B. LANDIS,
WM. M. HOWARD,
Managers on the part of the House.[2]

6501. On February 22, 1907,[3] in the Senate, Mr. Shelby M. Cullom, of Illinois, presented the following:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 21574) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1908, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 13, 14, 15, 23, * * * etc.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, * * * etc.

* * * * * * *

That the House recede from its disagreement to the amendment of the Senate numbered 224, and agree to the same with an amendment as follows:

In lieu of the number proposed insert "5;" and insert the words "Sec. 4" before the matter substituted for the amendment of the Senate numbered 222; and the Senate agree to the same.

S. M. CULLOM,
F. E. WARREN,
Managers on the part of the Senate.
LUCIUS N. LITTAUER,
L. F. LIVINGSTON,
Managers on the part of the House.

[In this case only two of the three conferees of each House signed the report.]

6502. On February 22, 1907,[4] in the Senate, Mr. Moses E. Clapp, of Minnesota, offered the following:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5290) providing for the allotment and distribution of Indian tribal funds, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 2.

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[1] Very frequently one of the three managers does not sign the report. It is necessary, however, that two of the three shall sign.

[2] Conference reports are drawn up in duplicate, and in that which is presented to the House the names of the House managers are signed first.

[3] Second session Fifty-ninth Congress, Record, pp. 3602, 3603.

[4] Second session Fifty-ninth Congress, Record, pp. 3622, 3623.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 6, 7, and 8, and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment as follows: In lieu of the matter proposed to be stricken out insert the following:

"Provided further, That the Secretaries of the Interior and of the Treasury are hereby directed to withhold from such apportionment and allotment a sufficient sum of the said Indian funds as may be necessary or required to pay any existing claims against said Indians that may be pending for settlement by judicial determination in the Court of Claims or in the Executive Departments of the Government at time of such apportionment and allotment."

And the Senate agree to the game.

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment insert the following:

"SEC. 2. That the Secretary of the Interior is hereby authorized to pay any Indian who is blind, crippled, decrepit, or helpless from old age, disease, or accident his or her share, or any portion thereof, of the tribal trust funds in the United States Treasury belonging to the tribe of which such Indian is a member, and of any other money which may hereafter be placed in the Treasury for the credit of such tribe and susceptible of division among its members, under such rules, regulations, and conditions as he may prescribe."

And the Senate agree to the same.

MOSES E. CLAPP,
GEO. SUTHERLAND,
W. J. STONE,
Managers on the part of the Senate.
JOHN F. LACEY,
CHARLES H. BURKE,
WM. T. ZENOR,
Managers on the part of the House.

6503. Form of conference report on House amendments to a Senate bill, where the House recedes from some of its amendments and the Senate recedes from its disagreement as to others.—On February 8, 1907,[1] the following conference report was presented in the House:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6364) entitled "An act to incorporate the National Child Labor Committee," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment numbered 1.

That the Senate recede from its disagreement to the amendment of the House numbered 2, and agree to the same.

E. L. TAYLOR, Jr.,
SAMUEL W. SMITH,
T. W. SIMS,
Managers on the part of the House.
JOHN C. SPOONER,
A. O. BACON,
Managers on the part of the Senate.

6504. Form of conference report in a case wherein the House had disagreed to a Senate amendment to a House amendment to a Senate bill.

Form of statement accompanying report of the House managers of a conference.

[1] Second session Fifty-ninth Congress, House Report No. 7570.

On February 26, 1907,[1] Mr. Francis W. Cushman, of Washington, presented a conference report as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill S. 925, "An act authorizing the construction of a steam vessel for the Revenue-Cutter Service of the United States," having met, after full and free conference, have Weed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment to the amendment of the House.

JAMES R. MANN,
FRANCIS W. CUSHMAN,
W. H. RYAN,
Managers on the part of the House.
S. B. ELKINS,
GEO. C. PERKINS,
S. R. MALLORY,
Managers on the part of the Senate.

Accompanying this report, Mr. Cushman presented a written statement as follows:

The original bill as it passed the Senate authorized the construction of one revenue cutter for use in the Puget Sound waters.

This bill was amended in the House by striking out all of said bill after the enacting clause and inserting provisions authorizing the construction of four (4) vessels for the Revenue-Cutter Service at a total cost not to exceed $650,000, and amending the title of said bill to conform with said amendment.

The Senate agreed to the amendment of the House with an amendment which in substance authorized the construction of one additional boat, to wit: One motor boarding boat for the port of Galveston, Tex.

The Senate now recedes from this Senate amendment. The effect of this is to eliminate from the bill the provision for the one motor boarding boat for the port of Galveston, Tex., and leaves the bill providing for the four revenue-cutter vessels. This leaves the bill in exactly the same form as it passed the House.

JAMES R. MANN,
FRANCIS W. CUSHMAN,
W. H. RYAN,
Conferees[2] on the part of the House.

6505. The statement accompanying a conference report should be in writing and signed by at least a majority of the House managers.—On April 13, 1880,[3] Mr. Philip B. Thompson, of Kentucky, presented a conference report on the bill (S. 885) providing for taking the census, when Mr. Omar D. Conger, of Michigan, called for the detailed statement called for by the rule.

A question at once arose as to the nature of the statement called for by the rule, then recently adopted.

After debate the Speaker pro tempore[4] said:

In construing an amended statute it is necessary to take into consideration the statute previous to its amendment. Before the amendment of this rule conference reports were submitted and signed by the conferees, and it was customary to call on any member of the conference committee to make explanation of the effect of the report if adopted. The Chair understands the new part of the rule was

[1] Second session Fifty-ninth Congress, Record, p. 4000.

[2] The more frequent form uses the word "Managers" instead of "Conferees."

[3] Second session Forty-sixth Congress, Record, p. 2367.

[4] William M. Springer, of Illinois, Speaker pro tempore.

intended to change that practice, and therefore in construing the language of that new part of the rule, namely:

"And there shall accompany every such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions will have upon the measures to which they relate."

it is necessary to give effect to that additional provision. In order to give effect to it the Chair understands it has reference to something in addition to the report of the conference committee, something to accompany that report, an explicit detailed statement, which, of course, could not be the report itself.

Whether that additional detailed statement should be made verbally or in writing may be a question open to some doubt; but, in view of the fact that this detailed statement must be made by the referees as a statement accompanying the report, the Chair is of the opinion that it must come with the sanction, of the conferees; not a statement of one of the managers of the conference, but a statement of all of them, or a majority of them, and to be a statement of all of them, or a majority of them, it must be in writing, detailed and sufficiently explicit that Members of the House, on the reading of it, can understand the changes to be effected and the actual purport of the conference report. The Chair therefore is of the opinion that, in presenting a conference report, it must be accompanied by a detailed statement in writing, signed by the conferees themselves or a majority of them, giving their explanation of the changes made in their own report. This report not being accompanied by such detailed statement in writing, signed by the respective conferees, the Chair sustains the point of order and holds that the report is not in order under the rule.

6506. On the calendar day of March 3, 1901,[1] but the legislative day of March 1, Mr. Theodore E. Burton, of Ohio, presented the conference report on the river and harbor bill.

Mr. William P. Hepburn, of Iowa, having raised a question of order as to the statement accompanying the report, the Speaker[2] said:

The House will observe that the rule does not say that the statement shall be signed. The statement that there was a statement would seem to be sufficient. The Chair is advised, and, in his own recollection, presented reports himself in which the statement was not signed, although it is usually the case that the statement is signed.

6507. A conference report may not be received without the accompanying statement required by the rule.—On December 20, 1890,[3] Mr. Thomas H. Carter, of Montana, as a privileged question, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 8049) to provide for the disposition of the abandoned Fort Ellis military reservation in Montana, submitted a report.

The report having been read, Mr. John H. Rogers, of Arkansas, made the point of order that as no statement accompanied the report it could not, under the rules, be now considered.

The Speaker[4] sustained the point of order.

6508. On May 28, 1896,[5] Mr. Benson Wood, of Illinois, submitted a conference report on the bill (H. R. 2604) to increase the pension of Caroline A. Hough.

Mr. Eugene F. Loud, of California, raised the point of order that no statement accompanied the report.

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[1] Second session Fifty-sixth Congress, Record, p. 3578.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 75.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-fourth Congress, Record, p. 5865.

The Speaker[1] held that such a statement was required, and the report was withdrawn.

6509. On February 1, 1897[2] Mr. Newton M. Curtis, of New York, presented a conference report on the Military Academy appropriation bill.

Mr. Joseph W. Bailey, of Texas, insisted that there should be a written statement,[3] as required by the rule.

There being no such statement the Speaker[1] held:

The gentleman from Texas [Mr. Bailey] makes the point that the conference report can not be received in the absence of a written statement of the House conferees, as required by the rules. The Chair sustains the point.

6510. On May 2, 1902[4] Mr. Joseph V. Graff, of Illinois, presented a conference report on the bill (H. R. 7018) for the relief of Robert J. Spottswood, etc.

The report having been read, Mr. Eugene F. Loud, of California, raised the question of order that the written statement required by the rules did not accompany the report.

There being no statement, the Speakers[5] said:

The rules axe explicit on this matter. A written statement must accompany the report. The gentleman will please recall his report until the statement is furnished.

6511. It is for the House and not the Speaker to determine whether detailed statement accompanying a conference report is sufficient to comply with the rule.—On February 28, 1887,[6] the conferees on the river and harbor appropriation bill presented with their report a statement, as required by the rule,[7] and it was read.

Thereupon Mr. William P. Hepburn, of Iowa, made the point of order that the statement was meager in its character and not a compliance with the rule.

The Speaker[8] decided:

The rule requires the managers of the conference on the part of the House to make this detailed statement. But the Chair does not feel it is in the province of the Chair to determine whether that report is sufficient or not. That is for the House to determine. Another rule requires that when committees report back to the House bills, resolutions, etc., such bills, etc., shall be accompanied by reports in writing. It frequently happens that a committee does nothing more than recommend in one or two lines the passage or rejection of a measure. And the objection has sometimes been made that these reports are insufficient, but that has been held to be a question which the Chair can not decide. The Chair can not assume the responsibility of examining all the reports and determining whether they axe sufficient.[9] That is involved in the question now pending whether the House will consider the report, If it is thought that the statement is insufficient and that that is a reason why the House should not consider the report, that, of course, will control the votes of the gentlemen on the floor.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 1412.

[3] It was so held early in the history of the rule, and at the same time Speaker pro tempore William M. Springer, of Illinois, ruled that the statement should be signed by the managers on the part of the House. (Second session Forty-sixth Congress, Journal, pp. 1016, 1017; Record, pp. 2365, 2367).

[4] First session Fifty-seventh Congress, Record, p. 4978.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Forty-ninth Congress, Record, p. 2437; Journal, pp. 770, 771.

[7] Rule XXIX. See section 6443 of this volume.

[8] John G. Carlisle, of Kentucky, Speaker.

[9] Mr. Speaker Carlisle ruled this way again in 1899. (Second session Fiftieth Congress, Journal. p. 414; Record, p. 1488.)

6512. On December 4, 1894,[1] Mr. James D. Richardson, of Tennessee, presented a conference report on the bill (H. R. 2650) providing for the public printing, etc.

The report and accompanying statement having been read, Mr. John De Witt Warner, of New York, made the point that the statement was not sufficiently explicit, and that the report therefore should not be received.

The Speaker[2] overruled the point of order, holding that the rule required that there should accompany each conference report a detailed statement or explanation; but, as was held in the Forty-ninth Congress, it was not for the Chair to determine whether the submission of a paper purporting to be a detailed statement of the effect of a conference report was sufficient compliance with the rule. The House might, if it desired, receive the report without any detailed statement whatever.[3]

6513. While the Chair may not pass upon the completeness of the written statement accompanying a conference report, he may require it to be in proper form.—On March 2, 1883,[4] Mr. Benjamin Butterworth, of Ohio, presented the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the Army appropriation bill (H. R. 7077).

The accompanying, statement having been read, Mr. Edward S. Bragg, of Wisconsin, made the point of order that the accompanying statement was not in compliance or conformity with Rule XXIX, and also the further point of order that the report itself was not in compliance with the said rule.

The Speakers[5] overruled the point of order, on the ground that it was not for the Chair to decide whether a conference report and accompanying statement was or not in strict conformity with said rule, that being a question of fact.

On March 3, 1883,[6] Mr. William D. Kelley, of Pennsylvania, made a report from the committee of conference on the disagreeing votes of the two Houses on the Senate amendments to the bill (H. R. 5538) to reduce internal revenue taxation.

Mr. Thomas M. Bayne, of Pennsylvania, made the point of order against the report that it was not accompanied by such a detailed statement as was required by the rule.

After debate the Speaker said:

> The Chair is ready to dispose of this question. * * * On yesterday the Chair did say, as has been stated by the gentleman from Massachusetts [Mr. Robinson], that it was not called on to decide the effect of a report. The point of order was made by the gentleman from Wisconsin [Mr. Bragg], that the conference report itself was not sufficiently explicit. The Chair declined to go into that question, declined to undertake to analyze the report, and decide for the House or the conferees what language should be used in it. That is as far as the Chair went on the occasion referred to. * * * The question is presented whether this conference report can be received from the conferees at all without an accompanying statement, and under the rule it is perfectly clear that it can not.

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[1] Third session Fifty-third Congress, Journal, pp. 15 and 16.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See, however, section 6507 of this chapter, wherein, when the case was directly presented, the Speaker held that a report unaccompanied by a statement should not be received.

[4] Second session Forty-seventh Congress, Journal, p. 563; Record, p. 3638.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] Journal, pp. 610, 611; Record, p. 3711.

Then the question is whether there is an accompanying statement. At the time the point of order was made the Chair was not able to ascertain anything that purported to be an accompanying statement was in existence. Since that point of order was made a paper has been furnished at the desk which is entitled "Index to changes proposed by the committee of conference," which seems to be signed by a majority of the conferees on the part of the House. But this does not purport to be an accompanying statement giving any sort of effect to proposed changes. The Chair thinks there should bean accompanying statement and the report can not be received until there is one for consideration.

Mr. Kelley thereupon presented a written statement signed by the majority of the conferees on the part of the House.

Mr. John G. Carlisle, of Kentucky, made the point of order that the statement was not sufficiently complete.

The Speaker said:

The Chair can not pass upon the effect of a statement or the question as to whether or not it covers all that it might contain; or hold that it should be more full and explicit and embody all that every Member of the House might desire it to embody. The Chair believes this to be a statement entitled to be called such under the rule; and although, as the Chair has said, it may not go to the extent that every gentleman might desire, the Chair thinks it is nevertheless a statement within the meaning of the rule, and therefore overrules the point of order.

6514. Form of statement to accompany a report of managers of a conference to the House.—On February 26, 1907,[1] Mr. Walter I. Smith, of Iowa, presented a conference report accompanied by a statement in form as follows:

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 23821) making appropriations for fortifications and other works of defense submit the following written statement explaining the effect of the action agreed upon and recommended in the accompanying conference report on each of said amendments:

On amendment numbered 1: Appropriates $900,000, instead of $700,000, as proposed by the House, and $1,200,000, as proposed by the Senate, for construction of fire-control stations and accessories.

* * * * * * *

On amendment numbered 11: Strikes out the appropriation of $600,000, proposed by the House, for construction of seacoast batteries in the Hawaiian and Philippine Islands.

On amendments numbered 12 and 13: Appropriates, respectively, for construction of seacoast batteries for Hawaiian Islands $200,000, and for construction of seacoast batteries in the Philippine Islands $500,000.

WALTER I. SMITH,
J. WARREN KEIFER,
JOHN J. FITZGERALD,
Managers on the part of the House.

6515. February 27, 1907,[2] Mr. Theodore E. Burton, of Ohio, presented the following statement to accompany a conference report:

The House conferees on H. R. 24991, making appropriations for the construction, repair, and preservation of certain public works on-rivers and harbors, and for other purposes, would respectfully report that they have reached an agreement with the Senate conferees, and recommend that the conference report on the bill filed herewith be adopted.

The total appropriations and authorizations in the bill as passed by the House was $84,198,138. The amount added by the Senate amendments was $8,685,334. As agreed upon in conference these additions have been reduced to $2,815,294, making the total amount carried by the bill in appropriations and authorizations $87,013,432.

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[1] Second session Fifty-ninth Congress, Record, p. 3999.

[2] Second session Fifty-ninth Congress, Record, p. 4174.

Aside from items of appropriation, the two main differences between the House and the Senate were in the provision for the acquisition of necessary land for the construction of a canal in St. Marys River, Michigan. Upon this an agreement has been reached which is set forth in the conference report. The Senate provision sought to authorize the acquisition of all land and waters between the existing canal in St. Marys River and the international boundary line. The question of the acquisition of this land is much embarrassed by conflicting claims of title. The provision as agreed upon provides only for the acquisition of the land immediately needed for the new canal and lock appropriated for in this bill, but seeks to prevent the creation of rights which will hereafter embarrass the Government in case, as is probable, other canals and locks may be required to meet the growing demands of traffic.

The Senate added as section 6 a provision authorizing the Secretary of War to approve a change of plans or of location in or over any navigable water of any pier, wharf, bridge, or other structure which has heretofore been or may hereafter be approved by the Secretary of War upon application by the parties interested, provided that such change shall be within the original authorization for such structure, etc., is stricken out, and this section is made to apply only to a bridge across the Hudson or North River at New York City.

THEODORE E. BURTON,
B. B. DOVENER,
J. H. BANKHEAD,
Managers on the part of the House.

Chapter CXXXVII.

CONSIDERATION OF CONFERENCE REPORTS.

1. **Reports and statements printed in the Record. Section 6516.**
2. **The pending question. Section 6517.**
3. **Original bill and amendments must be before the House. Sections 6518–6524.**
4. **Effect of rejection of report. Section 6525.**
5. **Discharge of managers. Sections 6526–6529.**
6. **Must be acted on as a whole without amendment. Sections 6530–6535.**
7. **Amendment of, by concurrent action of both Houses. Sections 6536, 6537.**
8. **Motion to lay on the table not in order. Sections 6538–6544.**
9. **Recommittal of. Sections 6545–6557.**[1]
10. **Reference to a standing committee. Section 6558.**
11. **As to consideration in Committee of the Whole. Sections 6559–6561.**[2]
12. **Reports of inability to agree. Sections 6562–6570.**[3]
13. **Custody of papers and report after failure to agree. Sections 6571–6585.**
14. **General decisions. Sections 6586–6589.**[4]

6516. A conference report and the accompanying statement are required to be printed in the Corgressional Record before being considered, except during the last six days of a session.

Present form and history of section 2 of Rule XXIX.

Section 2 of Rule XXIX provides:

> It shall not be in order to consider the report of a committee of conference until such report and the accompanying statement shall have been printed in the Record, except on either of the six days preceding the end of a session.

This rule dates from May 22, 1902,[5] when Mr. James D. Richardson, of Tennessee, reported it from the Committee on Rules and it was agreed to by the House. It was originally proposed by Mr. William P. Hepburn, of Iowa, and referred to the Committee on Rules.

6517. A conference report being presented, the question on agreeing to it is regarded as pending.—On June 5, 1900,[6] the Speaker had put the question on agreeing to the conference report on the disagreeing votes of the two Houses on the bill (S. 3419) "making further provisions for a civil government for Alaska,

[1] See also section 6609 of this volume.

[2] See also section 6311 of this volume.

[3] See also section 6334 of this volume.

[4] When a report is not acted on, the bill to which it relates is lost. (Sec. 6309 of this volume.)

[5] First session Fifty-seventh Congress, Record, pp. 5784, 5836.

[6] First session Fifty-fifth Congress, Record, p. 6712.

and for other purposes;" and had declared the question agreed to, when Mr. John F. Lacey, of Iowa, made the point of order that no motion had been made to adopt the conference report, but that the Chair had put the motion, assuming it to have been made.

The Speaker [1] said:

It required no motion. It was the pending question, and the Chair put it when the adoption of the conference report was pending.[2]

6518. A conference report may not be considered when the original bill and amendments are not before the House.[3]—On June 14, 1906,[4] Mr. Edward L. Hamilton, of Michigan, called up the conference report on the bill (H. R. 12707) to enable the people of Oklahoma and Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona and New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

But before the consideration of the report had begun the Speaker [5] said:

The Chair is informed at the Clerk's desk that there has been no message from the Senate on this subject, and that we have not the original papers.

Therefore the consideration of the report was abandoned, Mr. Hamilton withdrawing it.

6519. On June 26, 1902,[6] the conferees on the bill (H. R. 3110) to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, presented in the House their final report, through Mr. William P. Hepburn, of Iowa, chairman of the managers.

The report and statement having been read, it appeared that the original bill and amendment were not in possession of the House.

The Speaker [1] said:

It is impossible to consider this matter unless the papers are before the House, and they do not seem to be in the possession of the House.

The report and statement of the conferees are in our possession, but the House is not in possession of the papers; and it has been repeatedly held, and long ago thrashed out, that business can not be done by this body unless the papers are in its possession.

Mr. William Sulzer, of New York, as a parliamentary inquiry, asked what papers were necessary.

The Speaker said:

The bill itself and the substitute bill and all of the original papers in the case. The Chair will state that nothing can be done until these original papers are found.

Mr. Hepburn, as a parliamentary inquiry, asked if the House could not, by unanimous consent, proceed with the report.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Conference reports come before the House by means of the high privilege conferred by Rule XXIX. See section 6443 of this volume.

[3] See also sec. 6586 of this chapter.

[4] First session Fifty-ninth Congress, Record, p. 8486.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] First session Fifty-seventh Congress, Record, p. 7433.

The Speaker said:

Not without the original papers. The matter will have to go over until they are found.

6520. On March 3, 1869,[1] Mr. Speaker Colfax expressed the opinion, in the case of a verbal report from a committee of conference, that "no motion could be entertained or action had on any bill not in the possession of the House."

6521. On April 23, 1858,[2] in the Senate, Mr. James S. Green, of Missouri, presented the report of the managers of the conference on the bill (S. 161) "for the admission of the State of Kansas into the Union." The original bill and amendments were at that time before the House, having been presented with the report of the House managers.

Objection was at once made by Mr. Charles E. Stuart, of Michigan, that the report could not be made because the papers were with the other House—i. e., the original Senate bill, the House amendment, and the substitute proposed by the conferees. At once a debate began as to whether a conference report might be presented in the absence of the papers. Mr. Stuart quoted the parliamentary law showing that the papers were left always with the House agreeing to the conference—i. e., in cases where the conference was asked after a vote of disagreement. He admitted that in a case where a conference has been asked without a disagreement, the papers are retained by the House asking the conference. In this case the Senate had disagreed, and asked the conference, and the papers were properly with the House. The Senate decided to receive the report, the presiding officer, Mr. James M. Mason, of Virginia, deciding that the report might be presented and then that objectionable matter might be considered later if any should be found. The report having been presented, Mr. Stuart renewed his objection to action without the papers, and a debate, evidently divided somewhat on party lines as regarded the merit of the bill, arose. It was urged by Mr. Green and others that the report of the conferees was the only thing acted on, and that it could be acted on in the absence of the bill itself. They declared that this had frequently been done. On the other hand it was urged that such a procedure never took place, except by unanimous consent or in the late hours of a session. In the course of the debate Mr. William H. Seward, of New York, said:

I think that the written law on this subject is perfectly plain. According to that law this bill is in the House of Representatives; and this proposition being nothing more than an amendment to a bill, which bill is not here, but is in the House of Representatives, presents just exactly the same question which would occur if an individual Senator were to rise in his place and propose the same amendment, in the same words, to a bill now pending in the House of Representatives. The fact that this amendment has come from the committee of conference does not alter the nature or effect of the transaction in the least; for * * * it is either a new bill, and therefore must be read three times before it can pass, which is a reductio ad absurdum, or else it is an amendment; and if it is an amendment, and not an original or new bill, then it is an amendment to something, and it can not be an amendment to anything that is here, and can only be an amendment to a bill which is somewhere, which bill is not here, but is in the House of Representatives. It is a practical as well as a legal impossibility for the Senate to amend a bill which they have not the custody of, and which is not before them; for the effect of passing the amendment, or concurring in the report, is to stamp that amendment upon the identical parchment upon which the bill is written, and obliterate from the bill the matter for which the amendment is substituted.

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[1] Third session Fortieth Congress, Globe, p. 1891.

[2] First session Thirty-fifth Congress, Globe, pp. 1758, 1761, 1762, 1795, 1805, 1898, 1899.

The debate continued until April 26, when the Senate, by a vote of 32 yeas to 9 nays, voted to take up the report. This vote does not seem to have been a test of strength.

The report was accordingly considered and debated until April 30, when a message was received from the House informing the Senate of the agreement of the House to the report of the conferees. This brought the papers before the Senate.

As soon as this report was made to the Senate Mr. Hunter urged a vote on the pending report in that body. Some question arose as to whether the Senate should not postpone its report and act directly on the papers from the House, but Mr. Green urged that the papers being in the possession of the Senate obviated the objections previously made to action on the report which he submitted. The vote was then taken on agreeing to the report submitted by Mr. Green, and it was agreed to. Thus the bill was passed.

6522. On March 3, 1879,[1] the report of the conferees on the Post-Office appropriation bill was presented in the Senate, when Mr. George F. Edmunds, of Vermont, called for the bill. It was explained that the bill was in the hands of the enrolling clerk. Mr. Edmunds demanded it as a right, claiming that the bill should be before the Senate when the conference report was acted on.

The Vice-President[2] I ruled that the point of order was well taken, and the consideration of the report was suspended until the bill could be procured.

6523. The question on the adoption of a final conference report has precedence of a motion to recede and concur in amendments of the other House.—On March 3, 1899,[3] Mr. William W. Grout, of Vermont, presented the final conference report on the disagreeing votes of the two Houses on the District of Columbia appropriation bill.

Mr. David B. Henderson, of Iowa, rising to a parliamentary inquiry, said:

> Does a motion to recede from the disagreement of the House and to concur in the Senate amendments take precedence over a motion to adopt this report?

The Speaker[4] I replied that it did not.

6524. The consideration of a conference report may be interrupted, even in the midst of the reading of the statement, by the arrival of the hour previously fixed for a recess.—On June 9, 1890,[5] Mr. M. M. Boothman, of Ohio, submitted the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 3538) for the relief of Albert H. Emery.

The report having been read and the detailed statement accompanying the same having been partly read,

Mr. Charles Tracey, of New York, made the point of order that the hour of 5 o'clock p. m. having arrived, the House must take a recess under the order of the House.

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[1] Third session Forty-fifth Congress, Record, p. 2315.

[2] Mr. William A. Wheeler, of New York.

[3] Third session Fifty-fifth Congress, Record, p. 2927.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-first Congress, Journal, p. 720; Record, p. 5861.

The Speaker[1] sustained the point of order.

The House accordingly took a recess until 8 o'clock p. m.

6525. The rejection of a conference report leaves the matter in the position it occupied before the conference was asked.

The motion to instruct conferees may be amended unless the previous question be ordered.

The minority have no especial privileges as to asking conferences.

On June 12, 1890,[2] the House resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the bill of the Senate (S. 1) to protect trade and commerce against unlawful restraints and monopolies.

The question being on agreeing to the report, it was decided in the negative.

Thereupon, Mr. Richard P. Bland, of Missouri, having raised the question of order that it was the parliamentary right of the minority to ask for another conference with instructions,

The Speaker[1] overruled the question of order, and held that the rejection of the report left the bill and amendments in the same position as when the conference was asked and ordered, and that the pending question was on the amendment of the Senate to the amendment of the House to the bill, and that the proper mode of procedure was the appointment of a further conference with instructions, if the House so desired, to its conferees with respect to the amendments. The Speaker further held that the motion for instructions was amendable, unless the previous question was ordered thereon.

6526. While a conference is in progress the House which asks it may alone discharge the conferees, and having possession of the papers, may act on the amendments in disagreement.

In the House the discharge of conferees from the subject committed to them is effected by an order reported from the Committee on Rules and agreed to by the House.

Form of special order for discharging managers of a conference and disposing of amendments in dispute.

On August 13, 1894,[3] Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, submitted this resolution:

Resolved, That after the adoption of this resolution it shall be in order in the House to move that the order heretofore made requesting a conference with the Senate on the disagreeing votes of the two Houses on H. R. 4864 (the tariff bill) be rescinded; that the conferees heretofore appointed on the part of the House be discharged from further duty in that behalf, and that the House recede from its disagreement to the Senate amendments to said bill in gross and agree to the same. That after two hours' debate on said motion (which shall be indivisible) the vote shall be taken without delay or other motion; general leave to print is hereby granted for ten days.

Mr. Thomas B. Reed, of Maine, made the point of order that the resolution was not in order, for the reason that it provided for action by the House upon a bill and amendments thereto which were not before the House; that the bill (H. R. 4864)

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Journal, p. 735; Record, p. 5981.

[3] Second session Fifty-third Congress, Journal, pp. 563, 564; Record, pp. 8469, 8470.

should properly be in the custody of the Senate, and in a parliamentary sense was in the possession of the Senate; and that it was therefore beyond the power of the House to act upon the amendments to it.

After debate the Speaker[1] overruled the point of order, holding as follows:

In order to fully understand the exact question presented by the gentleman from Maine it is necessary, first, to look at the exact condition of this bill, and second, to the exact proposition that has been recommended in the report which has been read.

The House passed a bill. It went to the Senate. The Senate amended that bill and requested a conference. The House acceded to the request for a conference. The conference was held and a report of disagreement reported to the respective Houses. The House received the report and asked a conference and transmitted the papers to the Senate.

When it reached the Senate that body did something more than agree to the request for a conference. It was then in the power of the Senate to have receded from its disagreement in toto, and the bill would have become law; but the Senate did not do that. They insisted upon their amendments and returned the bill to the House. Now, of course, under the parliamentary law, where a bill is theoretically it ought to be practically and physically. The gentleman from Maine cites a case where the point is made upon a report presented in the House that the Senate had acceded to the request for a conference and it was not in order to present the report in the House until the Senate had acted. That seems to be the scope and effect of Jefferson's Manual. But the rule which is now before the House proposes to change the rule in Jefferson's Manual so far as this proceeding is concerned. So that the question arises, not whether under Jefferson's Manual this course may be pursued, but whether if the House chooses to change that rule its act is legal, binding, and valid.

There is no question that the House has a right to change or abrogate or alter any rule in Jefferson's Manual so far as it applies to its proceedings, but the question to consider now is as to the validity of the act, conceding that the rule authorizes the act to be done. So that the precedent cited by the gentleman, where the Speaker under that rule refused to receive the report, does not cover this question.

Now, as to the effect this rule would have if adopted, I have found but one precedent, and that was in the Forty-second Congress at the second session. I have the history of that bill—Senate bill 508. It passed the Senate on May 16, 1872.

On May 31 a message was received from the House stating that the House had passed with amendment the bill of the Senate 508. On June 1 the Senate disagreed to the amendment of the House to said bill, asked a conference on the disagreeing votes of the two Houses thereon, and appointed conferees. On June 4 a message was received from the House stating that the House had insisted upon its amendment to Senate bill 508 and had agreed to the conference. On June 10, 1872, on motion of Mr. Harlan, one of the conferees on the part of the Senate, the committee of conference on said bill was discharged from its further consideration, and the Senate receded from its disagreement to the amendment of the House and agreed to the same; and the House Journal shows that on June 10, 1872, when this action was taken in the Senate on motion of one of the conferees, and during the existence of the conference committee, the bill was in the House.[2] Now, that case is on all fours with this. In that case the Senate passed the bill; in this case the House passed it. In that case the Senate disagreed to the House amendment and asked for a conference, and the House acceded to the request for a conference. Under the rule laid down in Jefferson's Manual, if an agreement to report had been made, it must first have been made in the House. But there was no agreement. The conferees in that case, as in this case, had failed to reach an agreement, and in the Senate, on motion of Mr. Harlan, one of the conferees, the conferees were discharged and the Senate receded and the bill became a law.

Now, the object of all conferences between the two Houses is to get the minds of the Houses together to pass the bill. The Senate conferees are insisting upon the Senate amendments. The

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Mr. Speaker Crisp was evidently in error as to the custody of the bill, which was with the Senate when this action was taken. Perhaps the fact that the legislative days of the House and Senate were not coincident on the calendar day when the proceedings occurred explains the misunderstanding. (See sec. 6527.)

House conferees are insisting upon the rejection of those amendments. That conference committee is now in existence, and it has been held in the case just indicated that, pending that condition of affairs, the House which has rejected the amendment may recede from that action and permit the bill to become a law.

6527. On June 1, 1872,[1] the Senate disagreed to the amendment of the House to the bill (S. 508) for the relief of certain tribes of Indians, and asked a conference with House thereon.

On June[2] the House insisted on its amendments and agreed to the conference.

On the legislative day of June 10[3] in the Senate (legislative day of June 8[4] in the House), on motion of Mr. James Harlan, of Iowa, the committee of conference was discharged from further consideration of the disagreeing votes of the two Houses on the bill,[5] and the Senate receded from its disagreement to the amendment of the House and agreed to the same.

On the same calendar day (but not the same legislative day) the bill was reported in the House as truly enrolled and was signed by the Speaker.[6]

6528. A conference report being presented for printing merely, and the original papers being in "possession of the other House," a motion to discharge the conferees was held not to be privileged.—On June 2, 1906,[7] Mr. E. L. Hamilton, of Michigan, presented for printing under the rule the conference report on the bill (H. R. 12707) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona and New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

Thereupon Mr. Arthur P. Murphy, of Missouri, claiming the floor for a privileged resolution, offered the following:

Resolved, That the rule or resolution heretofore adopted on January 25, 1906, sending H. R. 12707, commonly known as the "statehood bill," to conference, be, and the same is hereby, rescinded and vacated as to all matters and things therein contained, and that the conferees on the part of the House be, and they are hereby, discharged from further consideration or action thereon; and it shall be in order for the House immediately, without debate, intervening motion, or appeal, to proceed to vote upon the following proposition: Shall the House agree to and concur in the Senate amendments to H. R. 12707, known as the "statehood bill?"

Mr. Sereno E. Payne, of New York, made the point of order that the resolution was not privileged or parliamentary.

The Speaker[8] said:

The Chair will state that the position of this bill is that the Senate conferees have the papers, and under the practice and precedents the report is there first made. Even if it presented a question of

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[1] Second session Forty-second Congress, Senate Journal, p. 916.

[2] House Journal, p. 1041.

[3] Senate Journal, p. 1028.

[4] House Journal p. 1136.

[5] The Globe (p. 4465) shows that the bill and amendments were in actual possession of the Senate when this motion was made.

[6] House Journal, p. 1127.

[7] First session Fifty-ninth Congress. Record, pp. 7788, 7789.

[8] Joseph G. Cannon, of Illinois, Speaker.

privilege at this stage and the House had the papers, the Chair doubts if this would be in order; but it is clearly out of order, because the report presented here is presented for printing only. The Chair sustains the point of order.

6529. Where the conference was asked by the House, may the Senate, by a motion to discharge its conferees, get possession of the bill and papers?

Senate discussion as to the rule governing the appointment of conferees.[1]

Instance of a bill which failed in conference.

On February 18, 1905,[2] in the Senate, the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, with the Senate amendments thereto, was returned to the Senate from the House with the Senate amendments disagreed to, and with a request for a conference, the House having appointed conferees.

A debate arising, Mr. Henry M. Teller, of Colorado, said:

Mr. President, I think the rule has been in parliamentary bodies, not only in this country but in others, particularly in Great Britain, that when a measure of this kind comes, as this comes, from another body, a coordinate branch of the legislature, the friends of the measure as it passed the body (and it is true in the other House, as well as in this) take charge of it from that time on. When we shall have reached the point, if we should reach it, that there is to be a conference, they are entitled then to a majority in that conference. I do not say that the rule here would be that the chairman of the committee to which the subject properly belongs would not be entitled to be a member of the conference, but I do say that has not been the rule in the Senate as a general thing. I will admit there have been exceptions, because in the case of many of the bills which come here no one has very much interest in the amendments and no one cares very much about it.

Sometimes there is a variety of amendments so great in number that it would be difficult to say who should be the champion of those amendments. In such cases undoubtedly we have repeatedly appointed as members of the conference committee those who were opposed to the amendments as well as those in favor of them.

I am at a loss, Mr. President, to know, under the ruling of the Chair, exactly what to discuss. I am at a loss to know who has this bill in hand. I am at a loss to know whom to follow, who is the leader; and I do not know exactly what motion ought to be made. I think it would be in order for me to make a motion that the Senate adhere to its amendments. I will take the ruling of the Chair on that point. I do not know which motion should have precedence.

On February 20,[3] the same subject was debated, and Mr. Arthur P. Gorman said:

There is now no question that conferees from the first must be so constituted as to represent, and to be in honor bound to represent, the views of the Senate upon every proposition of amendment made by it.

Second, that they must be free from any instruction of the Senate; and, third, the conferees on the part of the House asking the conference shall come into that conference perfectly free from any instruction on the part of the House.

I said on Saturday, and I repeat now, that it is unfortunate, certainly very unwise—destructive to good government—in my judgment, to refer in open discussion in this body to any action of the

[1] See also sec. 6371 of this volume.

[2] Third session Fifty-eighth Congress, Record, pp. 2812–2816.

[3] Record, pp. 2895–2898.

House of Representatives. Parliamentary law prohibits it, and I am sorry to say that it is so laxly observed. The close observance of such a rule would prevent much of the friction that has taken place in the past, and seems to exist now, and is likely to grow. Disagreeable as the duty may be, the presiding officer should stop instantly any Senator who attempts to quote any statement made in the other House. Therefore I approach that phase of the question with a great deal of hesitation.

I accept the record that has been made as a complete one, and yet we can not fail to take note of what has been done and said outside of the Congress of the United States, and I do so at this time only for the purpose of emphasizing the necessity that the conferees to be appointed on the part of the Senate in this case shall represent fairly and earnestly the view of the Senate. Committees of this body of all sorts are to be elected by the body except when it is done otherwise by unanimous consent. As a rule—indeed, I believe it is almost the universal rule—the Chair, by the unanimous consent of the body, has appointed conferees. I know of no exception to that rule in the last thirty years.

But there has grown up another custom, to which there have been exceptions only in very, very rare cases, and that is that the conferees on the part of this body shall be the chairman of the committee who has charge of the bill and usually the senior member of the majority next to him and the senior Senator representing the other side of the Chamber. There have been one or two exceptions. One was made by the distinguished presiding officer [Mr. Frye] who now occupies the chair, in whose perfect fairness we have confidence. He now approaches a case that is unique and one that necessarily must embarrass him. It is a case that requires, in my judgment, under the circumstances, in view of what has occurred elsewhere, extraordinary care in the selection of the conferees.

By a decided majority of the Senate, as the votes upon the various amendments show, the admission of Oklahoma and the Indian Territory as one State was determined upon, and therefore the conferees would have no difficulty in ascertaining the desire of this body upon that proposition. And it is suggested to me that that is not in controversy. But an amendment having been made to the eighteenth section by accident, I think, it throws the whole section into conference. That was an error into which my friend the Senator from Georgia [Mr. Bacon] and I fell, because we did not know where the amendment offered by the Senator from Utah [Mr. Kearns] was attached to the bill. But that opens every provision of the bill, as I understand the usages of conference committees.

The other and second vote that was pronounced, and, I believe, unanimous, was upon the amendment offered by the distinguished Senator from Ohio [Mr. Foraker], that in submitting the matter to the people a separate vote should be taken in both Arizona and New Mexico upon the question of uniting those two Territories in one State. After that the crucial vote came on the amendment offered by the distinguished Senator from Georgia [Mr. Bacon] that rather than accept the proposition as it came from the House of Representatives, to unite New Mexico and Arizona in one State, we would eliminate those two Territories from the bill and let them remain Territories, as they now are.

That was determined upon unquestionably by a majority of the Senate, though slim. Still it is the voice of the Senate, and that view, I submit with great deference, ought to be represented in the conference by a Senator who is in hearty accord with the majority of the Senate.

Then came the proposition of the distinguished Senator from California [Mr. Bard] to admit New Mexico as a State, leaving out Arizona. First, in Committee of the Whole, the proposition was adopted by one majority, eliminating the vote of the Senator from Utah [Mr. Kearns], and in the Senate a tie vote threw it out. Offered again in a modified form, it carried.

Mr. President, as I said a moment since, it is perfectly within the rule, and a single objection will prevent the appointment of the conferees by the Chair. I think, as I said a moment ago, that has not been done for thirty years. In the case of the present occupant of the chair [Mr. Frye] and every other presiding officer whom I have known since 1880, I have never known an instance where the Chair has not been absolutely fair in the conduct of the business of this body. I apply that remark emphatically to the present occupant of the chair. I think it is perfectly proper, in view of the closeness of the vote and of the great interest that is taken in the question, if the Chair will permit me to say so, that he should follow the example which he wisely set. I can not lay my hand upon the very clause of the Chinese exclusion act which was amended in this body, but so close was the vote that the Senator from Pennsylvania, contrary to the custom which has grown almost to be a rule, was not appointed to serve on the conference committee, and a Senator who concurred in the views of the majority on the position taken by the Senate was substituted.

On February 25[1] the President pro tempore appointed the following conferees: Messrs. Albert J. Beveridge, of Indiana; Knute Nelson, of Minnesota; and William B. Bate of Tennessee.[2]

On March 1,[3] in the Senate, the conferees not having agreed, Mr. Joseph W. Bailey, of Texas, offered a motion:

Mr. Bailey moves that the order heretofore made by the Senate insisting on its amendments to H. R. 14749, a bill "to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," and agreeing to a conference, be rescinded; that the conferees heretofore appointed on the part of the Senate be discharged from further duty in that behalf, and that the Senate recede from its amendment on page 23, No. 46, and its amendment on page 42, beginning with line 9, down to and including line 24 on page 59, in the print of February 9, 1905, and insist upon its other amendments to the said bill.

Mr. Orville H. Platt, of Connecticut, expressed a doubt as to whether the motion, if adopted, would bring the bill before the Senate; but the matter went over without a decision.

On March 2[4] Mr. Bailey addressed the Senate on the motion. In the course of his remarks, Mr. Henry Cabot Lodge, of Massachusetts, said:

I should like to ask the Senator from Texas how we can possibly deal with this subject, which is not before the Senate? The papers are not here; the bill is not here. How can we do anything more than to ask the House to return the bill?

Mr. Bailey said:

Of course that raises a question which I supposed at a proper time would be raised, but I will digress from what I was about to say long enough to make this observation.

If it be true that the Senate can not resort to some such procedure as this, then it must be true that a conference committee can take the papers relating to any subject-matter and, by prolonging their conference until within an hour or an insufficient time before adjournment, can deprive either House or both Houses of the opportunity to enact a measure which an overwhelming majority might earnestly desire to make a law.

Mr. J. C. S. Blackburn, of Kentucky, then said:

The Senate is not now in possession of the papers in this case. The Senate has no possession of them. A conference committee is composed of Members of both Houses of Congress, and by order of the Senate that bill and every paper connected with it have been put beyond the control or reach of the Senate by such a procedure as is suggested.

The condition that the Senator from Texas so much apprehends is not imminent. The Senate can repossess itself, but not by this method of procedure. That bill and the papers accompanying it are now in the possession of a joint committee, one-half composed of the membership from this Chamber, and one-half from the membership of the House. So the Senate is no longer in possession either of the bill or of the papers to be affected by the resolution of the Senator from Texas.

The matter was not disposed of, and did not come up thereafter. No report was ever made by the conferees.

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[1] Record, p. 3359.

[2] This action, with the original bill and other papers, was transmitted to the House and was there delivered to the House conferees, to be held in their possession until an actual report (not simply a notification of entire failure to agree) should be agreed on. Then, under the law, the papers would be turned over to the Senate conferees.

[3] Record, p. 3747.

[4] Record, pp. 3870–3872.

6530. A conference report must be acted on as a whole.[1]—On March 17, 1852,[2] the House was considering the report of the committee of conference on the bill (S. 146) to make land warrants assignable. Mr. Thomas H. Bayly, of Virginia, rising to a parliamentary inquiry, asked if a conference report was an entirety, or whether a separate vote could be had on the various propositions included.

The Speaker[3] replied that the report was an entirety, and must be agreed to or disagreed to as a whole.

6531. On February 26, 1901,[4] Mr. Alston G. Dayton, of West Virginia, presented the conference report on the naval appropriation bill.

Mr. William P. Hepburn, of Iowa, asked for a separate vote on one of the several amendments included in the report.

The Speaker[5] held that there could not be separate votes on different portions of the conference report.

6532. On the calendar day of March 3, 1901,[6] but the legislative day of March 1, the conference report on the sundry civil appropriation bill was under consideration, when Mr. William W. Kitchin, of North Carolina, rising to a parliamentary inquiry, asked if it would be in order to demand a separate vote on any of the items on which the conferees had agreed.

The Speaker[5] held that the report must be acted on as a whole.

6533. On June 28, 1902,[7] the House was considering the final report of the committee of conference on the District of Columbia appropriation bill, when Mr. Joseph W. Babcock, of Wisconsin, asked for a separate vote on certain of the Senate amendments dealt with in the report.

Mr. James T. McCleary, of Minnesota, made the point of order that such separate vote was not permissible.

The Speaker[5] said:

> The point of order is sustained. The report must be adopted as an entirety or voted down as an entirety.

6534. A conference report may not be amended or altered on motion made in either House.—On June 23, 1906,[8] the House was considering the conference report on the bill (H. R. 12987) to amend the interstate-commerce law and enlarge the powers of the Interstate Commerce Commission, when Mr. John S. Williams, of Mississippi, proposed to amend the conference report.

The Speaker:[9]

> Answering the parliamentary inquiry, if the conference report is voted down, then the Senate amendments to the House bill are undisposed of, as fully as they were when they were first disagreed to.
>
> * * * Oh, but the gentleman sees at once that this is a conference report, which stands as a

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[1] This has been the rule in the later practice. In the earlier practice it was otherwise. See secs. 6468–6472 of this volume.

[2] First session Thirty-second Congress, Globe, p. 777.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Second session Fifty-sixth Congress, Record, p. 3084.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Fifty-sixth Congress, Record, p. 3571.

[7] First session Fifty-seventh Congress, Record, p. 7595.

[8] First session Fifty-ninth Congress, Record, p. 9082.

[9] Joseph G. Cannon, of Illinois, Speaker.

unit. The effect of the report is to dispose of all matters of disagreement between the House and Senate, and there is but one possible disposition to be made of it. * * * And that is to reject it or agree to it.

* * * If the gentleman will indulge the Chair, a proposition like unto that which he makes for unanimous consent would, if agreed to, be barren; or if it had any effect at all it would be equivalent to a rejection of the report; but if it served no other useful purpose, it might give somebody the opportunity to claim that if he were the Lord he would do this, that, or the other. * * *

This is a proposition that the Senate is interested in as well as the House, a proposition to close the matters in difference, and the only way to close them is by adopting the conference report or by rejecting the conference report, and put all the Senate amendments in difference again.

* * * The Chair will state that in the judgment of the Chair the gentleman asks something which the House has not the power to do in the present stage of this measure. If it has any effect at all, it would be equivalent to rejecting the report.

6535. On May 20, 1826,[1] the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the bill to carry into effect the treaty with the Creek Nation.

The conferees recommended a certain modification of the Senate amendment which was in disagreement; and the motion before the House was that the House recede from their disagreement to the amendment of the Senate, and agree to the same as modified and reported by the conferees on the part of the two Houses.[2]

Mr. John Forsyth, of Georgia, proposed an amendment to this modified form reported by the conferees.

The Speaker[3] decided that the report of the committee of conference could not be amended.

6536. Conference reports are sometimes amended by concurrent action of the two Houses.—On February 23, 1855,[4] the House, on motion of Mr. George W. Jones, of Tennessee—

Ordered, That the report of the committee of conference on the disagreeing votes of the two Houses on the bill of the Senate (No. 96) entitled "An act to provide for the payment of such creditors of the late Republic of Texas as are comprehended in the act of Congress of September 9, 1850," heretofore agreed to by the two Houses, be amended by striking out the words "six hundred and fifty" in the third line of the second page of said report, and inserting in lieu thereof the words "five hundred and fifty."

Ordered, That the Clerk request the concurrence of the Senate therein.

On the succeeding day a message from the Senate announced that that body had agreed to the amendment to the conference report.

6537. On March 3, 1879,[5] the House agreed to the conference report on the bill (H. R. 6143) making appropriations for the post-office service. Soon after a concurrent resolution was passed and sent to the Senate for correcting this report. The resolution was presented to the Senate before the conference report had been agreed to there. Mr. George F. Edmunds, of Vermont, insisted that the proper procedure was to disagree to the conference report, and thus have the error cor-

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[1] First session Nineteenth Congress, Journal, p. 615; Debates, p. 2672.

[2] At the present time the conferees embody their recommendations in a report, and the question is on agreeing to the report; and not on the various parliamentary motions needed to carry into effect the recommendations of the report. Up to a later period than 1826 conference reports were not printed in full in the Journal.

[3] John W. Taylor, of New York, Speaker.

[4] Second session Thirty-third Congress, Journal, pp. 436, 453; Globe, p. 903.

[5] Third session Forty-fifth Congress, Record. pp. 2315, 2372, 2376.

rected in a new report. If the report should be agreed to the resolution might fail to be acted on or might be disagreed to. The Senate followed this view, and the report was disagreed to and a new conference arranged.

6538. Under the later practice the motion to lay a conference report on the table has not been entertained, it being considered more courteous to the other body to take such action as would be communicated by message.

Instance wherein a House manager indorsed on a conference report his dissent and protest.

Instance in 1848 wherein a conference report was signed by the managers of the two Houses.

On August 14, 1848,[1] Mr. Joseph R. Ingersoll, of Pennsylvania, from the conference on the part of the House upon the disagreeing votes on the amendments to the bill (H. R. 290) to change the times for holding the district courts of the United States in the western district of Virginia, and for other purposes, made the following report:

> The committee of conference on the disagreement of the two Houses on the bill of the House of Representatives to change the times for holding the district courts of the United States in the western district of Virginia, and for other purposes, report that they have agreed to recommend that the amendment of the Senate be adopted with the following amendment: Strike out the words "two hundred and fifty," so as to read, "that there shall be allowed to the judge of the said district the yearly compensation of two thousand dollars, instead of the compensation now fixed by law."

This report was signed by Messrs. A. P. Butler, J. M. Mason, and John P. Hale, "committee on the part of the Senate," and Messrs. J. R. Ingersoll and B. B. Thurston, "committee on the part of the House."

Mr. G. W. Jones, the third House conferee, added this indorsement:

> I dissent from and protest against the above report.

The report was read, when Mr. Samuel F. Vinton, of Ohio, moved that it be laid upon the table; and the question being put, it was decided in the affirmative.

Mr. George W. Jones, of Tennessee, moved that the last vote be reconsidered, and that his motion to reconsider be laid upon the table, which was agreed to.

These were the last proceedings on the bill.

6539. On June 8, 1872,[2] Mr. William S. Holman, of Indiana, from the Committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 827) to authorize the construction of bridges across the Ohio River, made a report.

The same having been read, Mr. George F. Hoar, of Massachusetts, moved that the report be laid on the table.

The Speaker[3] declined to entertain the motion, stating that he had uniformly declined to entertain a motion to lay a conference report on the table, for the reason that if such a report should be laid on the table the bill was laid on the table, and there was no opportunity left for the House and Senate to have a second conference

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[1] First session Thirtieth Congress, Journal. p. 1283; Globe, p. 1080.

[2] Second session Forty-second Congress, Journal, p. 1129; Globe, p. 4460.

[3] James G. Blaine, of Maine, Speaker.

Mr. Hoar appealed from the decision, stating that he did so in order that the House might settle the question whether a motion to lay a conference report on the table was in order.

On motion of Mr. Nathaniel P. Banks, of Massachusetts, the appeal was laid on the table.

6540. On August 10, 1876,[1] Mr. Frank Hereford, of West Virginia, presented the conference report on the river and harbor appropriation bill.

Mr. Benjamin A. Willis, of New York, moved to lay the report of the committee of conference upon the table.

Mr. George F. Hoar, of Massachusetts, made the point of order that it was not in order to move to lay the report of a committee of conference upon the table, and that the only parliamentary motion that could be made was to postpone the consideration of the report. In making this point of order Mr. Hoar said that in the Congress before the last a question arose over the statement in Barclay's Digest that a motion to lay a conference report on the table was in order.

The Speaker at that time (Mr. Blaine) believing the point to be very important and the statement in the Digest wrong, called the attention of the House to it and desired some Member to make a motion, so that the matter might be formally settled. It was then settled that the motion to lay a conference report on the table was not in order. The only parliamentary motion in such a case was a motion to postpone consideration of a conference report. One reason for this was that the order to lay on the table was never communicated to the other branch, and courtesy would require them to communicate to the other branch the disposal of the report of a conference committee.[2]

The Speaker pro tempore[3] in ruling said:

> The Chair is informed that the uniform usage of the House has been not to entertain a motion to lay on the table a report of a committee of conference, it being discourteous to the other House to dispose of it in that manner, and in pursuance to the usages of the House the Chair rules that the motion to lay upon the table is not in order. This point was settled by the House on appeal from the decision of the Chair on the 8th of June, 1872.

6541. The motion to lay a report of a committee of conference on the table was entertained on July I and August 3, 1854.[4]

6542. On February 14, 1857,[5] a motion to lay the Military Academy appropriation bill on the table was admitted at the time of the presentation of the conference report on the bill. Again, on March 2, 1857,[6] a motion was entertained to lay on the table the conference report on the tariff bill.

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[1] First session Forty-fourth Congress, Journal, p. 1423.

[2] The fact that a bill in which the other House is concerned is laid on the table is not communicated to the other body arises probably from the fact that under general parliamentary usage a matter laid on the table is not finally disposed of. But in the practice of the House as developed in later years a laying on the table is ordinarily as much a final adverse decision as a negative vote on the passage of a bill.

[3] William M. Springer, of Illinois, Speaker pro tempore.

[4] First session Thirty-third Congress, Journal, pp. 1085, 1279; Globe, pp. 1594, 2104.

[5] Third session Thirty-fourth Congress, Journal, p. 425; Globe, p. 700. The Globe indicates that the motion was in reality to lay the report on the table.

[6] Journal, p. 609.

6543. On June 29, 1864,[1] the House laid on the table the report of the committee of conference on the bill (H. R. 495) to amend the charter of the Washington and Georgetown Railroad Company. The motion to lay on the table was subjected to a motion to reconsider, and that motion was tabled.

6544. On July 20, 1868,[2] a conference report on the bill (H. R. 554) making a grant of land to the State of Minnesota was laid on the table. The House reconsidered this action later and asked a new conference, but no question was made as to the parliamentary procedure.

6545. It is in order for one body to recommit a conference report if the other body, by action on the report, have not discharged their managers.—On April 11, 1904,[3] in the Senate, Mr. William M. Stewart, of Nevada, moved to recommit to the conferees the conference report on the Indian appropriation bill, which had not yet been presented in the House of Representatives, and which had not been acted on by the Senate.

Mr. George F. Hoar, of Massachusetts, objected that the proposed procedure was not parliamentary, and that the recommittal should be by concurrent action of the two Houses.

The President pro tempore[4] said:

The Chair has known it to be done several times. None of the papers are now in the hands of the House. The report has not been made in the House. It has only been made in the Senate. * * * There are twenty or thirty precedents for precisely this action. There is one precedent the Chair remembers, where the report on the naval appropriation bill was made and accepted by the Senate, and a motion was made in the Senate to reconsider the action accepting the report, and then a motion was made to recommit, and it was recommitted. The Chair has before him now twenty or thirty just such propositions of reference to committees of conference. * * * It would simply require that the House shall be notified of the action of the Senate.

On the same day the following resolution was transmitted to the House by message:

Resolved, That the conference report on the bill (H. R. 12684) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1905, and for other purposes, be recommitted to the conference committee.

On April 12[5] in the House, Mr. Charles Curtis, of Kansas, presented the report of the conferees for printing under the rules. As the Senate had not yet acted on the report, and was still in possession of the papers, Mr. Curtis's possession of them was informal merely.

Mr. James M. Robinson, of Indiana, claiming the floor for a point of order, said:

I make the point of order that it is not in order; that the conferees have no authority to present the conference report that is now presented.

In further explanation of that allow me to say that on Friday the conference report was presented and was printed in the Record. It is now in the possession of the House, unacted upon by the House. Since that time a new conference has been held without the authority of the House and without action

[1] First session Thirty-eighth Congress, Journal, p. 948; Globe, pp. 3401, 3402.

[2] Second session Fortieth Congress, Journal, p. 1113; Globe, p. 4255.

[3] Second session Fifty-eighth Congress, Record, pp. 4610, 4664.

[4] William P. Frye, of Maine, President pro tempore.

[5] Record, pp. 4691–4693; Journal, p. 583.

upon the prior conference report. In further explanation, Mr. Speaker, let me say that on yesterday in the Senate a further conference was provided for, but the matter having been already presented to the House, this House took no action. This did not take the matter from the province of the House and re-refer it to the conferees. Now, I submit that the conferees, although appointed by an order of the Senate with no concurrent House action, have no authority in this House at this time to do anything else than take action on their former report presented in the Record and offered by them to the House.

After debate the Speaker[1] held:

Clause 2 of Rule XXIX is as follows:

"It shall not be in order to consider the report of a committee of conference until such report and the accompanying statement shall have been printed in the Record, except on either of the six days preceding the end of a session."

The Indian appropriation bill was committed to a committee of conference—three Members of the House and three of the Senate. This is considered to be, in one sense, a joint committee. The committee met and came to an agreement, and a report was made first to the Senate. The parliamentary condition of the bill between the two bodies was that the original papers—that is, the bill and report of the conferees—were with the Senate, the conference report being required under the practice to be first made there. The printing of the conference report in the Record of the House proceedings on the request of the gentleman from Kansas [Mr. Curtis], under the rule, on Saturday last, or on Monday last, it is immaterial which, was in a certain sense done informally, since technically the House was not in possession of the papers. There is no doubt that the printing of the report at that time complies substantially with the requirement of the rule just cited.

Printing, in the opinion of the Chair, is not consideration. The House has never considered, as the Chair understands it, this conference report. The committee on the part of the House has not been discharged. The House has never had power to discharge that committee under parliamentary usages and procedure, because the House has never had the papers in its possession since the conference committees of the two bodies agreed to their report.

The Senate under date of April 11 sent the House the following message.

After directing the reading of the message, as given above, the Speaker continued:

Now, then, the only question arising is this: Is there a conference committee in existence? Neither the House nor Senate conferees had been discharged at the time the Senate recommitted the report. If the House conferees had been discharged by the action of the House it would have been impossible for the House conferees then to participate in consideration of the matter. The Chair has no hesitancy in overruling the point of order, but will call attention, in doing so, to certain prior decisions found on page 412 of the Manual. The first given is that "it is not in order to recommit a conference report to a committee of conference when a report has already been acted on in the other House."

Now, then, this report had not been acted on in this House when it was recommitted in the Senate. It was then in the other House. If it had been acted on here at that time the committee of conference would not have been in existence in its entirety.

There is in the Manual and Digest a reference to a ruling by Mr. Speaker Carlisle, in which the power to recommit a conference report was denied; but an examination shows that in that case the facts differed from the facts in the present case, because in that case, which arose in this House, the Senate had acted upon the conference report, and the conferees upon the part of the Senate had been thereby discharged. So, when in the House it was proposed to recommit the conference report, Mr. Speaker Carlisle properly held that it could not be done, because the select committee was not in existence. But in this case the select committee is in existence, or was when the Senate recommitted the report.

Again, "a conference report made first in the Senate and there recommitted and again reported was acted on by the House after the Senate had agreed to it."

This is subsequent to the case on which Mr. Carlisle made the decision, and under a different state of facts, and the same principles were involved as in the matter now before the House. So far as precedent is concerned it is conclusive, and the Chair has no difficulty in overruling the point of order. The gentleman presents a conference report for printing under the rule.

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[1] Joseph G. Cannon, of Illinois, Speaker.

6546. On March 3, 1899,[1] the Senate was considering the conference report on the disagreeing votes of the two Houses on amendments of the Senate to the bill (H. R. 11795) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. The House had disagreed to the Senate amendments, among which were provisions for the construction of a canal in Nicaragua and for irrigation of arid lands of the West. As the Senate had agreed to the conference asked by the House, the report of the conferees was made first in the Senate.

Mr. Lee Mantle, of Montana, moved to recommit the report to the committee of conference.

Mr. William P. Frye, of Maine, made the point of order that the motion to recommit a conference report was not in order.

The Vice-President[2] said:

> The Chair believes that the motion is entirely in order. The Chair understands that there are but three actions which may be taken, either to agree to the report, to disagree to it, or to recommit it. The Chair finds the precedents to be many of the recommittal of reports of committees of conference. That has been the practice in both Houses.

After debate, the motion was decided in the negative; but after further debate was renewed and decided in the affirmative.[3] So the Conference report was recommitted to the conferees. A message announcing this action was sent to the House.

On the same day the conferees again reported to the Senate, and the report was agreed to.[4]

A message was thereupon sent to the House informing that body that the Senate had agreed to the conference report.

The report was thereupon taken up, considered, and agreed to in the House, no question being made as to the proceedings of the Senate relative to the report.[5]

6547. On June 21, 1860,[6] the House, on motion of Mr. John Sherman, of Ohio, voted to recommit the conference report on the naval appropriation bill. Mr. Sherman, in making his motion, said that the Senate had not yet acted on the report, and he made the motion in order that the House conferees might take the report to the Senate conferees and amend it. No objection to the procedure seems to have been made on the ground of propriety.

6548. On July 10, 1862,[7] the report of the committee of conference on the naval appropriation bill was recommitted by the House to the conferees, in order that a clerical error might be corrected. It appears that the report was made first in the House, and had not been made in the Senate at the time of this recommittal.

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[1] Third session Fifty-fifth Congress, Record, p. 2823.

[2] Garret A. Hobart, of New Jersey, Vice-President.

[3] Record, pp. 2842, 2923.

[4] Record, p. 2843.

[5] Record, pp. 2923–2925. The parliamentary situation involved in this case is somewhat different from that involved in section 6551. In that case the report had been acted on in one House, and the conferees of that House were therefore discharged, so the conference committee had ceased to exist in its entirety. In this case the other House had not acted, so the committee was entire when the Senate voted to recommit.

[6] First session Thirty-sixth Congress, Journal. p. 1177; Globe, p. 3215.

[7] Second session Thirty-seventh Congress, Journal, p. 1027; Globe p. 3237.

6549. On April 27, 1872.[1] the report of the committee of conference on the legislative appropriation bill was ordered printed and recommitted to the conference committee. There was no question as to this proceeding, it differing materially from an ordinary recommittal.

6550. On February 17, 1876,[2] the Senate disagreed to the report of the committee of conference on the joint resolution (H. Res. 52) relating to the payment of interest on certain bonds of the District of Columbia, and recommitted the report to the committee of conference. The House was notified by message of this recommittal, but does not seem to have taken action on it. The report of the conferees was made first in the Senate, so the subject had not been acted on by the House.

6551. Where a conference report has been made and acted on in one House, and the managers of that House have thereby been discharged, the other House is precluded thereby from recommitting the report to the managers.—On January 21, 1887,[3] the House was considering the conference report on the interstate-commerce bill. Mr. Ransom W. Dunham, of Illinois, moved that the report be recommitted.

Mr. Nathaniel J. Hammond, of Georgia, made a point of order against the motion.

After debate the Speaker held:[4]

At the last session of Congress a committee of conference was appointed on the disagreeing votes of the two Houses on the bill known as the interstate-commerce bill. That committee, as the House has been officially notified, has reported to the Senate, and its report has been agreed to by that body. After that action of the Senate, the report of the committee of conference was made to this body, and is now before the House for consideration, and the previous question has been ordered upon it.

In the first place, a motion to recommit is a motion to recommit to the entire committee of conference, as a matter of course, and not merely to the managers on the part of the House. But there is, in fact, no committee of conference on this bill now in existence—the whole committee having reported to the Senate, and the Senate having disposed of the report, the committee was dissolved, so far as the Senate is concerned, the general rule being that a select committee is dissolved by its report. Otherwise a select committee once created would become of necessity a standing committee, and matters could be constantly referred to it, notwithstanding it had fully reported upon the particular matter which it was originally formed to consider.

In addition to that the Chair is not aware of any parliamentary law or practice which authorizes the recommitment of a conference report. The consideration of conference reports is governed by different rules, in many respects, from all other legislative proceedings in the House. Such reports can not be laid on the table, as has been frequently decided, nor can they be amended, as has also been frequently decided; and the only question which can be taken upon them is to agree to them as an entirety or to postpone their consideration, for the obvious reason that a refusal to agree is of itself substantially equivalent to a commitment to another conference committee, the old one being dissolved by its report to the two Houses. The motion to recommit, therefore, the Chair thinks is out of order.[5]

6552. On June 28, 1902,[6] the House was considering a final conference report on the District of Columbia appropriation bill, when Mr. George A. Pearre, of

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[1] Second session Forty-second Congress, Journal, p. 761; Globe, pp. 2829, 2830.

[2] First session Forty-fourth Congress, Journal, p. 416; Record, pp. 1141–1142.

[3] Second session Forty-ninth Congress, Record, p. 880; Journal, pp. 333, 334.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] On April 19, 1871 (first session Forty-second Congress, Globe, p. 808), Mr. Speaker Blaine expressed doubts about the propriety of entertaining a motion to recommit a conference report.

[6] First session Fifty-seventh Congress, Record, p. 7599.

Maryland, rising to a parliamentary inquiry, asked if the report might be recommitted.

The Speaker[1] said:

> That would be in this case impossible, since the Senate has agreed to the report and their conferees are thereby discharged. The remedy is to vote the conference report up or down. If the report is voted down, consideration of the amendments will be in order.

6553. On June 17, 1862,[2] in the Senate, Mr. Lafayette S. Foster, of Connecticut, objected to a proposition to recommit the conference report on the bill (H. R. 415) for the payment of bounties to volunteers, for the reason that the House of Representatives had already agreed to the report, and therefore the conference committee of the House was functus officio. The motion to recommit was not pressed.

6554. A conference report that has been acted on by either House is sometimes recommitted by concurrent action of the two Houses taken by unanimous consent.—On April 29, 1872,[3] the House disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the legislative appropriation bill (H. R. 1060).

Thereupon Mr. William S. Holman, of Indiana, moved that the report be recommitted to the committee of conference.

Mr. James A. Garfield, of Ohio, made the point of order that this could not be done as the Senate had already acted on the report.

The Speaker[4] replied that there was nothing in the rules to prevent the recommittal of the report, although the Senate had acted on it. Such action was frequently taken.

The report was thereupon recommitted, and soon after a message was received from the Senate announcing that they had concurred in the action of the House recommitting the bill.[5]

6555. On February 21, 1862,[6] the bill (H. R. 240) to authorize the issue of United States notes, etc., was sent to conference, and on February 24 the report of the committee of conference was agreed to in both House and Senate, and messages announcing this were interchanged.

On February 25 a message was received from the Senate announcing that they had adopted a resolution that the disagreeing votes of the two Houses on the bill be again referred to the committee of conference heretofore appointed on the bill. The record of debate shows that Mr. William Pitt Fessenden, of Maine, had moved the reconsideration of the vote by which the conference report had been agreed to in the Senate, and the vote being reconsidered, had moved that the report be recommitted in order that an error be corrected.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Thirty-seventh Congress, Globe, pp. 2746, 2747.

[3] Second session Forty-second Congress, Journal, pp. 772, 774; Globe, pp. 2883, 2896.

[4] James G. Blaine, of Maine, Speaker.

[5] On June 8 (Journal, p. 1108; Globe, pp. 4442, 4443) the conference report on the sundry civil appropriation bill was recommitted.

[6] Second session Thirty-seventh Congress, Journal, pp. 337, 443, 349; Globe, pp. 929, 938, 940, 948.

In the House, on motion of Mr. Thaddeus Stevens, of Pennsylvania, and by unanimous consent:

Ordered, That the House agree to the proposed recommitment of the said disagreeing votes of the two Houses on the bill of the House No. 240 to the committee of conference heretofore appointed on that bill.

The committee subsequently reported, and the report was agreed to in both Houses.

6556. On July 9, 1866,[1] the bill (S. 222) further to prevent smuggling was found by the chairman of the Committee on Enrolled Bills in the Senate to have come to his committee with several of the amendments unacted on, the error seeming to have been made in the making up of the report of the committee of conference. So the Senate recommitted the bill to the committee of conference, and sent a message to the House informing them of its action. The House, by suspension of the rules, concurred in recommitting the bill to the conferees.

6557. On May 13, 1870,[2] after the report of the committee of conference on the bill (S. 95) in relation to the Hot Springs reservation in Arkansas, had been agreed to in both branches, a motion was made in the Senate by unanimous consent (the Chair ruling that such consent was necessary) that the vote whereby the report had been agreed to be reconsidered, and this having been done, the report was recommitted. A message notifying the House of this action was received in the House on the same day. On May 16, the House, by unanimous consent, recommitted the report in concurrence. The object of this action was to correct an error in enrollment.

6558. A motion to refer a conference report to a standing committee has been held out of order.—On May 5, 1898,[3] the House was considering a conference report on a bill (H. R. 597) extending the homestead laws and providing for the right of way for railroads in the District of Alaska.

Mr. Mahlon Pitney, of New Jersey, rising to a parliamentary inquiry, asked if it was in order to move that the conference report be referred to the Committee on Public Lands for further report to the House, or must the report be first voted down?

The Speaker[4] said:

The Chair thinks that a conference report cannot be referred—that it must be accepted or rejected.[5]

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[1] First session Thirty-ninth Congress, Journal, p. 988; Globe, p. 3664.

[2] Second session Forty-first Congress, Journal, pp. 785, 797; Globe, pp. 3447, 3503.

[3] Second session Fifty-fifth Congress, Record, p. 4636.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Under the modern usage of the House, in accordance with which a motion to discharge a committee is not in order under the regular order of business, a matter referred to a standing committee passes in a sense out of the control of the House if the committee refuse or neglect to report. Courtesy to the Senate undoubtedly requires the House to act on a conference report with a fair degree of promptness, hence the motion to refer should not be entertained. But if the House should feel the need of having a conference report examined by a committee, and a special order should provide for its reference and for a report at a specified time, the situation would evidently be different from that involved in this ruling.

6559. While conference reports were formerly considered in Committee of the Whole, they may not be sent there on suggestion of the point of order that they contain matter ordinarily requiring consideration therein.—On August 9, 1842,[1] the House resolved itself into the Committee of the Whole House on the state of the Union; and after some time spent therein the Speaker resumed the chair, and Mr. George N. Briggs, of Massachusetts, reported that the committee had, according to the order, had the state of the Union generally under consideration, and particularly the report[2] of the managers appointed to conduct the conference on the disagreeing votes of the two Houses on the amendments of this House to the bill from the Senate (No. 283) entitled "An act respecting the organization of the Army, and for other purposes," and that he was directed by the committee to report its disagreement to the said report of the managers, and to recommend to the House to ask a further conference with the Senate on the subject-matter of the amendments depending to said bill.

The House proceeded to the consideration of the report of the Committee of the Whole House on the state of the Union; when it was—

Resolved, That this House disagree to the report of the managers at the conference on the disagreeing votes of the two Houses on the amendments pending to the bill from the Senate (No. 283), entitled, etc., and ask a further conference with the Senate on the subject-matter of the said amendments.

Mr. Edward Stanly, of North Carolina; Mr. William B. Calhoun, of Massachusetts, and Mr. William O. Butler, of Kentucky, were appointed managers to conduct the further conference on the part of this House.

6560. On August 3, 1886,[3] the House was considering the report of the managers on the part of the House of the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 7480) known as the "river and harbor bill."

The point of order was made by Mr. William P. Hepburn, of Iowa, that there were in the conference report entirely new propositions, including new items of appropriations, since the Senate had struck out all of the House bill after the enacting clause, and the conference report related to modifications of this Senate substitute. Therefore the new appropriations should be considered in Committee of the Whole.

The Speaker[4] ruled:

The second point of order is submitted by the gentleman from Iowa that these proposed modifications must have their first consideration in Committee of the Whole House on the state of the Union under the rule of the House. The Chair is not aware of any case in the history of the House where a conference report has been sent to the Committee of the Whole on the state of the Union, and it could not well be done for the obvious reason that measures sent to the Committee of the Whole on the state of the Union are sent there for the purpose of being amended and debated under the five-minute rule.[5] A conference report can not be amended, for it is one entire proposition which must

[1] Second session Twenty-seventh Congress, Journal, p. 1248; Globe, p. 868.

[2] See also instance on January 28, 1834. (First session Twenty-third Congress, Journal, p. 256; Debates, p. 2543.)

[3] First session Forty-ninth Congress, Record, p. 7932; Journal, p. 2515.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] The instance recorded in section 6559 was before the development of the five-minute rule. (See sec. 5221 of this volume.)

be agreed to in its entirety or rejected by the House upon a single vote. The Chair, therefore, overrules the point of order.[1]

6561. On March 3, 1871,[2] the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the bill of the House, No. 2816, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1872, and for other purposes."

In this report was a measure for the establishment of a commission to consider and act on claims arising out of the operations of the war.

Mr. Fernando Wood, of New York, asked whether the report, as it proposed an appropriation of money, would not go to the Committee of the Whole.

The Speaker[3] said:

It does not. A conference report, as the gentleman knows, is privileged in the highest degree. The question is on accepting or rejecting the report. The only motion that can be entertained is to lay the report on the table.[4] It can not be amended, but must be accepted or rejected as a whole.

6562. When conferees report that they have been unable to agree, the report is not acted on by the House.—On February 21, 1899,[5] Mr. Theodore Otjen, of Wisconsin, submitted a report signed by the conferees on the bill (H. R. 4936) for the allowance of certain Bowman Act claims, etc., and stating that after full and free conference they had been unable to agree.

The report having been read, Mr. Otjen moved that the House further insist on its disagreement to the Senate amendments and agree to the conference asked by the Senate.

Mr. James D. Richardson, of Tennessee, made the point of order that the report of the committee should be adopted first.

The Speaker[6] said:

The Chair hardly sees how the House can agree to a report in which nothing is done. * * * The Chair will have the precedents examined, but his impression is that there is nothing to agree to. * * * There is no legislation in it. The Chair will see that the Journal is put in the proper form. The question is on the motion of the gentleman from Wisconsin that the House further insist and agree to the conference asked by the Senate.

6563. In the earlier practice managers reported their inability to agree either verbally or in writing, but the reports were not signed as at present.—On December 11, 1811,[7] Mr. John Randolph, of Virginia, from the committee appointed managers on the part of the House of the conference on the subject of the disagreeing votes of the two Houses of Congress on the Senate's amendments

[1] There is nothing in this decision to prevent the House from referring a conference report to the Committee of the Whole on motion; but there would be little object in so doing, since it could not be amended and debated under the five-minute rule, wherein the great advantage of consideration is found in the modern practice.

[2] Third session Forty-first Congress, Globe, p. 1916.

[3] James G. Blaine, of Maine, Speaker.

[4] This was before the House had discarded the old practice. (See secs. 6538–6544.)

[5] Third session Fifty-fifth Congress, Record, p. 2144.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Twelfth Congress, Journal, pp. 63, 76 (Gales & Seton ed.); Annals, pp. 31, 455, 558.

to the bill "for the apportionment of Representatives among the several States, according to the third enumeration," reported:

That the committee had held a conference with the managers appointed on the part of the Senate. That the following propositions were submitted by the committee to the managers of the Senate: To fix the ratio at 34,000, 33,000, 40,000. All of which being promptly rejected by the committee of the Senate, your committee, as a last effort at accommodation, proposed 36,000 as the medium between the two numbers adopted by the two Houses respectively; which was also rejected, as the others had been, without any discussion whatever on the part of the managers of the Senate. No proposition being submitted on the other side to your committee, the conference was broken up, and the joint committee of the two Houses finally separated without coming to any agreement.

The Senate managers had already, on December 10, reported to the Senate as follows:

That the committee had held a conference with the managers appointed on behalf of the House of Representatives, and that the joint committee of the two Houses, upon the close of the conference, finally separated without coming to any agreement. That the committee heard nothing on the conference sufficient to induce them to depart from the amendments made by the Senate to the bill from the House of Representatives. They therefore recommend to the Senate to adhere to the said amendments.

Neither of these reports bears the signatures of the conferees.

On December 18, a message having been received from the Senate that they had adhered to their amendment,[1] the House voted to recede, yeas 72, nays 62. As the bill was shortly after enrolled and signed by the President, it is evident that the House must have concurred in the Senate amendment, although the Journal does not so state.

6564. On March 3, 1849,[2] disagreements on the part of conferees were reported to the House by one of the conferees, and not in the form of a written report signed by the conferees. This is in accordance with the practice previous to this time.

6565. On August 18, 1856,[3] Mr. Lewis D. Campbell, of Ohio, from the last committee of conference on the disagreeing votes of the two Houses on the Army appropriation bill, made a report that the conferees had been unable to agree, and asked to be discharged. The report, which is signed by all the managers on the part of both Houses, three for each House, gives in full the text of the amendment on which they have been unable to agree—the amendment relating to the use of troops in Kansas. This is one of the first, apparently the very first, instances where a report of inability to agree appears in the Journal in full and signed by the conferees.

6566. On June 20, 1862,[4] apparently for the first time, a committee of conference made a formal report, signed by both committees of managers, that they had been unable to agree. This was not an ordinary case, however. The first report of the conferees on the bill (H. R. 413, making appropriation for the payment

[1] In this case the House had asked for the conference, and consequently the papers remained with the Senate conferees, and would be presented first to the Senate for action. (Journal, p. 57.) The message announcing the action of the Senate came the day the House conferees reported.

[2] Second session Thirtieth Congress, Journal, p. 636.

[3] First session Thirty-fourth Congress, Journal, pp. 1531, 1532.

[4] Second session Thirty-seventh Congress, Journal, p. 906; Globe pp. 2832, 2847.

of bounties) had been defeated in the Senate because the conferees had in their report changed the original text of the bill which had been agreed to by both Houses. At the second conference the conferees were agreed as to what should be done, but the purpose could not be effected without an unpermissible change of the text. So they agreed to report a disagreement, and in the House the report was laid on the table.

6567. In 1864,[1] the conferees on the bill (H. R. 122) to increase the internal revenue, reported twice that they were unable to agree. In each case they made a formal report, signed by all the conferees. No action was taken on these reports in either body, they being regarded as mere notifications.

6568. Instance wherein the House conferees declined to sign a report that the conferees had been unable to agree.

Form of written statement that managers of a conference have failed to agree.

Instance wherein a bill failed in conference.

On March 2, 1905,[2] Mr. James R. Mann, of Illinois, presented the following:

The committee of conference[3] on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 16986) "to provide for the government of the Canal Zone, for the construction of the Panama Canal, and for other purposes," having met, after full and free conference have been unable to agree.

W. P. HEPBURN,
JAMES R. MANN,
W. C. ADAMSON,0
Managers on the part of the House of Representatives.
A. B. KITTREDGE,
J. H. MILLARD,
A. P. GORMAN,
Managers on the part of the Senate.

Mr. Mann moved that the House insist upon its disagreement to the Senate amendments and ask for a further conference, and that motion was agreed to, and the same conferees for the House were reappointed.

On the same day[4] the Senate agreed to the conference and reappointed its conferees.

On March 3,[5] in the Senate, Mr. Kittredge said:

Yesterday a disagreement between the conferees was reported to the Senate, and the amendments of the Senate were further insisted upon and a second conference ordered. Nothing was accomplished at this conference, and at 5 o'clock yesterday afternoon your conferees signed a report to the effect that they had been unable to agree, and handed the same to the managers of the conference on the part of the House. At half past 10 last night the House managers had not signed this report, and two of its Members stated that they were not certain that it would be signed.

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[1] First session Thirty-eighth Congress, Journal, pp. 327, 338; Globe, p. 886.

[2] Third session Fifty-eighth Congress, Record, p. 3876.

[3] The House had asked this conference, and the statement of the failure to agree was made first in the House.

[4] Record, pp. 3840–3842.

[5] Record, pp. 3929–3937.

Mr. Joseph B. Foraker, of Ohio, said:

Upon the proposition, as I understand it, this conference has come into a deadlock, the House refusing to agree to any proposition, even to sign a disagreeing report, a most unusual and extraordinary thing to happen.

The first inquiry I wanted to address to the conferees was, What is the difficulty which induces the House to take such an unusual position? I understand they assign as a condition to signing the report that there shall be an abolition of the Commission. I do not know of anything the Commission has done that would justify any such action as that on the part of our coordinate branch of legislation; but perhaps they do.

Mr. Henry M. Teller, of Colorado, said:

This is not the first instance even in this Congress where the House has simply laid down an ultimatum to the Senate. When the House passed the bill and we put the amendments on they had a right to disagree to the amendments and to let the matter there drop or to send it back to us. When they appointed conferees to meet the Senate conferees the common rule of parliamentary bodies and common courtesy and common decency required that they should meet upon the theory that there was to be some concession upon one side and the other, some agreement as to what was to take the place of what was then before the committee and which was the subject of disagreement between the two Houses.

No agreement as to the differences over this bill was reached, and the bill failed in conference.

6569. On the calendar day of March 3, 1901,[1] but the legislative day of March 2, in the Senate, Mr. Eugene Hale, of Maine, presented the following:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate numbered 3, 7, 8, 9, 10, 24, 25, 26, 39, 40, 42, 60, 61, 65, 67, 79, 80, 81, 82, 84, 85, 86, and 89 to the bill (H. R. 13705) making appropriations for the naval service for the fiscal year ending June 30, 1902, and for other purposes, having met, after full and free conference have been unable to agree.

EUGENE HALE,
WILLIAM E. CHANDLER,
B. R. TILLMAN,
Managers on the part of the Senate.

AMOS J. CUMMINGS,
Manager on the part of the House.

Mr. Hale stated that the conferees had in the last conference been able to come to an understanding on all but two amendments; and on these the House conferees had insisted that the Senate should recede. The Senate conferees had proposed that a disagreement be reported on the unadjustable points of difference so that the two Houses might express their opinions, but the House conferees had refused to do that, and two of them had even refused to sign the statement of disagreement which he had presented.

Mr. Henry Cabot Lodge, of Massachusetts, having objected that the paper presented was not a regular report, Mr. Hale stated that he did not present it technically as a conference report.

Mr. Henry M. Teller, of Colorado, called attention to the fact that the Senate was in possession of the papers,[2] and was not hampered by the refusal of the House conferees to act. The Senate could recede, insist, or instruct its conferees.

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[1] Second session Fifty-sixth Congress, Record, pp. 3490–3492, 3496, 3508.

[2] The Senate, being the body agreeing to the conference asked by the House, would be in possession of the papers if the managers should come to an agreement. But in the absence of an agreement it seems the better rule that the papers should remain with the House which asked the conference. See sec. 6571 of this chapter.

After debate the matter was withdrawn, and Mr. Hale presented this resolution, which was agreed to:

Resolved, That the present conferees of the Senate upon the disagreeing votes of the two Houses upon the naval appropriation bill be discharged from further duty, and that the House of Representatives is hereby requested to grant a conference with the Senate upon the disagreeing votes upon said bill.

Later, on motion by Mr. Hale, and by unanimous consent, a message was sent to the House recalling this resolution.

Later Mr. Hale presented a report signed by all the conferees of both Houses, and embodying an entire agreement except upon one proposition—relating to submarine torpedo boats.

The report was agreed to by the Senate, and then the Senate voted to recede from the remaining amendment.

Later the conference report was agreed to by the House.

6570. Form of report when managers of a conference report that they have been unable to agree.—On March 2, 1907,[1] Mr. Washington Gardner, of Michigan, presented the following:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24640) "An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1908, and for other purposes," having met, after full and free conference have been unable to agree.

WASHINGTON GARDNER,
W. P. BROWNLOW,
JOHN A. SULLIVAN,
Conferees on the part of the House.

P. J. MCCUMBER,
N. B. SCOW,
Conferees on the part of the Senate.

The House then considered the Senate amendments, insisted on its disagreement thereto, and agreed to a conference which had been asked by the Senate.

6571. When a conference breaks up without reaching any agreement the managers of the House asking the conference do not necessarily surrender the papers to the managers of the other House, as in the case where a report is agreed to.—On May 4, 1864,[2] the Senate asked a conference with the House on the disagreeing votes of the two Houses on the army appropriation bill. The House agreed to this conference. This conference was a failure, the conferees being unable to agree on a report. Not even a signed report of the inability to agree was made; and it appears also that the only announcement of the failure made in the House was that of the message from the Senate asking a new conference. The failure to agree was announced in the Senate, where the papers were taken first for action, the Senate being the asking body. The Senate asked for a new conference, which was agreed to by the House.

6572. On February 6, 1861,[3] a message from the Senate announced that that body had insisted on its amendments disagreed to by the House on the deficiency appropriation bill (H. R. 866) and asked a conference with the House on the disagreeing votes. The House agreed to this conference. On February 9 some of

[1] Second session Fifty-ninth Congress, Record, p. 4503.

[2] First session Thirty-eighth Congress, Journal, pp. 621, 622, 678, 681; Globe, p. 2351.

[3] Second session Thirty-sixth Congress, Journal, pp. 281, 293, 294, 302, 303.

the House conferees reported to the House that the conferees had been unable to agree. This report was apparently verbal. No action was taken by the House at this time, as the papers were evidently not in possession of the House conferees. But on February 11 a message was received from the Senate announcing that that body further insisted and asked a further conference. Thereupon the House further insisted on its disagreement to the amendments and agreed to the conference. Thus, in this case, it is evident that when the conferees were unable to agree the papers were retained by the conferees of the asking body, and not turned over to the conferees of the House agreeing to the conference, as in the case where a report is agreed to.

6573. In 1864 [1] the first conference report on the bill (H. R. 122) to increase the internal revenue was disagreed to by the Senate. The House thereupon asked a new conference, which the Senate agreed to. The conferees, finding themselves unable to agree, drew up a report that they had been unable to agree, and signed it in due form. The papers were evidently delivered to the Senate conferees, as would have been the procedure in case an agreement had been reached, and were taken to the Senate first. But when there Mr. John Sherman, of Ohio, one of the Senate conferees, said that after consultation it had been determined that it would be best for the Senate to send the papers to the House in order that that body might first take action on the papers. So the papers were sent to the House, where it was voted to insist on the disagreement, and ask a new conference, and instruct the House conferees.

6574. On July 2, 1864,[2] Mr. Kellian V. Whaley, of West Virginia, from the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 406) supplementary to the act to grant pensions approved July 14, 1863, reported that the conferees had been unable to agree. This report was made verbally. It was moved and ordered that the House further insist and ask a further conference. In this case the House had originally asked the conference, and when the conferees could not agree the House conferees retained possession of the papers, and returned them to the House for the first action.

On July 2, 1864,[3] the conferees on the bill (H. Res. 11) in relation to the claim of Carmack & Ramsay made in formal style a report to the House stating that they had been unable to agree and asking to be discharged. All the conferees signed this report. The House acted on this report, agreeing to it. The House then further insisted and asked a further conference with the Senate. This was a case where the House had asked the first conference, and the House conferees had retained the papers and returned them to the House for first action, when it was found that the conference could not agree.

6575. In 1865,[4] the conferees on the deficiency appropriation bill (H. R. 620) reported formally, over their signatures, their inability to agree. This report was made first in the Senate, which was the House agreeing to this conference. For the next conference new conferees were appointed, and they also reported an inability to agree. This report was made first in the House, which was the body asking the

[1] First session Thirty-eighth Congress, Journal, pp. 303, 327; Globe, p. 886.

[2] First session Thirty-eighth Congress, Journal, pp. 970, 1005.

[3] First session Thirty-eighth Congress, Journal, pp. 968, 1001.

[4] Second session Thirty-eighth Congress, Journal, pp. 110, 136, 146.

conference, and the House acted by receding from its disagreements to all the amendments but the fourth amendment, and voting to adhere to its disagreement to that amendment.

6576. On March 3, 1865,[1] the conferees on the army appropriation bill were unable to agree, and so reported informally to the House. The papers went first to the Senate, which was the asking body.

6577. On February 28, 1867,[2] the conferees on the legislative appropriation bill reported an inability to agree. The papers were sent first to the Senate, which had agreed to the conference. No formal signed report of the failure to agree was made. Mr. Thaddeus Stevens, of Pennsylvania, reported in the House.

6578. On March 2, 1867,[3] there were two conferences on the legislative appropriation bill which were unable to agree. After each report of failure to agree, the papers went first to the Senate, which had been the body agreeing to the conference in each case. In each case the Senate, when possessed of the papers, voted to adhere.

6579. On January 21, 1868,[4] Mr. John A. Logan, of Illinois, from the committee of conference on the disagreeing vote of the two Houses on the bill (H. R. 207) for the exemption of cotton from internal tax, reported that the conferees had been unable to agree. The papers and report were made in the House first, the House having agreed to the conference asked by the Senate.

6580. On May 12, 1870,[5] the House asked a conference with the Senate on the bill (H. R. 781) making appropriations for the payment of pensions, and on the succeeding day the Senate agreed to the conference. The conferees were unable to agree, and made a formal report to that effect. This report was made first in the Senate, the agreeing body.

6581. On February 28, 1871,[6] the committee of conference on the bill (H. R. 2509) to abolish the office of admiral and vice admiral of the Navy, reported in the House that the conferees had been unable to agree. The report and papers were in this case brought first into the House, which was the body asking the conference.

6582. On June 19, 1878,[7] the conferees on the sundry civil appropriation bill reported inability to agree first in the House, which had asked the conference.

6583. In 1879,[8] there were two ineffectual conferences on the army appropriation bill, which ultimately failed to become a law. After each of the two failures to agree the report and papers were brought first to the House agreeing to the conference.

6584. On April 18, 1902,[9] the bill (H. R. 13031) "to prohibit the coming into and to regulate the residence within the United States, its Territories, and

[1] Second session Thirty-eighth Congress, Journal, pp. 431, 432, 438, 440.
[2] Second session Thirty-ninth Congress, Journal, pp. 468, 522, 523.
[3] Second session Thirty-ninth Congress, Journal, pp. 560, 583, 585, 587, 590.
[4] Second session Fortieth Congress, Journal, pp. 214, 225; Globe, p. 673.
[5] Second session Forty-first Congress, Journal, pp. 774, 777, 987, 1014.
[6] Third session Forty-first Congress, Journal, pp. 262, 446.
[7] Second session Forty-fifth Congress, Journal, pp. 1418, 1433.
[8] Third session Forty-fifth Congress, Journal, pp. 533, 615, 616, 663.
[9] First session Fifty-seventh Congress, Journal, p. 615; Record, p. 4419.

all territory under its jurisdiction and the District of Columbia of Chinese and persons of Chinese descent," which had been returned from the Senate with amendments, was taken up, the amendments were disagreed to, and a conference was asked with the Senate.

The Senate subsequently agreed to this conference.

The conferees were unable to agree, and on April 25[1] Mr. Robert R. Hitt, of Illinois, chairman of the board of managers on the part of the House, submitted a report of the disagreement to the House.

Thereupon the House voted to insist further on its disagreement to the Senate amendment and to ask a further conference.

Thus, in case where a conference had failed, the papers were brought back to the House asking the conference.

6585. An instance where, after a conference asked before a disagreement, the report was made first in the House agreeing to the conference.— On June 26, 1902,[2] the conferees on the bill (H. R. 3110) to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, presented the final report in the House. In this case the Senate had amended the House bill and had at once asked a conference before the disagreement. The House had disagreed to the Senate amendment and agreed to the conference.

The conferees having agreed, the report was made first in the House.

It was then messaged to the Senate, and later agreed to there.

6586. Where a conference results in disagreement, a motion for a new conference is privileged.

A report from a conference committee may not be presented for action or a request for another conference be made unless the House be in possession of the papers, i. e., the original bill and Senate amendments.[3]

On June 17, 1892,[4] Mr. Newton C. Blanchard, of Louisiana, reported that the conference on the amendments of the Senate to the bill (H. R. 7820) for the improvement of rivers and harbors had resulted in disagreement, and thereupon submitted this resolution:

Resolved, That the House insist on its disagreement to the Senate amendments 64 and 173 on the bill (H. R. 7820) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, and agree to a further conference with the Senate.

Mr. W. C. P. Breckinridge, of Kentucky, submitted the question of order whether it was in order for the chairman of the Committee on Rivers and Harbors to move as a privileged question for a committee of conference.

The Speaker held that there having been an actual disagreement between the Houses, the motion was privileged.

Air. James D. Richardson, of Tennessee, made the point of order that the request for a further conference must come from the House having possession of the papers.

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[1] Journal, p. 647; Record, p. 4690.

[2] First session Fifty-seventh Congress, Record, pp. 7433, 7436, 7428.

[3] See also secs. 6518–6522 of this section.

[4] First session Fifty-second Congress, Journal, p. 229; Record, p. 5369.

The Speaker[1] held that in case of an original request for conference the request must be made by the House having the papers; but upon a disagreement by the conference committee, the papers being with that committee, the request might be made by either House for a further conference.[2]

The Speaker suggested that there being no information officially that the Senate had asked for a further conference, the motion that the House agree to such conference was not now in order.

Mr. Blanchard thereupon modified his resolution by substituting *request* for "agree to."

Mr. Breckinridge, of Kentucky, and Mr. William S. Holman, of Indiana, thereupon demanded that the bill and amendments be produced.

The Speaker announced that the bill was not in possession of the House, and held that the gentleman from Louisiana [Mr. Blanchard] could not present a report from his committee when the House was not in possession of the papers. It stood like any other matter that comes before the House. The bill must be here, because it was in the province of any gentleman on either side of the House to move to concur in the Senate amendments. That motion, of course, necessitated the reading of the amendments and the reading of the bill. Any gentleman, instead of moving to nonconcur, might move that the House concur, which motion would have priority; and of course it would be necessary to read the amendment in order that the House might understand it, and it could only be read from the original bill; so that the Chair thought that the gentleman could not proceed without the papers being present.

Mr. Blanchard thereupon withdrew the report and resolution.

6687. A final conference report providing that the House recede from the only disagreement was agreed to by the House, and the presiding officers of the two Houses signed the bill, although the Senate had not acted on the report.—On March 3, 1875,[3] the House agreed to the following report of the committee of conference:

> The committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 3341) to equalize the bounties of soldiers who served in the late war for the Union having met, after full and free conference agreed to recommend and do recommend to their respective Houses as follows:
>
> That the House recede from its vote nonconcurring in the amendments of the Senate and agree to the same.

In the Senate, on the same day, Mr. John A. Logan, of Illinois, chairman of the Senate conferees, presented the report and asked its adoption, although he said he understood that the action of the House in agreeing to the Senate amendments had thereby passed the bill.

Mr. William Sprague, of Rhode Island, moved that the report be laid on the table, and by a vote of yeas 30, nays 24, the report was laid on the table. Mr. Logan asserted that nevertheless the bill was passed.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] The latter portion of the ruling seems to reverse this portion, for if possession of the papers is necessary for action by the House it is evident that a conference may not be requested in the absence of the papers.

[3] Second session Forty-third Congress, Journal, pp. 660, 669, 834; Record, pp. 2205, 2208, 2264, 2269.

On the same day the Speaker[1] affixed his signature to the bill, which was enrolled and presented to him by a member of the Committee on Enrolled Bills. No question was raised in the House. But in the Senate, after the Vice-President[2] had signed the bill, and while Mr. John J. Ingalls, of Kansas, was occupying the chair, Mr. Justin S. Morrill, of Vermont, raised the question of order that under the circumstances the Vice-President could not legally sign the bill.

The presiding officer held that the subject was no longer before the Senate, and therefore declined to entertain the point of order.

The bill did not become a law, as it was not presented to the President until the last hours of the session, being one of the last of the bills passed by the Congress.

6588. Instance wherein the House, after disagreeing to a conference report already agreed to by the Senate, laid on the table a House bill with Senate amendments.—On May 19, 1906,[3] the House considered the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10129) to amend section 5501 of the Revised Statutes of the United States, which was brought up in the House, having already been agreed to in the Senate.

The conference report was disagreed to.

Thereupon Mr. Samuel W. McCall, of Massachusetts, moved to lay the bill and Senate amendment on the table.

Mr. Albert S. Burleson, of Texas, rising to a parliamentary inquiry, asked if it would be in order to take action to procure another conference.

The Speaker[4] said:

> The motion to lay on the table would dispose of the bill, and has precedence under the rule.

Thereupon, by vote of yeas 107, nays 66, the bill and amendment were laid on the table.

6589. Amendments between the Houses once disagreed to do not, on the rejection of a conference report, return to their former state so that they may be required to go to Committee of the Whole.—On May 21, 1896,[5] a message having been received from the Senate that the report of the committee of conference on the river and harbor bill had been disagreed to, Mr. William P. Hepburn, of Iowa, made the point of order that the conference was thereby dissolved, and that the amendments of the Senate to the bill were in the same condition as when first sent to the House; and therefore that these amendments, being appropriations of money, must under Rule XX[6] be considered in Committee of the Whole House on the state of the Union.

The Speaker,[7] having called attention to the fact that the House had nonconcurred in the amendments, said that that was the action of the House of Representatives and could not be overruled by the Speaker.

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[1] James G. Blaine, of Maine, Speaker.

[2] Henry Wilson, of Massachusetts, Vice-President.

[3] First session Fifty-ninth Congress, Record, p. 7119.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] First session Fifty-fourth Congress, Record, pp. 5532, 5533.

[6] See section 4797 of Volume IV of this work.

[7] Thomas B. Reed, of Maine, Speaker.

Chapter CXXXVIII.

MESSAGES AND COMMUNICATIONS.

1. **Provisions of the parliamentary law. Section 6590.**[1]
2. **Ceremony of receiving message of President. Section 6591.**
3. **Entry of messages on Journal. Section 6593.**
4. **Practice and forms as to messages between the Houses. Sections 6594–6599.**[2]
5. **Reception of messages in relation to pending business. Sections 6600–6604.**
6. **Correction of errors and return of. Sections 6605–6611.**
7. **Messages of the President and their consideration. Sections 6612–6646.**
8. **Messages sent by President before organization of the House. Sections 6647–6650.**
9. **Withdrawal of a portion of a message. Section 6651.**
10. **Communications from public officers and others. Sections 6652–6662.**[3]

6590. As a committee of the whole may not receive a message, the Speaker takes the chair informally if a message be received while the committee is sitting.

Messengers are saluted by the Speaker for the House.

If the messenger commit an error he may be admitted or called in to correct it.

A message from the President is usually communicated to both Houses on the same day when its nature permits.

Jefferson's Manual has the following provisions in regard to the reception of messages:

In section XII: If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not.[4] (2 Hats., 125, 126.)

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[1] Rare instances wherein messages to the Senate were sent by Members of the House. (Secs. 1538 of Vol. II and 1928 of Vol. III.)

[2] Usage as to the messages preliminary to the electoral count. (Sec. 1961 of Vol. III.)

Form of message when the House disagrees to certain amendments of the Senate and agrees to others with amendment. (Sec. 6287 of this volume.)

In relation to secret sessions. (Secs. 7250–7252 of this volume.)

Informal rising of the Committee of the Whole when messages are received. (Secs. 4785–4791 of Vol. IV.)

[3] Secretary Stanton's communication which led to the impeachment of the President. (Sec. 2408 of Vol. III.)

As to estimates of appropriations transmitted from the Executive Departments. (Secs. 3573–3577 of Vol. IV.)

[4] It is the practice of the House to receive messages from the Senate or President during a call of the roll, or when a Member has the floor; but not while the Journal is being read.

In section XLVII: In the House of Representatives, as in Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee, without any question or interruption. (4 Grey, 226.)

Messengers are not saluted by the Members, but by the Speaker for the House. (2 Grey, 253, 274.)

If messengers commit an error in delivering their message, they may be admitted or called in to correct their message. (4 Grey, 41.) Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House of Representatives, their Secretary, by mistake, delivered one only; which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake; the correction was received and the two amendments acted on de novo.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But when a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one House was not noticed by the other, because the declaration being original, could not possibly be sent to both Houses at the same time.[1] (2 Hats., 260, 261, 262.)

6591. The ceremony of receiving a messenger from the President of the United States in the House.—The messenger is introduced by the Doorkeeper at the bar of the House, with the words "Mr. Speaker, a message from the President" [or the Senate, as the case may be]. Thereupon the messenger bows and addresses the Speaker as "Mr. Speaker." The Speaker, with a slight inclination, addresses the messenger as "Mr. Secretary," since such is his title whether he be from the President or the Senate. Thereupon the messenger delivers the message in a distinct voice that should be heard by all the Members present.

The Secretary of the President makes his announcement in form as follows:

I am directed by the President of the United States to deliver to the House a message in writing [or "sundry messages in writing" if there be more than one].

Sometimes, also, he adds, if the occasion require, the words—

and to announce his approval of sundry House bills.

Frequently the message merely announces the approval of bills.

6592. Practice as to the reception in the House of messages from the Senate, as founded on former joint rules.—For many years, from the early days of the Government until 1876, the two Houses had joint rules, which established the practice as to messages:

When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House by the Doorkeeper, and shall be respectfully communicated to the Chair by the person by whom it may be sent.

The same ceremony shall be observed when a messenger shall be sent from the House of Representatives to the Senate.

Messages shall be sent by such persons as a sense of propriety in each House may determine to be proper.[2]

The practice continues in accordance with the requirements of these rules, although the rules have ceased to exist.

6593. Messages from the Senate and President giving notice of bills passed or approved are entered in the Journal and published in the Record.

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[1] See section 6616 of this volume.

[2] The Clerk or one of his subordinates delivers the messages of the House in the Senate and Senate messages are delivered by the Secretary of the Senate or one of his subordinates.

Present form and history of Rule XLI.

Rule XLI provides:

Messages received from the Senate and the President of the United States giving notice of bills passed or approved shall be entered in the Journal and published in the Record of that day's proceedings.

March 15, 1867,[1] on motion of Mr. Nathaniel P. Banks, of Massachusetts, a rule was adopted providing that such messages should be read immediately from the Clerk's desk. In the revision of 1880[2] the rule was changed to its present form.

6594. It has long been the practice for the House to direct the Clerk to take its messages to the Senate.—A frequent form with the House in early days was to direct that "a message be sent to the Senate, notifying," etc., "and that the Clerk do go with the said message."[3] This is the full form:

Ordered, That a message be sent to the Senate, notifying that body that this House has chosen John Quincy Adams, President of the United States, for the term of four years, commencing on the 4th day of March, 1825; and that the Clerk do go with the said message.[4]

6595. The manner of delivering and receiving messages between the two Houses was early arranged by a joint rule.—On April 28, 1789,[5] Mr. Richard Bland Lee, of Virginia, reported the following respecting the mode of communicating papers, bills, and messages between the two Houses:

When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House by the Doorkeeper, and shall be respectfully communicated to the Chair by the person by whom it may be sent.

The same ceremony shall be observed when a message shall be sent from the House of Representatives to the Senate.

Messages shall be sent by such persons as a sense of propriety in each House may determine to be proper.

The report was read twice and agreed to by the House. November 13, 1794,[6] this regulation was agreed to among the joint rules and continued there until the rules were dropped in 1876.

The Senate did not at once agree to this,[7] but on May 7,[8]

Ordered, That, when a messenger shall come from the House of Representatives to the Senate, and shall be announced by the doorkeeper, the messenger or messengers being a Member or Members of the House, shall be received within the bar, the President rising when the message is by one Member, and the Senate also when it is by two or more; if the messenger be not a Member of the House, he shall be received at the bar by the secretary, and the bill or papers that he may bring shall there be received from him by the Secretary, and be by him delivered to the President.[9]

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[1] First session Fortieth Congress, Globe, p. 119.

[2] Second session Forty-sixth Congress, Record, p. 207.

[3] Second session Eighteenth Congress, Journal, p. 222.

[4] Messages from the House to the Senate are taken nominally by the Clerk, but usually by the Chief Clerk, and sometimes by other subordinate officials. Thus, on May 27 and 28, 1902, messages were delivered in the Senate by the Enrolling Clerk of the House. (First session Fifty-seventh Congress, Record, pp. 5950, 6043.)

[5] First session First Congress, Journal, p. 21 (Gales & Seaton ed.); Annals, p. 221.

[6] First session Third Congress, Journal, p. 230 (Gales & Seaton ed.).

[7] Annals, p. 30.

[8] Annals, p. 31; Journal of House, p. 32 (Gales and Seaton ed.).

[9] An earlier proposition had proposed a more elaborate ceremonial. See Annals, pp. 23, 24.

6596. Forms of messages in use by the Clerk of the House in transmitting business from the House to the Senate.—The Clerk of the House [1] in delivering messages to the Senate uses a variety of forms, to conform to the variety of business which is to be transmitted.

For transmitting House bills:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has passed the following bills ——— in which bills the concurrence of the Senate is requested.

For transmitting Senate bills amended by the House:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has passed the bill of the Senate (S. ——) [title] ———, with the accompanying amendment, in which the concurrence of the Senate is requested.

For transmitting House bills with Senate amendments to which the House has agreed:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has agreed to the amendment of the Senate to the bill of the House (H. R. ——) [title] ———.

For transmitting House bills with Senate amendments to which the House disagrees, and on the disagreeing votes as to which a conference is asked:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House disagrees to the amendment of the Senate to the bill (H. R. ——) [title] ———, and asks a conference with the Senate on the disagreeing vote's of the two Houses thereon.

Ordered, That Mr. ——— ———, Mr. ——— ———, and Mr. ——— ———, be the managers of the conference on the part of the House.

[If the conference is not asked, the latter portion would not be used.]

For transmitting a House bill on which, after one disagreement as to the Senate amendment, a further conference is asked:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House further insists upon its disagreement to the amendment of the Senate to the bill (H. R. ——) [title] ———, and asks a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. ——— ———, Mr. ——— ———, and Mr. ——— ———, be the managers of the conference on the part of the House.

For transmitting a Senate bill as to which the Senate has disagreed to a House amendment on which the House insists:

Mr. President. I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House insists upon its amendment to the bill (S. ——) [title] ———, disagreed to by the Senate, and agrees to the conference asked by the Senate on the disagreeing vote's of the two Houses thereon.

Ordered, That Mr. ——— ———, Mr. ——— ———, and Mr. ——— ———, be the managers of the conference on the part of the House.

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[1] The forms here given are those used by Mr. William J. Browning, for twelve years Chief Clerk of the House, who as deputy of the Clerk delivers most of the messages in the Senate. He received the forms from his predecessor in office. Forms substantially similar are used by the Secretary of the Senate in delivering messages in the House.

For transmitting a Senate bill with a House amendment on which, after one disagreement, the House continues to insist:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House further insists upon its amendment to the bill (S. ——) [title] ———, disagreed to by the Senate, and asks a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. ——— ———, Mr. ——— ———, and Mr. ——— ———, be the managers of the conference on the part of the House.

[Various modifications of these forms are made to suit peculiar conditions.]

For transmitting the information that the House has agreed to a conference report:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses to the amendments of the ——— to the bill (——) entitled ———.

For transmitting the information that the House has disagreed to a conference report:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has

Resolved, That the House disagrees to the report of the committee of conference on the disagreeing votes of the two Houses to the amendments of the ——— to the bill (——) entitled ———.

For transmitting enrolled bills to the Senate:

Mr. President, the Speaker of the House having signed the following enrolled bills ——— ———, I am directed to present the said bills to the Senate for the signatures of its President.

For transmitting a bill which the House has passed after its return with the objections of the President:

Mr. President, the President of the United States having returned to the House the bill (H. R. ——) entitled An act ———, with his objections to the same, the House proceeded to reconsider the bill, and

Resolved, That the bill do pass, two-thirds of the House agreeing thereto,

I am directed by the House to communicate the said bill, the message of the President returning the same with his objections, and the proceedings of the House thereon, to the Senate.

For transmitting intelligence of the death of a Member:

Mr. President, I am directed by the House of Representatives to communicate to the Senate intelligence of the death of Hon. ——— ———, of ———, late a Representative from the State of ———, and to transmit the resolutions of the House thereon.

[Where a committee has been appointed to attend the funeral, the names of the committee would be given.]

For transmitting resolutions adopted by the House after eulogies of a deceased Member:

Mr. President, I am directed by the House of Representatives to transmit to the Senate the resolutions of the House as tributes to the memory of Hon. ——— ———, late a Representative from the State of ———.

6597. Forms of messages of the Senate announcing disagreements and insistence as to amendments, and asking conferences.—On April 29, 1858,[1] this message was received from the Senate:

The Senate insist upon their amendments, disagreed to by the House, to the bill of the House (H. R. 306) to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1858, and ask a conference with the House on the disagreeing votes of the two Houses thereon, and have appointed Mr. Toombs, Mr. Biggs, and Mr. Fessenden the managers at said conference on the part of the Senate.

6598. On May 27, 1858,[2] a message was received from the Senate as follows:

The Senate insist upon their amendments, disagreed to by the House, and disagree to the amendment of the House to the amendment of the Senate to the bill of the House (H. R. 201) making appropriations for the legislative, executive, and judicial expenses of Government for the year ending the 30th of June, 1859, and ask a conference with this House on the disagreeing votes of the two Houses thereon, and have appointed Mr. Pearce, Mr. Fitzpatrick, and Mr. Trumbull the committee on their part.

6699. On March 3, 1859,[3] the following message was received:

The Senate have disagreed to the amendments of this House to the amendments of the Senate to the bill of the House (H. R. 712) making appropriations for the naval service during the fiscal year ending June 30, 1860; ask a conference with the House on the disagreeing votes of the two Houses thereon, and have appointed Mr. Mallory, Mr. Bright, and Mr. Hamlin the managers on the part of the Senate.

6600. The reception of a message from the President or the Senate is not the transaction of business.

An opinion that a message may be received during a call of the House.

At the evening session of July 20, 1886,[4] which had been set apart for the consideration of a certain class of bills, the Secretary of the Senate appeared with a message.

Mr. Ransom W. Dunham, of Illinois, made a point of order as follows:

Under the order of the House providing for this evening session, nothing is in order but to act upon bridge bills, and therefore the receipt of a message from the Senate is not now in order.

The Speaker[5] held:

The Chair thinks that the reception of a message from the Senate or from the President is not the transaction of business, and this has heretofore been held very frequently in the House. For instance, even when the House is operating under an order for a call of the House, no motion being in order except a motion to adjourn or for some matter connected with the call, it has always been held that these messages could be received. The Chair overrules the point of order.

6601. Messages between the Houses are received during debate, but are to be sent only when both Houses are sitting.

In Congress the rejection by one House of a bill from the other is made the subject of a message to the originating House.

General provisions of the parliamentary law relating to messages between the Houses.

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[1] First session Thirty-fifth Congress, Journal, p. 711.

[2] Journal, p. 933. (See also Journal, p. 1062, for a similar case.)

[3] Second session Thirty-fifth Congress, Journal, p. 564.

[4] First session Forty-ninth Congress, Record. p. 7243; Journal, p. 2281.

[5] John G. Carlisle, of Kentucky, Speaker.

*****-Payroll No.: 83315 -Name: Yvette Shivers Apprentice -Folios: 830-831 -Date: 1-16-01 -Subformat:

Section XLVII of Jefferson's Manual provides:

Messages between the Houses are to be sent only while both Houses are sitting. (3 Hats. 15.) They are received during a debate without adjourning the debate.[1] (3 Hats.,22.)

It is not the usage for one House to inform the other by what numbers a bill is passed. (10 Grey, 150.) Yet they have sometimes recommended a bill, as of great importance, to the consideration of the House to which it is sent. (3 Hats., 25.) Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. (1 Blackst., 183.)

But in Congress the rejection is notified by message to the House in which the bill originated.

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message. (3 Grey, 151, 181.)

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it. (3 Hats., 25; 5 Grey, 154.) But if it be mere inattention, it is better to have it done informally by communications between the Speakers or Members of the two Houses.

6602. The Speaker has exercised his discretion about interrupting the pending business to permit the reception of a message.—On February 17, 1877,[2] the Speaker laid before the House a communication from Nathan Clifford president of the Electoral Commission, informing the House that the Commission had considered and decided upon the matters submitted to it under the act of Congress, and had transmitted the decision to the President of the Senate, to be read at the meeting of the two Houses according to said act.

Mr. Lucius Q. C. Lamar, of Mississippi, submitted the following resolution and demanded the previous question thereon:

Resolved, That the Clerk of the House notify the Senate that the House of Representatives will be prepared at 11 o'clock a. m. on Monday to receive the Senate in the hall for the purpose of proceeding under the provisions of the act to provide for and regulate the counting of votes for President and Vice-President.

Mr. John A. Kasson, of Iowa, made the point of order that before action was taken on the pending resolution a message from the Senate must be received, the Secretary of the Senate being now at the door of the House with a message from that body pertinent to the said communication.

The Speaker[3] overruled the point of order, on the ground that the pending resolution was also pertinent to the subject-matter of said communication, and that the previous question had been demanded thereon.

6603. In the latest practice the parliamentary rule that messages are to be sent only when both Houses are sitting has been observed.—On June 17, 1892[4] a message having been received from the Senate, Mr. John L. Bretz, of Indiana, made the point of order that the House could not receive a message from the Senate submitting a request for a conference when the Senate was not in session.

The Speaker[5] overruled the point of order.

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[1] The adjourning of a debate is a practice of Parliament, but not of the House. Messages are received in the House during a debate, even while a Member is speaking, and while the roll is being called, but not while the Journal is being read.

[2] Second session Forty-fourth Congress, Journal, p. 465; Record, p. 1664.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Fifty second Congress, Journal, p. 230; Record, p. 5371.

[5] Charles F. Crisp, of Georgia, Speaker.

6604. On Monday, April 18, 1898,[1] the House met at 10 a.m., in continuation of the legislative day of Saturday, April 16, 1898. On Saturday evening the Senate had passed the joint resolution (H. Res. 233) "authorizing and directing the President of the United States to intervene to stop the war in Cuba, and for the purpose of establishing a stable and independent government of the people therein," with amendments, one of which recognized the independence of the Cuban republic. The Senate then adjourned until the usual hour, 12 m., on Monday.

When the House met, at 10 a.m., Mr. Nelson Dingley, of Maine, being recognized, said:

Mr. Speaker, in view of the fact that no message can be received from the Senate until both Houses are in session, I move that the House do now adjourn.

Mr. Joseph W. Bailey, of Texas, rising to a parliamentary inquiry, said:

I desire to inquire if it be true that no message can be received from the Senate unless both Houses are in session?

The Speaker[2] said:

That is the rule.[3]

6605. The request of the Senate that its Secretary be allowed to correct an error in a message was granted by order of the House.—On September 27, 1850,[4] a message was received from the Senate by Mr. Dickens, their Secretary, which concluded as follows:

I am directed, further, to notify the House that in engrossing the amendments of the Senate to the bill entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year ending June 30, 1851, and for other purposes, "a mistake was made by stating as an amendment that the words "five thousand five hundred," in lines 25 and 26 of page 11, had been struck out, and the words "one thousand" inserted in lieu thereof; and request that the Secretary be permitted to correct the error.

And then the Secretary withdrew.

Then, on motion of Mr. Samuel F. Vinton, of Ohio, by unanimous consent—

Ordered, That the Secretary of the Senate be authorized to correct the error of which the Senate has notified the House.

6606. Correction of an error whereby a Senate amendment to a House bill had failed to be included in a message.—On July 12, 1790,[5] it being discovered that a mistake had been made in the message from the Senate on Friday last, respecting the amendment to the bill entitled "An act to regulate trade and intercourse with the Indian tribes," whereby an amendment proposed on the part of the Senate for striking out the fourth section of the bill had been omitted, the House proceeded to consider the said amendment, and—

Resolved, That this House do disagree to the same.

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[1] Second session Fifty-fifth Congress, Record, p. 4002.

[2] Thomas B. Reed, of Maine, Speaker.

[3] See section 6601.

[4] First session Thirty-first Congress, Journal, p. 1546.

[5] Second session First Congress, Journal, pp. 171, 172 (Old ed.), 268 (Gales & Seaton ed.).

6607. One House may correct an error in its message to the other, the receiving House concurring in the correction.—On July 14, 1866,[1] by unanimous consent, and on motion of Mr. Nathaniel P. Banks, of Massachusetts—

Ordered, That the Clerk be directed to correct an error in the announcement of the action of the House upon the amendments of the Senate to the bill of the House (H. R. 261) making appropriations for the diplomatic and consular service of the Government.

On July 16 the Senate received the correction, and on motion of Mr. Charles Sumner, of Massachusetts, agreed to the following:

Resolved, That the Senate agree to the correction of the message of the House of Representatives in respect to its action upon the amendments of the Senate to the bill (H. R. No. 261) making appropriations for the consular and diplomatic expenses of the Government for the year ending June 30, 1867, and for other purposes, as requested by the House.

A message announcing this action was sent to the House.

6608. On February 10, 1873,[2] Mr. Nathaniel P. Banks, of Massachusetts, as a question of privilege, but which was journalized. as by unanimous consent, presented a resolution correcting the message of the House to the Senate on the 23d of January, 1873, acquainting the Senate with the action of the House on the amendments of the Senate to the joint resolution (H. Res. No. 170) in relation to the Vienna Exposition. The resolution went on to specify the corrections.

The House agreed to the resolution, and on the same day the Senate concurred in the correction of the error.

6609. One House sometimes asks of the other the return of a message.

It is in order for one body to recommit a conference report if the other body by action on the report have not discharged their conferees.

On June 28, 1906,[3] the House received from the Senate a message transmitting the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 19844) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1907, and for other purposes, with the amendments of the Senate thereto and the message of the Senate of June 27, 1906, notifying the House of the agreement of the Senate to the conference report thereon.

The House, which had begun the consideration of the conference report, but had laid it aside without action, ordered that the message be returned to the Senate.

In the Senate, on the some day,[4] on motion of Mr. George C. Perkins, of California, the report was recommitted to the conferees.

No message announcing this recommittal was sent to the House.

6610. On June 24, 1902,[5] the Speaker laid before the House the following resolution from the Senate:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate its message disagreeing to the amendment of, and asking a conference with, the House of Rep-

[1] First session Thirty-ninth Congress, Journal, pp. 1018, 1023; Globe, p. 3825.

[2] Third session Forty-second Congress, Journal, p. 353; Globe, pp. 1224, 1233.

[3] First session Fifty-ninth Congress, Record, p. 9546.

[4] Record, p. 9475.

[5] First session Fifty-seventh Congress, Record, p. 7337.

resentatives on the bill (S. 4284) entitled "An act to amend an act entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota,' approved January 14, 1889."

The request was granted.

6611. On June 28, 1902,[1] the House received by message from the Senate the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 8586) amending the act of March 2, 1901, entitled "An act to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, concluded on the 10th day of December, 1898," the amendments of the Senate thereto, and the message of the Senate of March 11, 1902, disagreeing to the report of the committee of conference thereon.

The House granted this request.

6612. The Constitution provides that the President shall from time to time give Congress information of the state of the Union, and make recommendations.—The Constitution of the United States, in section 3 of article 2, in prescribing the duties of the President of the United States, provides:

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.

6613. Origin of the practice as to the transmission and reception of messages from the President of the United States.—On May 29, 1789,[2] on report made by a joint committee, the House agreed:

That until the public offices are established and the respective officers appointed any returns of bills and resolutions or other communications from the President may be received by either House, under cover, directed to the President of the Senate or Speaker of the House of Representatives, as the case may be, and transmitted by such person as the President may think proper.

On June 1 the House received notice that the Senate had agreed to the report.

6614. It is usual for the President to inform the House by message of such bills as he has approved and of such as have become laws without his approval.—On February 28, 1861,[3] a message was received from the President of the United States, by A.J. Glossbrenner, his private secretary, notifying the House that he did, on the 27th instant, approve and sign bills of the following titles:

H.R. 435. An act to refund to the Territory of Utah the expenses incurred in suppressing Indian hostilities in the year 1853; and

H.R. 714. An act establishing certain post routes.

And this day,

H.R. 864. An act making appropriations for the consular and diplomatic expenses of the Government for the year ending June 30, 1862;

Also notifying the House that "An act for the relief of Hockaday & Ligget," having been presented to the President on the 16th of February, 1861, and not having been returned by him within ten days (Sundays excepted), it has now become a law under the Constitution of the United States.

6615. On February 23, 1867,[4] the President sent to the House a message notifying the House that the following bills, having been presented to the President on

[1] First session Fifty-seventh Congress, Journal, p. 872; Record, pp. 7595, 7600.

[2] First session First Congress, Journal, p. 43 (Gales & Seaton ed.); Annals, p. 432.

[3] Second session Thirty-sixth Congress, Journal, p. 424.

[4] Second session Thirty-ninth Congress, Journal, p. 479.

the 9th day of February, 1867, and not having been returned by him within ten days (Sundays excepted), had become laws under the Constitution of the United States:

H. R. 874. An act to regulate the duties of the Clerk of the House of Representatives in preparing for the organization of the House, and for other purposes; and

H. R. 902. An act to declare the sense of an act entitled "An act to restrict the jurisdiction of the Court of Claims," etc.

6616. A message of the President is usually communicated to both Houses on the same day, but an original document accompanying can of course be sent to but one House.—On February 2, 1858,[1] on motion of Mr. Alexander H. Stephens, of Georgia, by unanimous consent, the Speaker laid before the House the following message this day received from the President of the United States, which was read, and was as follows:

To the Senate and House of Representatives of the United States:

I have received from J. Calhoun, esq., president of the late constitutional convention of Kansas, a copy, duly certified by himself, of the constitution framed by that body, with the expression of a hope that I would submit the same to the consideration of Congress "with the view of the admission of Kansas into the Union as an independent State." In compliance with this request, I herewith transmit to Congress, for their action, the constitution of Kansas, with the ordinance respecting the public lands, as well as the letter of Mr. Calhoun, dated at Lecompton on the 14th ultimo, by which they were accompanied. Having received but a single copy of the constitution and ordinance, I send this to the Senate.[2] * * *

6617. On March 28, 1898,[3] the President of the United States transmitted to the House a message relating to the loss of the battle ship *Maine* in the harbor of Habana.

The message having been read, Mr. Joseph W. Bailey, of Texas, rising to a parliamentary inquiry, said:

I understand that under the rules of the House the message must be referred to the proper committee without debate, but I understood the President to say in his message that he lays before Congress the conclusions of the naval board of inquiry and the testimony. I desire to inquire if that has reached the House?

The Speaker[4] said:

The report and testimony have not reached the House. There is a note attached to the message which was not read by the Clerk. I will read it to the House:

"The findings of the court and testimony are sent with the message to the Senate."

6618. When the President was prevented by adjournment from returning a bill with his objections it was formerly customary for him at the next session to communicate his reasons for not approving.—On November 6, 1812,[5] President Madison sent a message addressed to the Senate and House of Representatives stating:

The bill entitled "An act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization," which passed the two Houses at the last session of Congress, having appeared to me liable to abuse by aliens having no real purpose of effectuating a naturalization, and therefore

[1] First session Thirty-fifth Congress, Journal, p. 270; Globe, p. 533.

[2] See also section 6590 of this volume.

[3] Second session Fifty-fifth Congress, Record, pp. 3285, 3286.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Twelfth Congress, Journal, p. 544.

not having been signed, and having been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law. I recommend that provision be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes.

The message was referred to a select committee.[1]

6619. On December 15, 1847,[2] a message was received from the President of the United States and was at once read. In this message the President stated that on the last day of the preceding session of Congress a bill entitled "An act to provide for continuing certain works in the Territory of Wisconsin, and for other purposes," which had passed both Houses, was presented to him for his approval. He entertained insuperable objections to the bill, but the short period of time before the close of the session allowed him no time to prepare his objections and communicate them to the House. For this reason the bill was retained and failed to become a law. Therefore the President deemed it proper at this time (the beginning of the succeeding session) to state his objections to the bill.[3]

6620. On January 7, 1859,[4] the Speaker, by unanimous consent, laid before the House a message received from the President of the United States, in which he gave his reasons for not approving on the last day of the last session of Congress "A joint resolution in regard to carrying the United States mails from St. Joseph, Mo., to Placerville, Cal." This resolution authorized and directed the Postmaster-General—

to order an increase of speed upon said route, requiring the mails to be carried through in thirty days, instead of thirty-eight days, according to the existing contract: Provided, The same can be done upon a pro rata increase of compensation to the contractors.

6621. The annual message of the President is usually referred when read to the Committee of the Whole House on the state of the Union, whence it is distributed by action of the House to appropriate committees.

Messages of the President other than the annual messages, are usually referred to standing committees at once, even in matters of great importance. (Footnote.)

Form of resolutions for the distribution of the President's annual message.

The resolutions distributing the President's annual message are reported by the Committee on Ways and Means.

When the annual message of the President is received and has been read, it is usual for a Member of the majority party[5] to offer the following resolution:

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[1] In recent years it has not been customary to send messages of this kind. (See Record, first session Fiftieth Congress, p. 9538, bills H.R. 11139 and 11262.) At the close of the Fifty-fourth Congress several general appropriation bills were not approved; but the President could not have communicated his reasons, as his term expired with the Congress. Sometimes the President sends notice of the signature of a bill at the next session. (See Record, p. 363, second session Fiftieth Congress.)

[2] First session Thirtieth Congress, Journal, p. 82; Globe, p. 36.

[3] The Globe shows that the Speaker (Robert C. Winthrop) declared that all messages of the President, whether veto or not, were by precedent spread on the Journal. (First session Thirtieth Congress, Globe, p. 36.)

[4] Second session Thirty-fifth Congress, Journal, p. 151; Globe, p. 272.

[5] Usually the Chairman of the Ways and Means Committee.

Resolved, That the message of the President and accompanying papers be referred to the Committee of the Whole House on the state of the Union and be printed.[1]

Messages from the President other than the annual messages[2] are referred in accordance with the rule relating to the order of business to appropriate standing committees.[3] This is true even of the special message at the opening of a special session.[4]

6622. On December 16, 1889,[5] Mr. William McKinley, jr., of Ohio, chairman of the Committee on Ways and Means, being recognized, said:

[1] I am instructed by the Committee on Ways and Means to report a resolution for the distribution of the President's message. That message some days ago was referred to the Committee of the Whole House on the state of the Union, and to that committee this resolution should go. I move, therefore, that the House resolve itself into the Committee of the Whole for the purpose of considering the resolution.[6]

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[1] See Records, second session Fifty-fifth Congress, p. 11; first session Fifty-fourth Congress, p. 26; first session Fifty-second Congress, p. 20; first session Fifty-first Congress, p. 92.

[2] On January 16, 1833 (second session Twenty-second Congress, Journal, pp. 204–206; Debates, pp. 1082–1089) when President Jackson sent to the House the message relating to the nullification troubles in South Carolina, there was a long debate as to the reference. It was urged that it was a most proper matter to go to the Committee of the Whole House on the state of the Union, but there was objection that such a course, by producing debate, would intensify excitement. Therefore the House sent the message to the Committee on the Judiciary.

[3] Section 2 of Rule XXIV. (See sec. 3089 of vol. IV.)

[4] First session Fifty-fifth Congress, Record, p. 19.

[5] First session Fifty-first Congress, Record, p. 188.

[6] This distribution of the President's annual message is a survival of the old practice, according to which messages of the President were referred to the Committee of the Whole, which debated them and determined what should be done with the several portions, generally recommending their reference to select committees, standing committees not then being an established institution of the House. (Annals of Congress, First Congress, Vol. II, pp. 1847–1850, see also sec. 6623 of this volume.) These recommendations took the form of resolutions which originated in the Committee of the Whole and were reported by it to the House. The change of practice in the House has been such that now the Ways and Means Committee report the resolutions for reference of the message, and they are referred to the Committee of the Whole House on the state of the Union, which considers them and reports them to the House for adoption.

The treatment of the annual messages has varied somewhat. Formerly they were kept in Committee of the Whole House on the state of the Union and therein debated at various times. This occurred as late as 1856. (First session Thirty-fourth Congress, Journal, pp. 532, 544, 659, 1430.) At a later session in the same Congress the annual message was debated at length in the House on the motion to refer and print. (Third session Thirty-fourth Congress, Journal, pp. 82, 221.) In 1860 the usual motion to refer the annual message to the Committee of the Whole House on the state of the Union was amended so that so much as referred to the perilous condition of the country should go to a special committee of one from each State. The remainder of the message was on the following day considered in Committee of the Whole House on the state of the Union, which at once reported the usual resolutions of distribution. These resolutions had been moved in the committee by Mr. John Sherman, of Ohio, chairman of the Ways and Means Committee. (Second session Thirty-sixth Congress, Journal, pp. 36, 42; Globe, p. 16.) In the next Congress the resolutions were offered in the House by unanimous consent by Mr. Ehhu B. Washburne, of Illinois, who was chairman of the Committee on Commerce. (First session Thirty-seventh Congress, Journal, p. 49.) At the next session the message was debated in Committee of the Whole House on the state of the Union, and after general debate had been closed by order of the House, the Committee of the Whole, on motion of Mr. Thaddeus Stevens, of Pennsylvania, chairman of the Ways and Means Committee, rose and reported the resolutions. (Second Session Thirty-seventh Congress, Journal, pp. 37, 39.) At the next session the resolutions were reported from the Committee of the Whole House on the state of the union (third session Thirty-seventh Congress, Journal, p. 89); but at the succeeding session they were reported from the Ways and Means Committee, Mr. Thaddeus Stevens, chairman of that committee,

This resolution being agreed to, the House resolved itself into Committee of the Whole, and after some time therein the committee rose and reported the resolution with the recommendation that it be adopted by the House. The House agreed to the recommendation.

The resolution provided:

*Resolved,*That so much of the annual message of the President of the United States to the two Houses of Congress at the present session as relates to our foreign affairs, including appropriations therefore, together with the accompanying correspondence and documents, the Pan-American Congress, the International Maritime Congress, the regulation of Chinese immigration, the Canadian fisheries and boundaries, the enlargement of extradition with Great Britain, Spanish and Venezuela claims, West India trade, Isthinian transit, and the reorganization of our consular and diplomatic service, be referred to the Committee on Foreign Affairs.

That so much of said message and accompanying documents as relates to the public debt and the public revenues, to the national finances, to the revenue provisions of treaties with foreign countries, having connection with revenue questions, and the revision of the tariff and internal-revenue laws, to the wants and condition of the Treasury, and the reduction of the surplus, be referred to the Committee on Ways and Means.

That so much of said message and accompanying documents as relates to the appropriation of the revenue for the support of the Government, as herein provided, namely, for legislative, executive, and judicial expenses, for sundry civil expenses, for fortifications and coast defenses, for District of Columbia, for pensions, and for all deficiencies, be referred to the Committee on Appropriations.

That so much as relates to the judiciary of the United States, to legislation touching citizenship, naturalization, bankrupt law, protection of Federal officers and witnesses, international copyright, and the reorganization of the Department of Justice, be referred to the Committee on the Judiciary.

And so on through the list of subjects included in the message.

On December 24, 1895, when Mr. Nelson Dingley, of Maine, chairman of the Committee on Ways and Means, presented the resolutions, he obtained unanimous

making the report by unanimous consent. (First session Thirty-eighth Congress, Journal, p. 55; Globe, p.32.) The same practice again occurred at the second session of the Thirty-eighth Congress. (Journal, p. 29; Globe, p. 22.) It was considered proper to debate the message in Committee of the Whole after it had been distributed. (First session Thirty-eighth Congress, Journal, pp. 35, 56–58, 306, 434.) Beginning with the Thirty-ninth Congress the practice of reporting the resolutions from the Committee of the Whole was resumed (first session Thirty-ninth Congress, Journal, p. 105; second session Thirty-ninth Congress, Journal, p. 55; second session Fortieth Congress, Journal, p. 56, etc.), the only exception for a series of years being at the time of the impeachment of President Johnson, when the House, not intending to consider the message, laid it on the table. (Third session Fortieth Congress, Journal, p. 41; Globe, p. 34.) While the resolutions were offered in Committee of the Whole by the chairman of the Ways and Means Committee, they do not seem to have been offered by authority of that committee (first session Forty-third Congress, Record, p. 98; first session,Forty-fourth Congress, Record, p. 255) until Mr. Fernando Wood, of New York, reported the resolutions from the Ways and Means Committee in the Forty-fifth Congress, and they were by the House referred to the Committee of the Whole House on the state of the Union (first session Forty-fifth Congress, Journal, pp. 192, 103; Record, p. 203; third session Forty-filth Congress, Journal, p. 63; Record, pp. 74, 80; second session Forty-sixth Congress, Journal p. 46); but in one instance Mr. Wood waited until the House had resolved itself into Committee of the Whole, and then submitted the resolutions "by instructions of the Ways and Means Committee." (Second session Forty fifth Congress, Record, p. 101; Journal, p. 81.) This was an exception, however, and the general practice since has been to have the resolutions reported from the Ways and Means Committee and referred to the Committee of the Whole House on the state of the Union. (First session Forty-eighth Congress, Journal, p. 255.) The resolutions seem generally in recent years to have been reported without unanimous consent, as if privileged.

consent for their consideration in the House,[1] but they are usually considered in Committee of the Whole.[2]

6623. Recent instance wherein the House has resolved itself into Committee of the Whole House on the state of the Union for debate on the President's message.—On December 12, 1895,[3] after a few bills had been passed by unanimous consent, but not after a call of committees had progressed for an hour, Mr. Nelson Dingley, of Maine, announced that Mr. Galusha A. Grow, of Pennsylvania, desired to speak on the President's message, and therefore moved that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering the President's message. No unanimous consent was asked, nor was objection made when the motion was made.

The motion was agreed to and the House having resolved itself into Committee of the Whole House on the state of the Union, Mr. Grow addressed the committee.

Mr. Grow having concluded, Mr. Dingley moved that the committee rise.

The committee accordingly rose and the Chairman[4] reported that the committee had had under consideration the annual message of the President of the United States and had come to no resolution thereon.

This was before the resolutions distributing the President's message had been agreed to.

6624. On November 1, 1877,[5] the House resolved itself into Committee of the Whole House on the state of the Union, for consideration of the President's message (which had already been distributed) and debate occurred on a bill relating to resumption of specie payments, which bill was not before the Committee of the Whole but was actually in the Committee on Banking and Currency. The motion to go into Committee of the Whole was made by Mr. William D. Kelley, of Pennsylvania, the oldest member in continuous service.

6625. The Committee of the Whole, having under consideration the President's message, may report in part, recommending a resolution for adoption.—On December 16, 1869,[6] the Committee of the Whole House on the state of the Union arose, and the Speaker having resumed the Chair, the Chairman reported that the Committee had had under consideration the state of the Union generally, and particularly the annual message of the President of the United States, and had directed him to report the following resolution:

Resolved, That the proposition, direct or indirect, to repudiate any portion of the debt of the United States is unworthy of the honor and good name of the nation; and that this House, without distinction of party, hereby sets its seal of condemnation upon any and all such propositions.

The questions having been raised as to the resolution, the Speaker[7] said:

The resolution is entirely in order. It is competent for the Committee of the Whole, having under consideration the President's message, to make any report which the majority of the committee may indicate, and on the rising of the committee such report comes immediately before the House for its

[1] First session Fifty-fourth Congress, Record, p. 301.

[2] Second session Fifty-fourth Congress, Record, p. 56.

[3] First session Fifty-fourth Congress, Journal, p. 43; Record, pp. 155–158.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Forty-fifth Congress, Record, p. 215.

[6] Second session Forty-first Congress, Journal, pp. 77, 78; Globe, p. 195.

[7] James G. Blaine, of Maine, Speaker.

action. * * * This may be considered in the nature of a partial report. The action of the Committee of the Whole on the President's message may not be exhausted after hundreds of such reports. The Committee of the Whole have not reported back the President's message, but merely report that they have come to this resolution thereon. The President's message may be the foundation of any number of reports from the Committee of the Whole.

The resolution was then agreed to, yeas 124, nays 1.

6626. The Committee of the Whole, in distributing the President's message, may recommend reference of portions to a standing or select committee with instructions.—On December 16, 1852,[1] the President's message was under consideration in Committee of the Whole House on the state of the Union, and a resolution was offered to refer so much of it as related to the existing tariff to the Committee on Ways and Means. Various attempts were made to amend this resolution by substituting for it a bill, etc., but the Chairman[2] ruled the amendment out of order, but intimated that an amendment instructing the committee to report the text of a bill relating to the general subject would be admissible. Accordingly Mr. Thomas L. Clingman, of North Carolina, offered an amendment instructing the committee to report a bill in the "following words," appending the text of a bill. This amendment was considered by the committee. On December 21,[3] this amendment was rejected.

6627. On December 11, 1854,[4] the President's message was under consideration in Committee of the Whole House on the state of the Union, when Mr. John Wheeler, of New York, offered the following:

Resolved, That so much of the said message as relates to the bombardment and burning of the town of San Juan de Nicaragua, or Greytown, be referred to a select committee of thirteen, and that said committee be instructed to report the facts in relation thereto, and that said committee. have power to send for persons and papers.

Mr. John S. Millson, of Virginia, raised a question of order that the Committee of the Whole might not appoint a special committee.

The Chairman[5] said:

The resolutions make no reference to any committee. They only recommend to the House to refer different portions of the message to certain committees. * * * The Chair is not aware of any principle of order or rule of the House that would prevent this committee from recommending the reference of any part of the message to a select committee. The Chair does not know that it has been usual to do it, but certainly it is not inconsistent with the object of the resolutions offered by the gentleman from Alabama.[6]

6628. While the President's annual message is usually referred entire to the Committee of the Whole, yet a portion of it has been referred to a select committee.—On December 4, 1860,[7] the annual message of the Presi-

[1] Second session Thirty-second Congress, Globe, pp. 78–83.

[2] Charles E. Stuart, of Michigan, Chairman.

[3] Globe, p. 121.

[4] Second session Thirty-third Congress, Globe, p. 29; Journal, p. 57.

[5] Frederick P. Stanton, of Tennessee, Chairman.

[6] Mr. George S. Houston, of Alabama, chairman of the Committee of Ways and Means, upon whom for many years has devolved the duty of preparing and presenting the resolutions distributing the President's annual message. (See secs. 1461, 1462 of this work.)

[7] Second session Thirty-sixth Congress, Journal, pp. 36, 37; Globe, pp. 6, 7.

dent of the United States was received and read, whereupon the usual motion was made that it be referred to the Committee of the Whole House on the state of the Union.

Thereupon Mr. Alexander R. Boteler, of Virginia, proposed the following amendment to the motion to refer, which was adopted:

And that so much of the President's message as relates to the present perilous condition of the country be referred to a special committee of one from each State.

This amendment was agreed to, and the motion as amended was also agreed to.

6629. In 1801 President Jefferson discontinued the custom of making an annual speech to Congress, and transmitted the first annual message.

Ceremonies at the delivery of the annual speech of the President of the United States to Congress.

In response to the President's annual speech the Speaker, attended by the House, used to deliver an address.

Until December 8, 1801, the President of the United States delivered to Congress an annual speech instead of transmitting a message. The two Houses met in joint meeting, either in the Senate Chamber or Hall of the House, and the President addressed them. He was sometimes accompanied by his secretary and the heads of the several Departments of the Government.[1] It seems to have been the custom for the President to take the chair of the Speaker (when the joint meeting was held in the Hall of the House), the President and Clerk of the Senate being placed on the right hand of the chair, and the Speaker and Clerk of the House on the left.[2]

It was the custom for the House to prepare an address, which the Speaker, attended by the House, carried to the President of the United States.[3]

On December 8, 1801,[4] the Secretary of the President appeared and, addressing the Speaker, announced that he was "directed by the President of the United States[5] to hand you a letter, accompanying a communication, in writing." The letter stated the inconvenience of the mode heretofore practiced, of making by personal address the first communications between the Legislative and Executive branches, and therefore he had adopted that by message, as used on all subsequent occasions through the session. In doing this he had principal regard to the convenience of the legislature, to the economy of their time, to their relief from the embarrassments of immediate answers on subjects not yet fully before them, and to the benefits thence resulting to public affairs. He therefore begged leave to communicate the inclosed message.

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[1] Third session Fifth Congress, Annals, p. 2420.

[2] First session Fifth Congress, Annals, p. 54.

[3] Former joint rule No. 10 provided: "When the Senate and House of Representatives shall judge it proper to make a joint address to the President it shall be presented to him in his audience chamber by the President of the Senate in the presence of the Speaker and both Houses." This joint rule dated from November 13, 1794. May 5 and 14, 1789 (first session First Congress, Journal, pp. 27, 32, 34; Annals, pp. 33, 36, 318), the House and Senate joint committee disagreed as to the title by which the President of the United States should be addressed. The House were at this time using the simple form "To the President of the United States." The Senate committee favored "His Excellency" or "His Highness, the President of the United States of America, and Protector of their Liberties." The Senate, however, overruled its committee and decided in favor of the simple form contended for by the House.

[4] First session Seventh Congress, Journal, pp. 7, 8. (Gales & Seaton ed.)

[5] Thomas Jefferson.

All messages of the President, whether annual or otherwise, have been transmitted "in writing" the President's secretary announcing to this day that he is instructed to deliver to the House a message "in writing."

6630. A joint rule formerly prescribed the method of presenting a joint address of the two Houses to the President of the United States.

President Madison declined a conference with a committee of the Senate.

On July 27, 1789,[1] the House, as one of its joint rules, adopted the following, which on the succeeding day was agreed to by the Senate:

> That when the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber by the President of the Senate, in the presence of the Speaker and both Houses.[2]

President Madison declined a conference with a committee of the Senate.[3]

6631. Ordinary messages of the President are referred without debate, usually by the Speaker, but sometimes by the House itself.

The President's annual message is usually referred by the House to the Committee of the Whole House on the state of the Union.

The reference of messages from the President is governed by section 2 of Rule XXIV:

> Messages from the President shall be referred to the appropriate committees without debate.

This was also the rule in the Fifty-first and Fifty-fourth Congresses. In the Fiftieth Congress the rule was:

> After the Journal is read and approved each day, other than Monday, the Speaker shall lay before the House for reference messages from the President, etc.

In the Fifty-third Congress the rule was in section 1 of Rule XXIV, and provided:

> After the Journal is read and approved each day, the Speaker shall lay before the House, for reference without debate, messages from the President, etc.

In the form first proposed by the Committee on Rules in the Fifty-first Congress[4] it was intended to have messages of the President referred by the Speaker like other communications from the Executive Departments of the Government, but during the consideration of the report the Committee on Rules modified the rule, adopting the present form, so that the reference of President's messages should be done as in preceding Congresses.[5] In preceding Congresses the messages of the President were usually referred by the Speaker to the committees having jurisdiction under the rules,[6] but the House at any time might refer the message itself, on motion made from the floor,[7] to such committee as it should select.[8] In the more recent

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[1] First session First Congress, Journal, p. 67 (Gales & Seaton ed.); Annals, pp. 58, 59, 698.

[2] This joint rule has not been in use since the very early days of the House, and the Executive has communicated to the two Houses by message.

[3] American State Papers, Miscel., Vol. II, pp. 215, 217, 218.

[4] First session Fifty-first Congress, Record, p. 1107.

[5] First session Fifty-first Congress, Record, p. 1287.

[6] First session Fiftieth Congress, Record, pp. 7901, 8012.

[7] First session Fiftieth Congress, Record, pp. 527, 2705, 4139, 9075.

[8] The House also has referred messages to select committees, to which it gave powers and instructions. (Second session Forty-fourth Congress, Journal, pp. 285, 305.)

Congresses the Speaker has usually referred the messages to the committees having jurisdiction under the rules, and the House has not exercised its power to interfere with such references.[1] The President's annual message, however, is generally referred to the Committee of the Whole House on the state of the Union by a motion or resolution offered from the floor[2]

6632. A message from President Monroe asking for the adjustment of certain personal claims was referred to a select committee with instructions.—On January 6, 1825,[3] President Monroe sent to the Congress a message stating that his term of service would expire at the end of the session of Congress; that he had been long in the service of his country, at home and abroad; and that it was his wish that all matters of account and claims between his countrv and himself should be settled with that strict regard to justice which is observed in settlements between individuals in private life. "It would be gratifying to me," he said, "and it appears to be just, that the subject should be now examined, in both respects, with a view to a decision hereafter. No bill would, it is presumed, be presented for my signature which would operate either for or against me, and I would certainly sanction none in my favor." He goes on to say that he wishes the examination made in order that he may enjoy his retirement in tranquillity, and also states that the public may derive considerable advantage from the precedent in the future government of the country.[4]

On January 11[4] the message was considered, and Mr. Samuel D. Ingham, of Pennsylvania, moved that it be referred to a select committee.

A long debate followed in which the delicacy of the subject was discussed and the peculiar relations of the House to the Executive. By some it was proposed that the claim should be referred to the Committee on Claims, like the claim of the ordinary citizen. It was urged, on the other hand, that the Committee on Claims was overburdened, and that the distinguished station of the applicant entitled him to reference to a select committee.

Mr. John Forsyth, of Georgia, moved to amend the motion with instructions "to receive from the President any evidence or explanation of his claims he may think proper to present, and report the same to this House."

These instructions were voted, 90 yeas to 70 noes.

The motion was then agreed to as amended.

Mr. Ingham was appointed chairman of the committee, and on February 21,[5] made a report. This report contained no recommendations, simply setting forth the findings of fact.[6]

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[1] See reference of messages relating to relations with Spain, second session Fifty-fifth Congress, Record, p. 3707; also Record for April 25, 1898.

[2] First session Fifty-first Congress, Record, p. 92; second session Fifty-third Congress, p. 15; second session Fifty-fifth Congress, p. 11.

[3] Second session Eighteenth Congress, Journal, p. 110; Debates, p. 150.

[4] Journal, p. 123; Debates, pp. 170–186.

[5] Journal, p. 255.

[6] House Report No. 79, second session Eighteenth Congress. In the Nineteenth Congress, on December 25, 1825, the subject was referred to a select committee, and a bill (H. R. 177) "for the relief of James Monroe" was reported and became a law. (See Journal, pp. 90, 181, 374, first session Nineteenth Congress.)

6633. The House may refer a message of the President to a select committee, and may specify its number, instruct it, and give it power to send for persons and papers.—On February 2, 1858,[1] a message was received from the President relating to the Lecompton constitution of Kansas.

Mr. Alexander H. Stephens, of Georgia, moved that the message be referred to the Committee on Territories.

At once a proposition was made for reference to a select committee, and after a long parliamentary struggle, and on February 8, the House referred the message in accordance with the following resolution:

Resolved, That the message of the President concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of fifteen, to be appointed by the Speaker,[2] that said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question or propriety of the admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that said committee have power to send for persons and papers.[3]

6634. On January 22, 1877,[4] the Speaker, by unanimous consent, laid before the House a message of the President of the United States transmitting a reply to a resolution of the House making inquiry as to the use of United States troops in certain States.

The message having been read, Mr. Fernando Wood, of New York, submitted a resolution providing that the message be referred to a select committee with certain instructions, and providing that the committee might have power to send for persons and papers and administer oaths.

Mr. John A. Kasson, of Iowa, made the point of order that the resolution was not in order except upon a motion to suspend the rules.

The Speaker[5] held that unanimous consent having been given to lay the said message before the House, the question of reference in the event of different committees being proposed was prescribed by Rule 43,[6] and the resolution, so far as it created a select committee and conferred power to send for persons and papers, was in order.[7] It was not necessary that the House refer to a select committee already in existence. It might refer the message to one to be appointed.

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[1] First session Thirty-fifth Congress, Journal, pp. 270, 279, 349, 369; Globe, p. 535.

[2] The rules provide now that all select committees shall be appointed by the Speaker (see sec. 4470 of Vol. IV), but in 1858 the House had the power to appoint the committee itself.

[3] In recent practice the powers of a committee are usually enlarged by a resolution reported from the Committee on Rules.

[4] Second session Forty-fourth Congress, Journal, p. 285; Record, pp. 814–817.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] Rule 43, which no longer exists, was as follows: "When a resolution shall be offered or a motion made to refer any subject, and different committees shall be proposed, the question shall be taken in the following order: The Committee of the 'Whole House on the state of the Union, the Committee of the Whole House, a standing committee, or a select committee."

[7] This committee was appointed January 26. (Journal, p. 305.)

6635. Messages of the President are regularly laid before the House only at the time prescribed by the order of business.—On April 3, 1848,[1] while the House was considering resolutions relating to the movements in France and Italy for freer governments, Mr. Charles J. Ingersoll, of Pennsylvania, asked that the message this day received from the President of the United States, and now in the possession of the Speaker, be laid before the House.

The Speaker[2] said that it could be done only by unanimous consent of the House; and hearing no objection, he accordingly handed the message to the Clerk.

The Clerk was in the act of opening the said message, when Mr. George Ashmun, of Massachusetts, objected to its being laid before the House at this time.

Mr. Charles J. Ingersoll raised the point of order that the objection came too late, the message having passed from the possession of the Speaker.

The Speaker decided that the objection was in season, the reading of the message not having been commenced, and that the message could not now be laid before the House.

Mr. Ingersoll having appealed, the decision of the Chair was sustained—yeas 90, nays 30.

6636. On August 14, 1848,[3] a message in writing was received from the President of the United States, and the Speaker announced to the House, on opening the said message, that it related to the approval by the President of the United States of the bill (H. R. 201) entitled "An act to establish the territorial government of Oregon."

Objection being made to the reading of the message at this time, it remained on the Speaker's table when the House was adjourned sine die.

On December 6, 1848,[4] the second day of the next session of Congress, this message was laid before the House.

6637. On January 3, 1849,[5] Mr. Frederick P. Stanton, of Tennessee, asked that the message of the President of the United States on the previous day, and now on the Speaker's table, be laid before the House.

Mr. Stanton urged that as the Constitution made it the duty of the President to communicate to the House, it was equally the duty of the House to listen to the communication. If the President should come to the House in person, as he had done in the earlier years of the Government, his communication would be received at once.

The Speaker[2] said that the Chair was not the servant of the President, but the servant of this House. It was his duty to obey the rules of the House—to receive Executive communications respectfully at the door of the House, but not to present them to the House out of the regular order of business, unless the House called for them. The Constitution of the United States declared that each House

[1] First session Thirtieth Congress, Journal, pp. 650, 651.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] First session Thirtieth Congress, Journal, p. 1293; Globe, p. 1081.

[4] Second session Thirtieth Congress, Journal, p. 54.

[5] Second session Thirtieth Congress, Journal, pp. 175, 176; Globe, pp. 144, 145.

might determine its own rules of proceeding. This House had done so, and by one of these rules had declared that—

after one hour shall have been devoted to reports from committees and resolutions, it shall be in order, pending the consideration or discussion thereof, to entertain a motion that the House do now proceed to dispose of the business on the Speaker's table, and to the orders of the day; which being decided in the affirmative, the Speaker shall dispose of the business on his table in the following order, viz, messages and other Executive communications.[1]

A note appended to the branch of the rule which prescribed that messages and communications should be first received, gave the date of its adoption as the 14th of September, 1837; at which time the Speaker believed the chair was occupied by the present Executive of the United States—though of that fact he was not quite certain—it might not be so; but whether it was so or not, that rule was adopted by the House. The Chair had always enforced it; and if messages had not been seasonably laid before the House it was in consequence of the action of the House itself, and not by any decision of the Speaker. It would be in the recollection of many gentlemen that at the close of the last session of Congress the Speaker had attempted again and again to lay before the House a message from the President, which was not laid before it until after the commencement of the present session. The House insisted upon other proceedings—calling for the yeas and nays, and submitting different motions. The Speaker, in the course he had taken, had conformed not only to the rules of the House, but to the precedents established by all his predecessors; and until the House changed the rule he should continue to execute its order. The Speaker would remark that during the last session of Congress—on the 3d of April, 1848—a question had been raised somewhat analogous to that now submitted by the gentleman from Tennessee. The Chair here quoted the precedent.

Mr. Stanton appealed, but subsequently withdrew the appeal.

6638. Messages from the President used at times to lie on the table several days before they could be laid before the House in the regular order of business. Such an instance is observed on January 9, 1850,[2] when unanimous consent was refused to present to the House and have laid on the table and printed a message that had been received several days before.

6639. While a question of privilege is pending the reading of a message from the President is in order only by unanimous consent.—On December 4, 1856,[3] the question before the House was the motion of Mr. Galusha A. Grow, of Pennsylvania, to lay upon the table the motion to reconsider the vote by which the House determined that the oath should not be administered to John W. Whitfield as the Delegate elect from the Territory of Kansas.

Mr. Humphrey Marshall, of Kentucky, rose and claimed as a question of constitutional privilege that the message of the President of the United States, transmitted to the House on the preceding day, be now read.

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[1] The rules relating to the order of business are Dow different.

[2] First session Thirty-first Congress, Globe, p. 124.

[3] Third session Thirty-fourth Congress, Journal, p. 48; Globe, p. 38.

The Speaker[1] stated that a question of privilege was already pending, and that it could not be superseded by other business except by the unanimous consent of the House.

Objection being made to the reading of the message, the Speaker decided that it could not now be read.

From this decision of the Chair Mr. Humphrey Marshall appealed, saying in the course of his remarks:

> The point I present relates to my constitutional privilege as a Member of this House to hear and to have read the President's message, which has been communicated to this House; and, as I understand the decision of the Chair, my question of privilege can not now be made because another question of privilege is pending. My ground is that it is not a question of privilege which can come in contact with mine, because the subject to which it relates is a creature of statute; that he is not a Member of this House; that he holds his place ex gratia and can not raise a question of debate in the House which can get inside of, or oust, my constitutional privilege as a Member.

The Speaker said:

> The Chair will state the question: A question relating to the privilege of a Delegate elect from one of the Territories being before the House, the gentleman from Kentucky calls for the reading of the President's message. In the opinion of the Chair it is a question relating to priority of business which is submitted, and the Chair rules it out of order as being in conflict with the question of privilege before the House; and when the gentleman from Kentucky takes an appeal, that appeal must be decided under the rule relating to the priority of business—the one hundred and thirteenth rule—which states that all questions relating to the priority of business to be acted on must be decided without debate.
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> It is certainly a question for the House to decide what class of business it will proceed with, and that question must be decided, under the positive rule of the House, without debate. The appeal must follow the same rule. * * * The Chair does not decide the question presented by the gentleman from Kentucky. That is for the House to decide. The Chair only decides the manner in which the Chair reaches his decision.

On the succeeding day Mr. Marshall withdrew his appeal.

6640. A message from the President is received during consideration of a question of privilege, but does not displace the pending business.— On April 26, 1838,[2] during the discussion of the report of the committee which had investigated the duel between Messrs. Graves and Cilley, a message was announced from the President of the United States. Objection being made to the reception of the message, the Speaker[3] said it was a delicate question between the parliamentary rule that pending a question of privilege no other business could be entertained and the constitutional right of the Chief Magistrate to make a communication to the House. If compelled to decide, he should decide that the message could be received, but he hoped that the objection would be withdrawn. It was withdrawn and the message was received. The next day the message was read and referred by consent.

6641. On March 30, 1894,[4] during the consideration of a contested-election case under a special order, the Speaker laid before the House the message from the President of the United States returning, with his objections, the bill (H. R. 4956)

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] Second session Twenty-fifth Congress, Journal, p. 817; Globe, p. 334.

[3] James K. Polk, of Tennessee, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 292, 293, 295; Record, pp. 3351, 3352.

entitled "An act directing the coinage of the silver bullion held in the Treasury, and for other purposes."

Mr. Charles A. Boutelle, of Maine, made the point of order that under the ruling of the Chair, heretofore made, such a document as a message from the President of the United States could not be submitted or acted upon by the House, or entertained by it, pending the consideration of any question under the special order.

The Speaker[1] overruled the point of order, and held that while the message would not now be acted upon, yet in pursuance of the requirements of the Constitution and practice of the House it should now be laid before the House and entered upon the Journal.

Mr. Boutelle stated that he appealed from the decision just rendered.

The Speaker declined to entertain the appeal.

6642. On March 30, 1894,[2] the House received a message from the President wherewith he returned, without his approval, the bill (H. R. 4956) "directing the coinage of the silver bullion held in the Treasury, and for other purposes."

At the time the message was received the House was considering a contested election case, and as soon as the message had been read,

Mr. Josiah Patterson, of Tennessee, demanded that the House proceed to the regular order of business.

Mr. Charles A. Boutelle, of Maine, thereupon moved that the House proceed, under the provisions of the Constitution, to reconsider the bill (H. R. 4956) entitled "An act directing the coinage of silver bullion held in the Treasury, and for other purposes."

Mr. William M. Springer, of Illinois, made the point of order that the motion of Mr. Boutelle was not now in order.

The Speaker[1] sustained the point of order, holding as follows:

There is before the House a question of the highest privilege, a question relating to the right of a Member of the House to his seat. The Constitution provides that each House shall determine the qualifications, returns, and election of its Members. The House is now discharging that duty, considering that question. Pending that the House has received and there has been read a message from the President of the United States containing his objections to a bill which has been passed by the House. The situation is this: The House is considering a matter of the highest privilege, made so by the Constitution, and is considering that matter also under a rule of its own, which provides that until it disposes of the matters mentioned in that rule it will consider no other business. Therefore the Chair overrules the motion to take up at this time the matter to which the President's message relates, and holds that it can be taken up after the disposition of the contested-election cases.

6643. It has ordinarily been considered a mark of disapprobation to lay a message of the President on the table.—On December 9, 1868,[3] the annual message of the President was, on motion of Mr. Elihu B. Washburne, of Illinois, laid on the table by a vote of 128 yeas, 38 nays. This action was taken as a means of expressing the disapprobation of the House as to the message, as appears from the debate.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 292, 293, 295; Record, p. 3353.

[3] Third session Fortieth Congress, Journal, pp. 39, 40; Globe, pp. 33–35.

6644. On August 15, 1876,[1] a motion was made to lay on the table and print a message from the President, the message being of such a character that the House did not consider action necessary. But Mr. James A. Garfield, of Ohio, opposed such a motion, on the ground that it would not be respectful to the President. The message was then referred to a committee.

6645. An instance wherein a message from the President to the House of one Congress was received by the House of the next, and laid on the table.—On March 4, 1867,[2] the Thirty-ninth Congress expired at 12 m., and the Fortieth Congress, convened under the act of January 22, 1867, assembled at 12 m. A message had been transmitted but not received from the President in the last moments of the expiring Congress, giving his reasons for signing the bill making appropriations for the support of the Army.

The Speaker,[3] by unanimous consent, laid this message before the House of the new Congress, and it was read and laid on the table.

6646. The reading of a message from the President having been prevented in the closing hours of a session, it was read at the beginning of the next session of the same Congress.—On August 14, 1848, in the closing hours of the session, a message was received from President Polk in relation to his approval of the bill for the establishment of the Territorial government of Oregon. The House was considering a resolution reported from the Committee on Printing. There was a call for the reading of the message, but, objection being made, the Speaker declined to put it before the House, as unanimous consent was refused. The House therefore adjourned without the message being read. The Journal says:[4]

> Objection being made to the reading of the said message at this time, it remained on the Speaker's table when the House was adjourned sine die.

This message was read at the beginning of the next session, but not until the day after the regular message had been received.[5]

6647. Messages sent to the House by the President before its organization have been retained in custody of the Clerk, but have not been read.

The contests over election of a Speaker in 1855 and 1859.

Discussion as to the status of the House with reference to the transaction of business before its organization by the choice of a Speaker.

On December 31, 1855,[6] the House was in the midst of a prolonged struggle over the election of a Speaker, 84 ballots having already been taken without result.[7] On this day a message, in writing, from the President of the United States was handed in at the Clerk's desk by Sidney Webster, his private secretary.

Mr. Thomas L. Clingman, of North Carolina, moved that the message be read.

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[1] First session Forty-fourth Congress, Record, p. 5685.

[2] First session Fortieth Congress, Journal, p. 9; Globe, p. 5.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] First session Thirtieth Congress, Journal, p. 1293; Globe, p. 1082.

[5] Second session Thirtieth Congress, Journal, p. 54.

[6] First session Thirty-fourth Congress, Journal, pp. 221–228, 231–233, 444, 511; Globe, pp. 111–113.

[7] The House was acting under general parliamentary law, rules not having been adopted.

Mr. Lewis D. Campbell, of Ohio, raised the question of order that the reading of the message was the transaction of business, and they could not transact business until the House was organized. He quoted the act of 1789.[1]

Mr. Clingman urged that the hearing of the message read was not of itself business.

The point being made by Mr. Campbell that they did not even know who were the Members of this House, Mr. Clingman raised the point that they were empowered to elect a Speaker, and Mr. James L. Orr, of South Carolina, quoted the language of the Constitution, "The House of Representatives shall choose their Speaker and other officers," to show that the body was the House. It was but respectful to the President that the message should be read. As to what could be done with the message after it was read was another question which had not been reached.

Mr. Alexander H. Stephens, of Georgia, quoted the section of the Constitution providing that the President shall from time to time give to Congress information of the state of the Union, etc. It was no action for the House to hear the message read. He agreed with the gentleman from Ohio that they could not take action until they were organized. But it was respectful to the President to listen to the message.

Mr. Israel Washburn, jr., of Maine, in reply admitted the direction of the Constitution, but contended that this was not at present a Congress, and could not be a Congress while either branch was unorganized. A Speaker must be elected before the Members could take the oath or transact business. Therefore the House had no right to receive and the President no right to send a message. It would be a breach of privilege for the President to tell the House it must organize. He could say nothing in regard to any business which they were to transact until the House was organized.

Mr. Stephens admitted that such an instance was unprecedented in this country, but it was shown by the Manual that the British Parliament had at one time been in session fourteen days before the election of a Speaker, during which time communications passed between the two Houses and between the House and the King.

Mr. Joshua R. Giddings, of Ohio, held that the sending of the message was an attempted innovation upon the uniform practice of the body from the foundation of the Government. If it was the duty of the President to communicate with this body in its unorganized state, why had he not sent the message four weeks before? The President had no right to communicate to the House until they became a constituent branch of Congress by electing a Speaker and taking the oath of office. It was an encroachment on their rights. He might as well have sent the message before they left their dwellings. They were as much a House then as now.

Mr. Orsamus B. Matteson, of New York, read the law of 1789, which provides for administering the oath to Members by the Speaker "previous to entering upon any other business."

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[1] Now section 30 of the Revised Statutes.

Mr. Humphrey Marshall, of Kentucky, contended that they were a House before they elected a Speaker; they were contemplated as a House before they elected a Speaker; and as a House they formed a constituent branch of the Congress of the United States. Mr. Marshall continued:

The President has taken the responsibility of addressing us while we are in a disorganized, or rather an unorganized condition. We assume here to be a House; but the Constitution says that each House shall be the judge of the election, return, and qualification of its own Members. We are here, and we have not exchanged credentials with each other, and we do not know, therefore, that the body of gentlemen here assembled, and assuming to be a House, is a qualified House; or if there is the majority of a quorum of a House here. And how are we to know that fact? Why, when the oath shall have been administered to us, and upon the presentation of our credentials. The Constitution says in the fifth section of the ninth article: "Each House shall be the judge of the election, return, and qualification of its own Members, and a majority of each shall constitute a quorum to do business."

I take it, therefore, that until there is an ascertained majority of a constitutional House, whose election and qualification are established, we are in an unorganized condition and can not possibly do any business. Yet we have assumed, as the President has a right to assume, that we are a House. We have assembled here, and have called the yeas and nays. Although we have not communicated to the President that we are organized and ready to receive communications from him, still, when his messenger appears at our door, and informs us that the President has sent a message to the House of Representatives, I think we should be stultifying ourselves if we were to turn round and say to him, "We are not yet a House so as to receive it." I am of opinion that we ought to receive it, and that, when we shall. have received it, it ought to lie just where it now lies until we are ready, by an organization, to read it and to act upon it.

Mr. George G. Dunn, of Indiana, moved to amend the motion of Mr. Clingman by striking out the same and inserting in lieu thereof the following:

That the packages delivered to the Clerk of this body on this day, purporting to be a communication from the President of the United States to the House of Representatives, be returned by the Clerk to the person who presented the same to him, as this House is not yet organized, and so is incompetent to receive such communication or entertain any question in regard to the same.

The previous question being ordered, the main question was put,[1] and the motion that the message be read was decided in the negative, 87 yeas to 126 nays.

Then, on motion of Mr. Henry Winter Davis, of Maryland, the whole subject was laid on the table by a vote of 108 yeas to 104 nays.

After further proceedings, Mr. Humphrey Marshall presented this resolution, which was not acted on, as the House adjourned pending its consideration:

Resolved, That the communication sent by the President of the United States to the House of Representatives, this day, be respectfully received by the House; and the Clerk is directed to take charge of the same until the organization of this House shall have been effected by the election of a Speaker.

When the House met on January 2, and after the Journal of the preceding session had been read, Mr. Joshua R. Giddings, of Ohio, moved to amend the same by striking out the following paragraph:

A message, in writing, from the President of the United States, was handed in at the Clerk's desk by Sidney Webster, his private secretary.

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[1] Under the old form of previous question a pending amendment fell. (See secs. 5443–5446 of this volume.)

And inserting in lieu thereof the following, viz:

After the reading of the Journal of yesterday, and before the Members had proceeded to ballot for Speaker, the private secretary of the President appeared at the bar of the House, and, without permission of the Members, announced that he was directed by the President of the United States to present to the House of Representatives a message, in writing.

He then handed a sealed package to the Hon. John W. Forney, Clerk of the House of Representatives of the last Congress, and now acting, under the act of 1791, as Clerk for the purpose of electing a Speaker; and having delivered said package, he withdrew.

Mr. Howell Cobb, of Georgia, moved to amend the proposed amendment by striking out the words "permission of," and inserting in lieu thereof the words "objection from;" but, pending this, moved to lay the whole subject on the table, which was carried, 125 yeas to 89 nays.

Motions that the message be received and read were afterwards made on January 2 and laid on the table, after discussion of the parliamentary law.

Finally, on February 2, 1856,[1] on the one hundred and thirty-third ballot Mr. Nathaniel P. Banks, jr., of Massachusetts, was elected by a plurality of votes, the election being subsequently confirmed by a resolution adopted by a majority vote. The House then proceeded to complete its organization by the election of a Clerk and other officers, and on February 14, 1856, on motion of Mr. Howell Cobb, of Georgia, by unanimous consent, the annual message of the President of the United States was taken up and read.

6648. On January 24, 1856,[2] while the House was still endeavoring to elect a Speaker, and before the result of the one hundred and twenty-fourth vote for Speaker had been announced, the Doorkeeper announced at the door of the House a message from the President of the United States.

Mr. Lewis D. Campbell, of Ohio, objected to receiving the same.

Mr. Alexander H. Stephens, of Georgia, moved that the message be received. And the question being put, it was decided in the affirmative, yeas 117, nays 84.

Thereupon a motion in writing from the President of the United States was handed in at the Clerk's desk by Sidney Webster, his private secretary.

Mr. Alexander K. Marshall, of Kentucky, moved that the message be read. And this motion was agreed to, yeas 108, nays 87.

The message having been read, Mr. Campbell moved that the message be laid on the table and committed to the Clerk, to be by him delivered to his successor.

Then, on motion of Mr. William H. Sneed, of Tennessee,

Ordered, That the whole subject be laid on the table.

On February 14 this message was taken up, the House being fully organized, and was referred.

6649. The first session of the Thirty-sixth Congress assembled December 5, 1859,[3] but no Speaker was elected until February 1, when William Pennington, of New Jersey, received a majority of all the votes cast on the forty-fourth vote, and was duly declared elected. On December 27, before the Speaker was elected, and

[1] First session Thirty-fourth Congress, Journal, pp. 231, 233; Globe, pp. 127, 128.

[2] First session Thirty-fourth Congress, Journal, pp. 364, 368, 544; Globe, pp. 294–298.

[3] First session Thirty-sixth Congress, Journal, p. 83; Globe, p. 268.

while the Clerk was presiding, a message, in writing, from the President of the United States was announced by James Buchanan, jr., his private secretary.

This message, on motion of Mr. John Cochrane, of New York, was received and laid on the table.

A motion was made to amend Mr. Cochrane's motion so as to provide that the message might be received and read.

In making a point of order against this Mr. Benjamin Stanton, of Ohio, said:

There is no precedent of a message being sent to the House in advance of its organization by the election of a Speaker and the sending of a message to the President informing him that the House was organized and was ready to receive any communication he might be pleased to make, except in the Thirty-fourth Congress. In the Thirty-fourth Congress, in advance of the organization of the House, President Pierce sent in his annual message to the House. When it was received here a motion was made that the message be delivered into the custody of the Clerk, to be kept by him until the House should be organized and ready to proceed to business.[1] The motion was carried. That action was based upon the idea that the House is incompetent to transact any business before its organization by the election of a Speaker. The receipt of a message is business; the reading of it is business; and it presupposes a capacity in the House to act upon the message itself after being read; the disposing of it, the committing it to a Committee of the Whole, or such other disposition of it as the House might see fit.

Upon this statement the proposed amendment was withdrawn, and Mr. Cochrane's motion, as originally made, was agreed to.

6650. Instance wherein the Senate received a message although a quorum were not present.—On August 5, 1886,[2] in the Senate, just before adjournment sine die, and in the absence of a quorum, President pro tempore John Sherman, of Ohio, held that a message from the President and from the House might be received and read, but not acted on. Mr. George F. Edmunds, of Vermont, protested that such action was unconstitutional.

6651. The President was allowed to withdraw papers included with a message by inadvertence.—On May 24, 1838,[3] a question was raised in the House as to the character of two papers transmitted to the House as a part of the documents accompanying a message of the President of the United States, in which he responded to a call of the House for information relating to the introduction of foreign paupers into the United States.

On the succeeding day the President sent a message with a letter from the Secretary of the Treasury explaining that the papers in question were inclosed with the other documents by inadvertence, and were of such a character that they would not have been transmitted to the House had attention been attracted to them. The President therefore asked permission to withdraw the papers.

The House, on motion of Mr. Churchill C. Cambreleng, of New York, voted—

that the committee to which the papers alluded to in the said message have been referred be discharged from the consideration thereof; and that the said papers be withdrawn from the files and returned to the President.

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[1] The Journal (first session Thirty-fourth Congress, pp. 226–231) indicates that such a motion was made, but not carried.

[2] First session Forty-ninth Congress, Record, pp. 8022, 8023.

[3] Second session Twenty-fifth Congress, Journal, p. 958; Globe, p. 410.

6652. The Secretary of the Treasury may recommend legislation to Congress, even when his views have not been requested by either House.— On February 14, 1878,[1] the Speaker laid before the House a communication from the Secretary of the Treasury, stating that discussion as to a reduction of taxes on spirits and tobacco had resulted in a decrease of revenue, which might render necessary the imposition of further taxes by Congress.

The communication having been read, Mr. Carter H. Harrison, of Chicago, made the point of order that the Secretary of the Treasury was not authorized to recommend legislation to Congress except when his views had been requested by either House, and that the said communication was not properly before the House.

The Speaker[2] overruled the point of order on the ground that the Secretary was required, under section 248 of the Revised Statutes, to give information to either branch of Congress respecting matters which shall appertain to his office.[3]

6653. A communication from the General of the Army, transmitted directly instead of through the Secretary of War, was received and referred, although occasioning some criticism.—On January 14, 1868,[4] the Speaker laid before the House a letter from U. S. Grant, General, to the Speaker of the House of Representatives, transmitting a letter of Maj. Gen. George G. Meade, commanding the third military district, in reference to a bill before Congress.

Mr. James Brooks, of New York, called attention to the extraordinary course of the House in receiving a communication from the military department through the General of the Army, instead of the Secretary of War. The subject was not discussed further, and the letter was referred to the Committee on Reconstruction.

6654. The Speaker laid before the House a letter of explanation from a Senator who was aggrieved by a reference to him personally in a House report—On April 29, 1822,[5] the Speaker[6] laid before the House a letter addressed to him by Mr. Caesar A. Rodney, a Senator of the United States for the State of Delaware. In a report made by a select committee of the House, Mr. Rodney had been referred to as one employed and paid as counsel for the War Department while a Member of Congress. Mr. Rodney's letter, which was in explanation and denial, was read and ordered to lie on the table.

This letter is referred to in the Journal as presented by the Speaker, and a brief description of its contents is given.

6655. A communication from a Member, relating to a controversy over a subject before the House, was laid before the House by the Speaker, by unanimous consent.—On February 25, 1853,[7] Mr. Speaker Boyd announced that he had received a communication from Hon. Edward Stanly, of

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[1] Second session Forty-fifth Congress, Journal, pp. 435, 436; Record, p. 1033.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] The Secretary of the Treasury alone, of all the Cabinet officers, sends his annual report to the House directly. The other Cabinet officers transmit their reports as a part of the President's message, or rather with it. The law of 1789 puts the Secretary of the Treasury on a basis of especial prominence in regard to Congress.

All the Secretaries of the President communicate directly to Congress from time to time.

[4] Second session Fortieth Congress, Journal, p. 188; Globe, p. 517.

[5] First session Seventeenth Congress, Journal, p. 512; Annals, p. 1723.

[6] Philip P. Barbour, of Virginia, Speaker.

[7] Second session Thirty-second Congress, Journal, p. 338; Globe, p. 852.

North Carolina, a Member of the House, and, if there was no objection, he would lay it before the House. Unanimous consent was granted and the letter was read, it relating to a controversy with a person not a Member of the House on a subject before the House. The letter was laid on the table and printed.

6656. Neither by unanimous consent nor by suspension of the rules was the Speaker allowed to present to the House the report of the "Peace Congress" of 1861.—On March 1, 1861,[1] Mr. Speaker Pennington made an effort to present to the House the report of the peace congress, but objection was made that it was not the order of business. A motion to suspend the rules to enable the Speaker to present the document was decided in the negative.

6657. The Speaker often presents, in regular order or by unanimous consent, communications or memorials addressed to the House.—On January 24, 1881,[2] Mr. Speaker Randall laid before the House a letter from the secretary of state of the State of Oregon transmitting copies of certain memorials of the legislature of that State.

6658. On December 4, 1867,[3] the Speaker, by unanimous consent, laid before the House a letter from newspaper correspondents having seats in the gallery, asking that there be an investigation of alleged breach of faith in the publication of the President's message. The paper was referred to the Committee on the Judiciary.

6659. On August 11, 1848,[4] the Speaker laid before the House a communication from Alexandre Vattemare, tendering to the Members of the House of Representatives his grateful acknowledgments for the very liberal manner in which he has been welcomed by them as the humble exponent and advocate of the system of international exchanges; which was laid on the table and ordered to be printed.

6660. On February 15, 1810,[5] the House considered the report of a select committee on a letter from Robert Fulton addressed to the Speaker.

6661. The House disregards anonymous communications.—On December 17, 1806,[6] the Speaker informed the House that he had received an anonymous communication, addressed to Congress, from a writer who professed himself to be a foreigner, and desired that his communication might be read with closed doors.

After discussing briefly the proper way of treating the communication, it was agreed that it was best to take no order whatever upon it.

The Journal does not mention the matter.

6662. A communication from a foreigner to the House is properly transmitted through the Executive.—On December 4, 1834,[7] President Jackson transmitted to the House a message inclosing a letter from George Washington Lafayette accompanying a copy of the Declaration of Independence engraved on copper, which General Lafayette had bequeathed to Congress. The letter was referred to the Committee on Foreign Affairs.

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[1] Second session Thirty-sixth Congress, Journal, pp. 446, 448; Globe, p. 1331.

[2] Third session Forty-sixth Congress, Journal, p. 251. Such memorials are now referred by filing them at the Clerk's desk. Either the Speaker or a Member may present them in this way.

[3] Second session Fortieth Congress, Journal, p. 37; Globe, p. 37.

[4] First session Thirtieth Congress, Journal, p. 1243.

[5] Second session Eleventh Congress, Journal, pp. 273–278.

[6] Second session Ninth Congress, Journal, p. 486 (Gales and Seaton ed.); Annals, p. 166.

[7] Second session Twenty-third Congress, Journal, p. 35.

Chapter CXXXIX.

RECESS.

1. Motion for, not privileged. Sections 6663, 6664.
2. General decisions as to taking. Sections 6665–6668.[1]
3. Committee of Whole takes recess only by permission of House. Sections 6669-6671.

6663. The motion for a recess is not, under the present rules, privileged as against a demand that business proceed in the regular order.— On August 15, 1890,[2] the House having completed consideration of a conference report, Mr. William M. Springer, of Illinois, moved that the House take a recess until 8 o'clock p. m.

The Speaker[3] ruled that the motion was not in order, and announced as the regular order of business the further consideration of the bill of the Senate (S. 846) for the relief of Nathaniel McKay and the executors of Donald McKay, coming over from the preceding day's session as unfinished business, on the third reading and passage of which the previous question had been ordered and which had been read the third time. The pending question was on the motion of Mr. Springer to commit the bill to the Committee on War Claims, on which question the yeas and nays had been ordered and on which no quorum had voted.[4]

6664. The motion for a recess is not in order when a question is before the House.—On March 2, 1891,[5] the House was considering the conference report on the bill (H. N. 10881) relating to copyrights, the question being on agreeing to the report.

Mr. Roger Q. Mills, of Texas, moved that the House take a recess.

The Speaker[3] ruled that the motion was not in order.

6665. When the hour previously fixed for a recess arrives, the Chair declares the House in recess, even in the midst of a division (but not of

[1] Recess not taken when the prior legislative day encroaches on the day for which it was ordered. (See. 3192 of Vol. IV.)

[2] First session Fifty-first Congress, Journal, p. 957; Record, p. 8629.

[3] Thomas B. Reed, of Maine, Speaker.

[4] The privileged character of the motion for a recess was taken away in the revision of 1890 (see sec. 5301 of this volume); it was restored in the Fifty-second and Fifty-third Congresses, and again taken away in the Fifty-fourth and has not been restored.

[5] Second session Fifty-first Congress, Journal, p. 346.

a roll call) or when a quorum is not present.—On April 23, 1884,[1] the House was considering the naval appropriation bill and was dividing on the motion for the previous question, when Mr. William H. Calkins, of Indiana, made the point of order that the hour of 5 o'clock p. m. having arrived, it was the duty of the Chair to declare the House in recess under the orders of the House of the previous day.

The Speaker[2] sustained the point of order, and in accordance with the order of the previous day declared the House (at 5 p. m.) to be in recess until 8 p. m.[3]

6666. On August 1, 1890,[4] a Friday evening after the recess, the House assembled at 8 p. m.

Mr. J. R. Williams, of Illinois, made the point of order that no quorum was present at the time the recess was taken, and therefore no business was in order except a call of the House or a motion to adjourn.

The Speaker pro tempore[5] overruled the point of order on the ground that the evening session was held under the rule for the consideration of business therein specified, having no relation to the business under consideration at the time the House took a recess, of which the present occupant of the chair had no official knowledge.

6667. A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess.—On January 9, 1889,[6] the pending question was the motion of Mr. J. B. Weaver, of Iowa, that the House take a recess until 1.30 p. m. that day. A quorum having failed on the vote on this motion, a call of the House was ordered.

A quorum having been obtained, the Speaker pro tempore announced the pending question to be the motion of the gentleman from Iowa, that the House take a recess.

Mr. Joseph E. Washington, of Tennessee, called attention to the fact that it was now 2 p.m.

The Speaker pro tempore[7] said:

> That is a matter for the House. The motion having been made, must be voted on. The House is dividing on the question.

6668. A question has arisen as to the class of business in order when the Friday evening session, provided for by the rules, has been prolonged to the next day by a recess.—On the calendar day of Friday, February 13, 1885,[8] the House held an evening session for the consideration of private pension bills. At the end of that evening session the House took a recess until the next day—the calendar day of Saturday.

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[1] First session Forty-eighth Congress, Journal, p. 1117.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] If the roll is being called, however, it is not interrupted.

[4] First session Fifty-first Congress, Journal, p. 915; Record, p. 8035.

[5] Samuel R. Peters, of Kansas, Speaker pro tempore.

[6] Second session Fiftieth Congress, Record, pp. 630, 631; Journal, p. 195.

[7] William H. Hatch, of Missouri, Speaker pro tempore.

[8] Second session Forty-eighth Congress, Record, p. 1669; Journal, pp. 536, 537.

The House having reassembled after the recess, and certain bills coming over from the evening session with the previous question ordered having been disposed of, a question arose as to the order of business.

Mr. Thomas B. Reed, of Maine, made the point of order that, as the session had been held to be a prolongation of Friday evening's session, and as by order of the House only pension bills of a certain class were in order on Friday evening, such bills could only be considered now.

The Speaker pro tempore [1] held:

The Chair holds, as it has held before, that this is a prolongation of the session of Friday evening for the completion of the work that came over under the operation of the previous question, and that under the rule this business can not be dispensed with except by unanimous consent. That work has now been completed, and there is nothing left upon which the previous question was in operation. The Chair overrules the point of order.

6669. The Committee of the Whole may take a recess only by permission of the House.—On February 5, 1857,[2] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 566) "reducing the duty on imports, and for other purposes," when Mr. Lewis D. Campbell, of Ohio, proposed that by unanimous consent the Committee take a recess until the evening.

The Chairman [3] said:

The Chair is of the opinion that the Committee has not the power to take a recess without the consent of the House, otherwise it might continue its session *ad infinitum*.

Thereupon the Committee arose, and the Speaker having taken the chair, the Chairman of the Committee of the Whole, by unanimous consent, offered the following, which was agreed to:

Ordered, That the Committee of the Whole House on the state of the Union have leave to take a recess this evening, provided that no vote be taken after said recess.[4]

6670. On April 27, 1858,[5] the House agreed to a resolution providing that during the remainder of that week the Committee of the Whole might take a recess until 7 p. m., provided that no vote should be taken at the evening session, except that the Committee rise, and the House adjourn.

6671. On February 26, 1907,[6] Mr. Charles H. Grosvenor. of Ohio, asked the unanimous consent of the House for an order as to consideration of the so-called ship-subsidy bill (S. 529) which the Speaker stated as follows:

The gentleman from Ohio asks unanimous consent that general debate, under the order, shall continue until 6 o'clock this afternoon and until 6 to-morrow, and at 6 o'clock to-morrow the Committee, by unanimous consent, shall be considered as recessed until 8 o'clock to-morrow evening, and that general debate shall continue in the Committee from 8 o'clock until 11 o'clock to-morrow evening.

The House gave consent.

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[1] J. C. S. Blackburn, of Kentucky, Speaker pro tempore.

[2] Third session Thirty-fourth Congress, Journal, p. 367; Globe, p. 589.

[3] Humphrey Marshall, of Kentucky, Chairman.

[4] In another instance (see Globe, second session Fortieth Congress, pp. 1543, 1558; Journal, p. 407), on February 29, 1868, a Committee of the Whole took a recess. It was during the debate on the articles of impeachment of Andrew Johnson, and the Committee of the Whole was acting under a special order, by the terms of which the Chairman ruled that the Committee could take a recess.

[5] First session Thirty-fifth Congress, Journal, pp. 698, 705; Globe, pp. 1811, 1833.

[6] Second session Fifty-ninth Congress, Record, p. 4033.

Chapter CXL.

SESSIONS AND ADJOURNMENTS.[1]

1. **Provision of the Constitution. Section 6672.**
2. **The three-day period and its conditions. Sections 6673–6675.[2]**
3. **The holiday recess. Sections 6676–6685.**
4. **Instance of a session prolonged by recess. Section 6686.**
5. **A recess a real, not imaginary time. Section 6687.**
6. **Adjournment of Congress not fixed by law. Section 6688.**
7. **Sine die adjournment. Section 6689.[3]**
8. **Special session ends with day of meeting of next regular session of a Congress. Sections 6690–6693.**
9. **End of last session of a Congress. Sections 6694–6697.**
10. **Privilege of concurrent resolutions of adjournment. Sections 6698–6706.**
11. **Adjournment of House at time of sine die adjournment of Congress. Sections 6707–6721.[4]**
12. **Forms and ceremonies at adjournment sine die. Sections 6722–6726.**
13. **Business undisposed of at end of a session. Section 6727.**
14. **Sessions on Sunday. Sections 6728–6733.[5]**
15. **Adjournment of the legislative day. Sections 6734–6740.[6]**

6672. Neither House during a session of Congress may, without the consent of the other, adjourn for more than three days, or to another place.

When the two Houses disagree as to adjournment, the President may adjourn them.

Section 5 of Article I of the Constitution provides:

Neither House during the session of Congress shall, without the consent of the other,[7] adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

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[1] See also Chapter I of Volume I, sections 1–13, for precedents as to the meeting of Congress.

[2] The Senate sitting for an impeachment trial may adjourn for more than three days. (Sec. 2423 of Vol. III.)

[3] Forms of resolutions providing for adjournment sine die or for a recess, and then privileged nature. (Sec. 4031 of Vol. IV.)

[4] Adjournment in the midst of a roll call. (Sec. 6325 of this volume.)

[5] As to Sunday, 7245, 7246 of this volume.

[6] Distinction between the legislative and calendar day. (Sec. 3192 of Vol. IV.)

Fixing the hour of daily meetings. (Sections 104–117 of Vol. I.)

[7] December 21, 1882 (second session Forty-seventh Congress, Record, p. 490), when the concurrent resolution of the House proposing a holiday recess of the Congress was received in the Senate, an amendment was offered to permit the House alone to take such recess, leaving the Senate in session. The Senate declined to agree to the amendment. Procedure like this has never been taken, the two Houses always having continued in session together except in instances wherein the President has convened the Senate alone in extraordinary session.

Also in section 3 of Article II, in the enumeration of the duties of the President of the United States, it is provided that—

he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper.

6673. Sunday is not taken into account in making the constitutional adjournment of "not more than three days."

The constitutional adjournment for not "more than three days" must take into the count either the day of adjourning or the day of meeting.

On Saturday, December 28, 1895,[1] Mr. Nelson Dingley, of Maine, rising to a parliamentary inquiry, asked:

My parliamentary inquiry is whether under the Constitution a recess can be taken from to-day until next Thursday, or whether that would be an adjournment for more than three legislative days. I do not know what the precedents have been. If the motion is permissible, I will move that when the House adjourns to-day it adjourns to meet on Thursday next.

The Speaker[2] said:

Sunday is not taken into account in these cases, but the Chair thinks the adjournment can not be to a later day than next Wednesday.[3]

6674. On May 29, 1850,[4] the House adjourned over from Thursday until Monday without any question as to Sunday being included.

6675. The House has by standing order provided that it should meet on two days only of each week instead of daily.

The device by which, in 1897, the House confined itself to a certain matter of legislation, avoiding the consideration of general bills.

On May 6, 1897,[5] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to:

Resolved, That from and after this day the House shall meet only on Mondays and Thursdays of each week until the further order of the House.[6]

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[1] First session Fifty-fourth Congress, Record, p. 401.

[2] Thomas B. Reed, of Maine, Speaker.

[3] There has been one ruling going farther than this: On the legislative day of April 4, 1898 (first session Fiftieth Congress, Journal, p. 1553; Record, p. 2841), but on the calendar day of Tuesday, April 10, Mr. J. B. Weaver, of Iowa, moved that when the House adjourn it be to meet on Thursday next.

Mr. Timothy E. Tarsney, of Michigan, moved to amend by striking out "Thursday" and inserting "Saturday."

Mr. Samuel Dibble, of South Carolina, made the point of order that the motion of Mr. Tarsney required an adjournment for more than three days without the consent of the Senate, which was forbidden by the Constitution.

After debate the Speaker pro tempore (William H. Hatch, Speaker pro tempore) said:

"Upon reflection and a count of the days, excluding to-day, the Chair thinks the point of order of the gentleman from South Carolina, Mr. Dibble, is not well taken, and that an adjournment from Tuesday until Saturday is in order, taking the three legislative days Wednesday, Thursday, and Friday as the recess and meeting again on the succeeding day, which is Saturday. The Chair therefore overrules the point of order."

[4] First session Thirty-first Congress, Journal, p. 976; Globe, p. 1088.

[5] First session Fifty-fifth Congress, Record, p. 933.

[6] This rule was the subject of much discussion. (See debates in Senate, May 29, 1897, et seq.; see also Art. I, sec. 5, and Art. II, sec. 2, of Constitution; Miller on Constitution, p. 198; Cushing's Manual, secs. 254, 263, 264, 361, 362, 368, 369, 503, 504, 507, 509, 510, 511, 514, 516, 525, 527; People *v.* Hatch, 33 Ill., 9.)

This rule was in operation until the end of the session, July 24, 1897.[1]

At the beginning of the next session, on December 6, 1897,[2] it was repealed by the adoption of the following resolution, reported from the Committee on Rules by Mr. David B. Henderson, of Iowa:

Resolved, From and after this date the House shall meet at 12 o'clock daily.

6676. When the two Houses adjourn for more than three days, and not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated.—On December 20, 1865,[3] the two Houses of Congress agreed to the following concurrent resolution:

Resolved,[4] That when the two Houses of Congress adjourn on Thursday, the 21st instant, they adjourn to meet on Friday, January 5, 1866.

On December 21 Mr. Justin S. Morrill, of Vermont, moved, at 3.20 p. m., that the House adjourn. This motion being decided in the affirmative, the Speaker, in pursuance of the concurrent resolution of the two Houses, declared the House adjourned until the 5th of January next.

On January 5, 1866, the two Houses reassembled, it still being the first session of the Thirty-ninth Congress.[5]

6677. On December 20, 1866,[6] Mr. James M. Ashley, of Ohio, moved, at 3 o'clock and 40 minutes p. m., that the House adjourn, which motion was agreed to.

Whereupon the Speaker, in pursuance of the concurrent resolution of the two Houses, declared the House adjourned until Thursday, the 3d day of January next.

On the 3d day of January the session was resumed, being still the second session of the Thirty-ninth Congress.

6678. In the earlier days of Congress the holiday recess was not often taken.

The two Houses do not notify the President when they are about to adjourn for the holiday recess. (Footnote.)

On December 20, 1820,[7] the House decided, 110 to 42, against a proposition for a holiday recess from December 22 to January 2. One Member asked the reason for the recess, but there seems to have been little debate. This seems to have been the first time it was proposed.

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[1] The House at this time was awaiting the action of the Senate on a general tariff bill and adopted the order in order as part of a programme to avoid any other legislation during the existing extraordinary session. In other Congresses the same result had been attained by an order limiting legislation. See sections 3064–3069 of Vol. IV of this work.

[2] Second session Fifty-fifth Congress, Record, p. 11.

[3] First session Thirty-ninth Congress, Journal, pp. 107, 108; Globe, p. 127.

[4] The resolving clause of a concurrent resolution is, in the modern usage, in this form if it originates in the House: "Resolved by the House of Representatives (the Senate concurring)."

[5] This is the regular holiday recess, generally taken each year. It was omitted in 1895 (first session Fifty-fourth Congress).

[6] Second session Thirty-ninth Congress, Journal, p. 106; Globe, p. 237.

[7] Second session Sixteenth Congress, Journal, pp. 81, 85; (Gales and Seaton, ed.), Annals, p. 682.

6679. On December 23, 1824,[1] Mr. Martin Beaty, of Kentucky, moved this resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized to adjourn their respective Houses from the 23d day of December, instant, to Monday, the 29th instant.

Mr. James K. Polk, of Tennessee, said that an adjournment over of the two Houses by a joint resolution was unprecedented. Therefore he moved that the resolution be laid on the table. The motion was agreed to, yeas 158, nays 27.

6680. On December 23, 1828,[2] the House agreed to the following resolution of the Senate:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That when the two Houses adjourn on Wednesday next [December 24], they adjourn to meet on Monday following [December 29].

There is no record of any debate over this resolution, which provided for a holiday recess, and no notice of the decision of the House was directed to be sent to the President.[3]

6681. On December 22, 1829,[4] the House, by a vote of 121 nays to 62 yeas, disagreed to a resolution from the Senate proposing a "temporary adjournment of Congress."

On December 24 the House adjourned over to December 28.

At the second session of this Congress there was no concurrent adjournment for the holidays.

6682. On Monday, December 23, 1833,[5] Mr. Edward Everett, of Massachusetts, offered this resolution:

Resolved (if the Senate concur therein), That when the two Houses of Congress adjourn to-morrow they adjourn to meet on Monday next.

On December 24, after some opposition, the House gave the resolution three readings [6] and passed it.

In the Senate Mr. Henry Clay, of Kentucky, opposed the resolution, urging the distressed condition of the country and the need of prompt legislation. So the Senate refused to concur.

6683. On Monday, December 24, 1849,[7] the House adjourned until Thursday, December 27, and on the latter day adjourned until Monday the 31st. A proposition was made in the House for a longer adjournment by concurrent resolution of the two Houses, but was not acted on.

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[1] Second session Twenty-third Cor[gress, Journal, p. 124; Debates, p. 845.

[2] Second session Twentieth Congress, Journal, p. 94.

[3] It is not the practice to notify the President that the two Houses are about to adjourn for the holiday recess. (Fifty-ninth Congress, first session, Journal, p. 204, second session, Journal, p. 131.

[4] First session Twenty-first Congress, Journal, pp. 80, 97.

[5] First session Twenty-third Congress, Journal, pp. 116, 121, 123; Debates, pp. 58, 2243.

[6] Resolutions do not, in the present practice, receive the three readings of bills.

[7] First session Thirty-first Congress, Journal, pp. 183, 189; Globe, p. 69.

6684. On December 20, 1858,[1] the Senate sent to the House the following resolution, which was, after considerable opposition, agreed to by the House:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That when the two Houses adjourn on the twenty-third instant they adjourn to meet on Tuesday the fourth of January next.

6685. In 1866[2] the subject of the holiday recess by adjournment of both Houses for more than three days was discussed at length in the Senate. It had not then become established as a custom, but was favored by the majority because Members could not be induced to remain in Washington, and so the recess would have to be taken by three day adjournments if not by concurrent action.

From 1866 onward the practice of taking the holiday recess has been more constant; but in 1882[3] the Senate disagreed to the concurrent resolution of the House proposing a holiday recess, and the two Houses by separate action merely adjourned from the 23d to the 27th.[4]

In 1895[5] also, the holiday recess was omitted; but, as in 1882 the action was exceptional.

6686. The two Houses may by concurrent resolution provide for an adjournment to a certain day, with a provision that if there be no quorum present on that day the session shall terminate.

The two Houses have the power to provide that their presiding officers shall declare an adjournment sine die in case that after a recess a quorum shall be lacking in either House.

The process whereby the Fortieth Congress prolonged its first session by successive recesses, with a provision for adjournment sine die in a certain contingency.

On March 29, 1867,[6] the House agreed to this concurrent resolution, which had already been agreed to by the Senate:

The President of the Senate and the Speaker of the House of Representatives are hereby directed to adjourn their respective Houses on Saturday, March 30, 1867, at 12 o'clock m., to the first Wednesday of July, 1867, at noon, when the roll of each House shall be immediately called, and immediately thereafter the presiding officer of each House shall cause the presiding officer of the other to be informed whether or not a quorum of its body has appeared, and, thereupon, if a quorum of the two Houses respectively shall not have appeared upon such call of the roll, the President of the Senate and the Speaker of the House of Representatives shall immediately adjourn their respective Houses without day.[7]

On March 30, 1867, the hour of 12 o'clock m. having arrived, the Speaker, in accordance with the concurrent resolution of the two Houses, declared the first

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[1] Second session Thirty-fifth Congress, Journal, pp. 83, 91; Globe, pp. 138, 153.

[2] Second session Thirty-ninth Congress, Globe, p. 131.

[3] Second session Forty-seventh Congress, Record, pp. 490–496.

[4] Record, pp. 630, 633.

[5] First session Fifty-fourth Congress.

[6] First session Fortieth Congress, Journal, pp. 157, 158, 184; Globe, pp. 454, 589.

[7] This resolution was adopted after prolonged disagreement between the two Houses. (First session Fortieth Congress, Journal, pp. 133, 146, 148; Globe, pp. 438, 454.) On July 3, 1867, in the Senate, Mr. Charles Sumner, of Massachusetts, made a protest against the constitutionality of it. (First session Fortieth Congress, Globe, pp. 463, 464.)

session of the Fortieth Congress adjourned to the first Wednesday of July next, at noon.

On Wednesday, July 3,[1] the two Houses met, and on July 11 Mr. George S. Boutwell in the House submitted this resolution:

Resolved (the Senate concurring), That the two Houses of Congress shall adjourn on the—day of July instant; the adjournment shall be to Wednesday, the 16th day of October next, at noon, and the two Houses shall then reassemble without further order.

To this Mr. Rufus P. Spalding, of Ohio, offered the following amendment as a substitute:

That the President of the Senate and the Speaker of the House are hereby directed, upon the adjournment of their respective Houses, to adjourn the same to the 16th day of October, 1867, at 12 o'clock m., when the roll of each House shall be called, and immediately thereafter the presiding officer of each House shall cause the presiding officer of the other to be informed whether or not a quorum of its body has appeared; and thereupon, if a quorum of the two Houses respectively shall not have appeared upon such call of the roll, the President of the Senate and the Speaker of the House of Representatives shall immediately adjourn their respective Houses without delay.

Against this amendment Mr. Robert C. Schenck, of Ohio, raised a point of order, saying:

Congress has powers prescribed by the Constitution. They are general when Congress finds itself with a quorum in each body composing Congress prepared to do business. There is a special power when that case does not occur and when each House finds itself without a quorum. How is it when there is not a quorum present? The Constitution then intervenes and makes a rule. When Congress finds itself assembled without a quorum in either branch the Constitution prescribes what it can do, what it may do, what if it chooses it must do, but gives no latitude to any other body, or to the body itself, outside of its action when the case occurs, to prescribe in advance that it shall do certain things and only certain things. I say that the power of Congress, therefore, to take a recess or to adjourn is limited to fixing the time when it shall reassemble; and when reassembled the Constitution intervenes, and if there be a quorum present, provides that it may go on and exercise its general powers; but if there be no quorum, that it shall have the specific power to adjourn from day to day and compel the attendance of absent Members. An attempt, therefore, to prescribe in advance a rule by which you shall disarm the Congress of the United States of its power to legislate, or of its power to compel the attendance of absent Members, is to substitute your rule for the Constitution.

The Speaker,[3] before ruling, had read the fourth clause of the fifth section of the Constitution:

Each House shall be the judge of the election, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members in such manner and under such penalties as each House may provide.

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[1] On July 3, 1867, when the House assembled after a recess that had begun on March 30 preceding, as soon as the roll had been called and the presence of a quorum ascertained, resolutions were adopted notifying the President pro tempore of the Senate and the President of the United States of that fact. The President pro tempore of the Senate was notified instead of the Senate, probably because of the terms of the concurrent resolution by which Congress had taken the recess. (First session Fortieth Congress, Journal, p. 161; Globe, 468.)

[2] This was at the time of a conflict between Congress and the President, when the two Houses did not wish to leave the President in full control of the Government.

[3] Schuyler Colfax, of Indiana, Speaker.

The Speaker then said:

The first part of that clause declares that "each House shall be the judge of the election, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business.' This is the broad charter given in the Constitution by which the two Houses transact all their legislative business. It includes, of course, within its range of power the authority to lay down an order of business, to decide when they shall meet, and what business they shall or shall not take up when they do meet. This is the power conferred by the Constitution upon a quorum of each House.

The clause then concludes by giving certain powers to less than a quorum. "A smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, but in such manner and under such penalties as each house may provide." They must, therefore, compel the attendance of absent Members in such Manner as each House (which means a quorum thereof) shall have provided anterior to that time. It follows, the Chair thinks, by the plain reading of the Constitution, that a minority of each House, less than a quorum, can not have, as the gentleman from Ohio (Mr. Schenck) argues, larger power than a majority of each House sitting as a legislative body. If the point of order made is correct, less than a quorum has more power than more than a quorum, an anomaly never recognized by parliamentary law nor conferred by the Constitution, in the opinion of the Chair. The limitation of the power of less than a quorum is absolute. They may do certain things in such manner and form and under such penalties as each House (which means a majority thereof) shall have previously provided.

The Chair, therefore, overrules the point of order on three grounds: First, that both Houses of Congress, at the opening meeting of the first session of this Congress, considered this provision of the Constitution, when it declared for exactly such an adjournment as is provided for in the pending resolution. That is a parliamentary precedent not questioned at that time, as the Chair understands, by any Member in either branch—certainly not appealed from in either branch—but spoken of latterly, when it was supposed there might not be a quorum present on the 3d day of July.

The Chair overrules it for a second reason, which is, that a majority of each House, when there was a quorum present, have determined that when Congress assembled on the 3d of July, if there was not a quorum present the absent Members should not be coerced, but that the presiding officers of both branches, who were simply the organs and servants of the two Houses to execute their orders, should then adjourn Congress without day, with full notice to every Senator and Representative of what would be the specific order of business on the 3d day of July, and what would be the result if a majority of either House failed to appear on that day.

The Chair overrules it on the third ground, that at the conclusion of long sessions the two Houses have sometimes provided for an adjournment at a specified day and hour, but that after a certain date only formal business, such as the signing of bills, shall be transacted, and at the final adjournment of such first session less than a quorum has been present.

If the point of order made by the gentleman from Ohio be correct, then if there were no quorum present at such a time the absence of a quorum would render null the concurrent resolutions of quorum of both the House and the Senate.

Mr. Schenck having appealed, the Chair was sustained, yeas 125, nays 14.

On July 20,[1] the Congress took another recess until November 21. When it reassembled the roll of the House was not called, and no notice of the presence of a, quorum was sent to either Senate or House. The Speaker (Mr. Colfax) also assumed that the first business in order was the reading of the Journal of the last day before the recess.

6687. A recess of Congress is a real, not imaginary time, when it is not sitting in regular or extraordinary session.

[1] First session Fortieth Congress, Journal, p. 253; Globe, p. 768. The resolution providing for this recess was in the ordinary form, providing simply that the presiding officers adjourn their respective Houses to meet on November 21. (Journal, p. 250.)

Discussion of the term "recess of the Senate" as related to the President's power of appointment.

On March 2, 1905,[1] in the Senate, Mr. John C. Spooner, of Wisconsin, from the Committee on the Judiciary, presented the following report:

The Committee on the Judiciary, to whom was referred the following resolution (being Resolution No. 51, Fifty-eighth Congress, second session, submitted by Mr. Tillman December 11, 1903)—

Whereas article two, section two, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;"

And further:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March fourth last to November ninth, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such case—

having considered the same, presents the following report:

The Senate has instructed this committee, by resolution, to report what in its opinion constitutes a recess of the Senate under the provisions of Article II, section 2, of the Constitution.

The word "recess" is one of ordinary, not technical, signification, and it is evidently used in the constitutional provision in its common and popular sense. It means in Article II, above referred to, precisely what it means in Article III, in which it is again used. Conferring power upon the executive of a State to make temporary appointment of a Senator, it says:

And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

It means just what was meant by it in the Articles of Confederation, in which it is found in the following provision:

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated a committee of the States, and to consist of one delegate from each State.

It was evidently intended by the framers of the Constitution that it should mean something real, not something imaginary; something actual, not something fictitious. They used the word as the mass of mankind then understood it and now understand it. It means, in our judgment, in this connection the period of time when the Senate *is not sitting in regular or extraordinary session as a branch of the*

[1] Third session Fifty-eighth Congress, Senate Report No. 4389; Record, pp. 3823, 3824.

Congress, or in extraordinary session for the discharge of executive functions; when its members owe no duty of attendance; when its Chamber is empty; when, because of its absence, it can not receive communications from the President or participate as a body in making appointments.

It is easy for a lawyer to comprehend the words "constructive appropriation," "constructive notice," "constructive fraud," "constructive contempt," "constructive damages," "constructive malice," but it would seem quite difficult for lawyer or layman to comprehend a "constructive recess" of Congress, or of the State legislature or of the Senate. It would seem quite as natural that there should be a "constructive session" of Congress or of the Senate as a "constructive recess." We think there can not be any "constructive end" of a session or a "constructive beginning" of a session of Congress or of the Senate.

The Constitution clearly confers upon the President the power to nominate and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, "and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." Congress in the same clause is empowered by law to "vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments."

"Human intention can not be made plainer by human language" than it is made clear by the Constitution that except as to the "inferior officers" referred to no Federal officer can be *appointed* save by and with the advice and consent of the Senate.

But it was obvious that without some provision for temporary appointments to fill up vacancies which might happen while the Senate was not in session to participate in making appointments grave inconvenience and harm to the public interest would ensue. To meet this difficulty it was by common consent provided that—

> the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

This is essentially a proviso to the provision relative to appointments by and with the advice and consent of the Senate. It was carefully devised so as to accomplish the purpose in view, without in the slightest degree changing the policy of the Constitution, that such appointments are only to be made with the participation of the Senate. Its sole purpose was to render it certain that at all times there should be, whether the Senate was in session or not, an officer for every office, entitled to discharge the duties thereof.

It can not by any possibility be deemed within the intent of the Constitution that when the Senate is in position to receive a nomination by the President, and, therefore, to exercise its function of advice and consent, the President can issue, without such advice and consent, commissions which will be lawful warrant for the assumption of the duties of a Federal office.

The framers of the Constitution were providing against a real danger to the public interest, not an imaginary one. They had in mind a *period of time* during which it would be *harmful* if an office were not filled; not a constructive, inferred, or imputed recess, as opposed to an actual one.

They gave power to issue these commissions only where a vacancy (1) happened (2) during a recess of the Senate, and they specifically provided that the commission shall expire at the end of the next session of the Senate.

The commissions granted during the recess prior to the convening of Congress in extraordinary session November 9, 1903, of course furnished lawful warrant for the assumption by the persons named therein of the duties of the offices to which they were, respectively, commissioned. Their names were regularly sent to the Senate thereafter. If confirmed, of course they would hold under appointment initiated by the nomination without any regard to the recess commission. If not confirmed, their right to hold under the recess commission absolutely ended at 12 o'clock meridian on the 7th of December, 1903, for at that hour the extraordinary session ended and the regular session of Congress began by operation of law. An extraordinary session and a. regular session can not coexist, and the beginning of the regular session at 12 o'clock was the end of the extraordinary session; not a constructive end of it, but an actual end of it. At 12 o'clock December 7 the President pro tempore of the Senate said:

> Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day.

Aside from the statement upon the record that the "hour had struck" which marked the ending of the one and the beginning of the other, the declaration of the President pro tempore was without efficacy. It did not operate to adjourn without day either the Congress or the Senate. Under the law the arrival of the hour did both.

The constitutional provision that the commission shall expire at the end of the next session is self-executing, and when the session expires the right to hold under the commission expires with it. If there be no appreciable point of time between the end of one session and the beginning of another, since of necessity one ends and another begins, the tenure under the commission as absolutely terminates as if months of recess supervened.

There was no time during which the President might not, had he chosen, have sent nominations to the Senate. It was in session to receive any nomination or message he might communicate. There was no "recess" within the letter or spirit of the Constitution, and therefore there was no right to issue commissions and induct the officers commissioned into office.

The theory of "constructive recess" constitutes a heavy draft upon the imagination, for it involves a constructive ending of one session, a constructive beginning of another, and a constructive recess between the two.

Senate Document No. 147, Fifty-eighth Congress, second session, is a letter from the Hon. Elihu Root, then Secretary of War, which makes clear the embarrassments of the situation, and presents both views of the constitutional question we are considering, the Secretary of Wax, confessedly one of the ablest lawyers of the country, frankly stating the strong inclination of his mind to the view which we adopt, that the Constitution means a real recess, not a constructive one.

The President, evidently acting under the advice of the Secretary of War, pursued the course which would be adapted to whichever view might ultimately be held by the accounting officers of the Treasury and the courts to be the correct one.

Senator Nelson dissents from so much of the foregoing report as relates to the matter of commissions granted during the recess prior to the convening of Congress in extraordinary session, November 9, 1903, as not called for by the resolution.

6688. The Executive has successfully opposed, as unconstitutional, an effort of the two Houses to fix by law the time of adjournment of Congress.—On June 11, 1836,[1] the following message was received in the Senate from President Jackson:

The act of Congress "to appoint a day for the annual meeting of Congress," which originated in the Senate, has not received my signature. The power of Congress to fix, by law, a day for the regular annual meeting of Congress is undoubted; but the concluding part of this act, which is intended to fix the adjournment of every succeeding Congress to the second Monday in May, after the commencement of the first session, does not appear to me in accordance with the provisions of the Constitution of the United States.

The Constitution provides:

First article, fifth section: "That neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

First article, sixth section: "That every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him," etc.

Second article, second section: "That he (the President) may, on extraordinary occasions, convene both Houses of Congress, or either of them; and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he thinks proper," etc.

According to these provisions the day of adjournment of Congress is not the subject of legislative enactment. Except in the event of disagreement between the Senate and House of Representatives, the President has no right to meddle with the question, and, in that event, his power is exclusive, but confined to fixing the adjournment of the Congress whose branches have disagreed. The question of adjournment is obviously to be decided by each Congress for itself by the separate action of each House for the time being, and is one of those subjects upon which the framers of that instrument did not intend one Congress should act, with or without the Executive aid, for its successors. As a substitute for the present rule, which requires the two Houses by consent to fix the day of adjournment, and, in the event of disagreement, the President to decide, it is proposed to fix the day by law, to be binding in all future time, unless changed by consent of both Houses of Congress, and to take away the contingent power of the Executive, which, in anticipated cases of disagreement, is vested in him. This substitute is to apply, not to the present Congress and Executive, but to our successors. Considering, therefore, that this subject exclusively belongs to the two Houses of Congress, whose day of adjournment is to be fixed, and that each has at that time the right to maintain and insist upon its own opinion, and to require the President to decide in the event of disagreement with the other, I am constrained to deny my sanction to the act herewith respectfully returned to the Senate. I do so with greater reluctance, as, apart from this constitutional difficulty, the other provisions of it do not appear to me objectionable.

This message was debated in the Senate on June 22 and 27, Messrs. Webster, Clay, and Calhoun opposing the reasoning of the President. On June 27 the question being taken on the passage of the bill, the President's objections notwithstanding, there were yeas 16, nays 23; so the bill was rejected.

6689. The Senate election case of Charles G. Atherton, of New Hampshire, in the Thirty-third Congress.

As to what constitutes a sine die adjournment of a legislative body.

[1] First session Twenty-fourth Congress, Debates, pp. 1757, 1859, 1878–1880.

A Senator appointed by the State executive to fill a vacancy ceases to serve after the final adjournment of the legislature which should elect his successor.

On August 2, 1854,[1] Mr. Andrew P. Butler, of South Carolina, from the Senate Committee on the Judiciary, made a report on the following preamble and resolution of the Senate:

"Whereas the Hon. Jared W. Williams was appointed by his excellency the governor of New Hampshire, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. Charles G. Atherton, a Senator, whose term of service would have continued till the 4th of March, 1859; and

"Whereas it is understood that since that temporary appointment was made the legislature of New Hampshire has been convened at their regular session, and has adjourned to the last Wednesday of May next, without filling such vacancy, and that said State still claims a right of representation under said appointment, which the appointee is not at liberty to surrender by his act without the action of the Senate: At his request, therefore,

"Resolved, That the subject be referred to the Committee on the Judiciary, to inquire into the facts connected with it, and to make such report as they deem proper to enable the Senate to determine whether the right of representation under said appointment has expired."

Under this resolution the committee are required to inquire into the facts connected with the case, and to make such report as they deem proper, to enable the Senate to determine whether the right of representation under said appointment had expired.

As the question to be determined must depend in a great measure on the proceedings of the legislature and constitution of New Hampshire, the committee submit the following as a part of their report having a bearing on the case:

communication from the governor to the legislature.

To the senate and house of representatives:

I have signed all the bills and resolutions which you have passed the present session and presented for my approval (except the bills and resolutions which I have returned to the house of representatives with my objection thereto), and having been informed by a joint committee of both branches of the legislature that you have finished the business before you and are ready to adjourn, by the authority vested in me I do hereby adjourn the legislature to the last Wednesday of May next.

N. B. BAKER.

COUNCIL CHAMBER, *July 15, 1854.*

"The senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve and be dissolved seven days next preceding the said first Wednesday of June, and shall be styled the general court of New Hampshire."—*Constitution of New Hampshire,* page 23.

From the language of the governor's communication to the legislature it seems to have been his judgment that the session had closed; and from the language of the constitution it would appear that it will have terminated on the day mentioned, as by another provision of the constitution the governor on the same day is required to dissolve the legislature. In this view of the subject, in proprio vigore, the legislature had no power of assembling from the time of its adjournment, as announced by the governor, until the last Wednesday of May next, when its existence terminated.

There was a power in the governor, should the general welfare require it, to call the legislature together as an existing body. But when so called together what would have been the character of such a meeting? Would it not have been a distinct session, carrying with its acts and doings all the incidents of a separate session? Such would seem to be a fair inference. This being conceded, then it would follow that the late legislature did adjourn sine die in the legal import of the term. If this is a legitimate conclusion this case can not in any particular be distinguished from that decided by the Senate in the case of the Hon. Samuel S. Phelps, a Senator from Vermont, and the committee refer to that case as the authority for their conclusion in the case under consideration.

In response to the resolution the committee are of opinion that "the right of representation under the appointment" has expired.

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[1] First session Thirty-third Congress, Senate Report No. 385; Globe, pp. 2208–2211.

On August 3 the Senate concurred in the report. On August 4 this action was reconsidered for debate, and then the question being again taken the report was concurred in.

6690. In the later Congresses it has been established, both by declaration and practice, that a special session, whether convened by law or proclamation, ends with the constitutional day for annual meeting.[1]

Instances wherein one session of Congress has followed another without appreciable interval.

Instance wherein the President of the United States was not notified of the expiration of a session of Congress.

Reference to questions arising in the Senate as to recess appointments in a case wherein one session followed its predecessor immediately.

The Fortieth Congress was convened by law[2] on March 4, 1867,[3] and was still in session November 26, 1867,[4] when the following resolution was presented in the Senate by Mr. James W. Grimes, of Iowa:

Resolved by the Senate (the House of Representatives concurring), That the President of the Senate and the Speaker of the House do adjourn their respective Houses without day on Monday, the 2d of December next, at half past 11 o'clock a. m.

Mr. Charles Sumner, of Massachusetts, moved to amend the resolution by making the hour "at twelve o'clock," giving as a reason that Congress might not safely adjourn for even a small time lest the President—whom many thought to be unpatriotic—should improve the brief time to issue commissions. Therefore he thought that one session should come close up to the other.

The amendment was agreed to, and then the resolution as amended was agreed to.

On the same day the House agreed to the resolution without debate.[5]

Accordingly, on Monday, December 2,[6] the presiding officers of the two Houses, in accordance with the concurrent resolution, declared the Houses adjourned sine die.

And immediately thereafter the Houses were called to order in the second session, and the roll was called by States.[7]

6691. On October 15, 1877,[8] Congress met in extraordinary session on the call of the President, and remained in session until the first Monday in December, the day appointed by the Constitution for the regular assembling of Congress.

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[1] Such was not the earlier practice, however. See chapter I of Vol. I.

[2] 14 Stat. L., p. 378. The law provided: "That in addition to the present regular times of meeting of Congress, there shall be a meeting of the Fortieth Congress of the United States, and of each succeeding Congress thereafter at 12 o'clock meridian, on the 4th day of March, the day on which the term begins for which the Congress is elected, except that when the 4th of March occurs on Sunday, then the meeting shall take place at the same hour on the next succeeding day."

[3] First session Fortieth Congress, Journal, p. 3.

[4] Globe, pp. 794, 795.

[5] Journal, p. 276; Globe, p. 798.

[6] Journal, p. 284; Globe, pp. 816, 817.

[7] Second session Fortieth Congress, Journal, p. 3.

[8] First session Forty-fifth Congress, Journal, p. 3; Record, p. 50.

On Saturday, December 1, 1877,[1] Mr. Fernando Wood, of New York, offered the following resolution, which was agreed to by the House:

Resolved (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, directed to adjourn their respective Houses, without day, at 3 o'clock p. m. this day.

Later on the day of December 1[2] the House took a recess until 10 a. m. of the calendar day of Monday, December 3 [the day prescribed by the Constitution for the meeting of the regular session of Congress].

On the same day, December 1,[3] the Senate adjourned until Monday, December 3, at 10 a. m.

As soon as the Senate had approved its Journal on Monday, December 3,[4] Mr. George F. Edmunds, of Vermont, offered this resolution, which was agreed to without debate:

Resolved by the Senate (the House of Representatives concurring), That it is the judgment of the two Houses that the present session of Congress expires by operation of law at 12 o'clock meridian, this day.

On the same day this resolution was agreed to by the House without debate.[5]

After the above resolution had been agreed to, the Senate took up the resolution of the House of December 1, and agreed to it with an amendment striking out the words "three o'clock p. m. this day," and inserting "eleven o'clock and fifty minutes a. m. Monday, the 3d of December, instant." The House concurred in that amendment.[6]

Then the two Houses agreed to the usual resolution authorizing the appointment of a joint committee to wait on the President and inform him of the adjournment.

And at 11.50 a. m. the Speaker declared the House adjourned sine die in accordance with the resolution of the two Houses. And ten minutes later the Speaker, at 12 m., called the House together in the new session, the roll being called by States.[7]

6692. On November 9, 1903, in pursuance to the call of the President, the Fifty-eighth Congress met in extraordinary session, and was in session on Saturday, December 5, 1903,[8] the last secular day before the first Monday in December, the day appointed by the Constitution for the regular yearly meeting of Congress.

In the House of Representatives business proceeded as usual, and at its close the simple motion to adjourn was agreed to, and the Speaker[9] announced, "the House stands adjourned," without adding as usual the day to which it stands adjourned.[10] No resolution for announcing to the President the termination of the session was proposed.

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[1] Journal, p. 285; Record, p. 806.

[2] Journal, p. 293; Record, p. 814.

[3] Record, p. 805.

[4] Record, p. 816.

[5] Record, p. 814.

[6] Record, pp. 814, 816.

[7] Second session Forty-fifth Congress, Journal, p. 3.

[8] First session Fifty-eighth Congress, Journal, p. 110; Record, p. 540.

[9] Joseph G. Cannon, of Illinois, Speaker.

[10] The Journal never records the Speaker's announcement of the day to which the House stands adjourned.

In the Senate on the same day[1] it was voted to adjourn until 11.30 a.m. on Monday, December 7. On that day[2] and hour the Senate met, and after the transaction of business and the adoption of the usual vote of thanks to the presiding officer, the hour of 12 o'clock having arrived, the President pro tempore[3] said:

Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day.

And immediately thereafter the President pro tempore called the Senate to order for the second session of the Congress.[4]

In the House at the same hour[5] the Speaker called to order, and, after prayer by the Chaplain, directed that the roll be called by States to ascertain the presence of a quorum. And then business proceeded as at the beginning of a session, the usual resolutions of notification being agreed to.

6693. On December 11, 1903,[6] in the Senate, Mr. Benjamin R. Tillman, of South Carolina, proposed the following:

Whereas Article II, section 2, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;

And further:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March 4 last to November 9, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

First. What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases.

Second. What legislation is necessary to prevent the holding of an office by any person or persons whose commissions issue or are held by Executive exercise of unlawful authority, if any there be.

On January 22, 1904,[7] the resolutions were debated in the Senate, Mr. Benjamin R. Tillman, of South Carolina, raising a question especially as to William D. Crum, appointed collector of the port of Charleston, S. C. The position taken by certain Senators, notably by Messrs. Eugene Hale, of Maine, and John C. Spooner, of Wisconsin, was that there was no constructive recess between the first and second sessions, and that the appointment of Mr. Crum was not a recess appointment.

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[1] Record, pp. 529, 531.

[2] Record, P. 542.

[3] William P. Frye, of Maine, President pro tempore.

[4] Second session Fifty-eighth Congress, Record, p. 1.

[5] Journal, p. 3; Record, p. 15.

[6] Record, p. 113.

[7] Record, pp. 1017–1023.

On January 25[1] the resolutions were again before the Senate, when Mr. Tillman said:

My inquiry was as follows:

"UNITED STATES SENATE,
Washington, D. C., January 8,1904.

"HON. LESLIE M. SHAW,
"Secretary of the Treasury, Washington, D. C.
"SIR: Will you please give me an answer to the following questions:
"First. When was Dr. W. D. Crum appointed collector of customs at the port of Charleston, S. C.? The date and character of his commission.
"Second. Is he now in office? If so, under what authority of law?
"Third. Did a new commission issue under the last appointment? If so, give date.
"Fourth. Has he been required to give a bond under his last appointment?
"Fifth. Has he ever received any compensation for his services; and if not, why not?
"An early reply will be appreciated by,
"Yours, respectfully,

B. R. TILLMAN."

THE SECRETARY ANSWERED ON THE SAME DATE, AS FOLLOWS:

"OFFICE OF THE SECRETARY, TREASURY DEPARTMENT,
"Washington, January 8, 1904.

"MY DEAR SENATOR: Replying to your note of January 8, relative to Dr. W. D. Crum, collector of customs at the port of Charleston, S. C., I beg to advise:
"The vacancy occurred in the fall of 1902, possibly in September, during a recess of the United States Senate."
I will note here that the duties of the office were performed in the interim by the deputy collector.
"Congress regularly convened in December of that year, and on December 31 Mr. Crum's nomination was sent to the Senate. The Senate adjourned on the 4th of March without confirming the nomination. On the 5th of March, the Senate being in special session, the nomination was again sent in. The Senate adjourned without confirming, and on March 20, 1903, the President issued a temporary commission, under which Mr. Crum entered upon the discharge of his duties. He was allowed no compensation, however, in view of the statute prohibiting it under similar circumstances. I doubt not you are familiar with the statute. The Senate again convened in special session in November, 1903, and the nomination was again sent in, but was not acted upon. At the adjournment of that special session and at precisely 12 o'clock noon of the first Monday in December, 1903, Mr. Crum was reappointed, and his nomination is now pending before the United States Senate. Under this last appointment Mr. Crum has again given bond and is in discharge of the duties of the office, but without compensation, for reasons heretofore referred to.

L. M. SHAW.

"Very truly, yours,
"HON. B. R. TILLMAN,
"United States Senate."

Mr. Hale said:

The Secretary says, when he comes to deal with the conditions at the end of the extra session, that an appointment was made at precisely 12 o'clock, and that the Senate now has that before it. That is this appointment which I have read:
"William D. Crum, South Carolina, to be collector of customs for the district of Charleston, in the State of South Carolina, in place of Robert M. Wallace, deceased.

"THEODORE ROOSEVELT.

"DECEMBER 7."
There is nothing said to the effect that a commission was issued.

On February 4[2] the resolutions were indefinitely postponed.

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[1] Record, pp. 1104–1109.
[2] Record, p. 1609.

On February 2[1] Mr. Tillman offered in the Senate the following:

Whereas Article II, section 2, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;"

And further:

"The President shall have power to fill up all vacancies which may happen during the recess of the Senate by granting commissions which shall expire at the end of the session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March 4 last to November 9, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

First. What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases.

Second. What legislation is necessary to prevent the holding of an office by any person or persons whose commissions issue or are held by Executive exercise of unlawful authority, if any there be.

On February 4,[2] the resolution was discussed at length and after Mr. Tillman had withdrawn the last clause (which was objected to as implying a reflection on the Executive) the Senate agreed to the resolution.[3]

6694. The legislative day of March 3 of the final session of a Congress is held to terminate at 12 m. on March 4 unless a motion is made and carried for an adjournment previous to that hour.—On March 3, 1851,[4] Mr. Alexander H. Stephens, of Georgia, said that he rose to a privileged question. It was then 5 minutes before 12 o'clock, on the 3d of March, and he submitted to the Chair that, constitutionally, this Congress expired at 12 o'clock. He inquired whether the House had the right to sit after 12 o'clock.

The Chair declined to decide the question until the hour arrived.

At 12 o'clock p.m. Mr. Stephens moved that the House adjourn sine die, and called for the yeas and nays on that motion. The yeas and nays were taken, and the motion was negatived, 30 yeas to 153 nays.

6695. On March 3, 1835,[5] in the closing hours of the Congress, Mr. Leonard Jarvis, of Maine, made the point of order that the functions of the House had ceased, since it was then after midnight of March 3.

The Speaker[6] said that the Chair could not decide such a question, and that the proper procedure would be to obtain the opinion of the House by making a motion to adjourn.

Thereupon, for the purpose of testing the question Mr. Seaborn Jones, of Georgia, moved that the House adjourn.

Mr. Charles F. Mercer, of Virginia, said that in the course of a membership of eighteen years he had frequently known the House to act one, two, or even four

[1] Record, p. 1522.

[2] Record, pp. 1603–1609.

[3] See see. 6687 of this chapter for the report of the Judiciary Committee.

[4] Second session Thirty-first Congress, Globe, pp. 784, 918–920.

[5] Second session Twenty-third Congress, Journal, p. 523; Debates, pp. 1659–1662.

[6] John Bell, of Tennessee, Speaker.

hours after 12 o'clock. It was also urged that it would not be respectful to the Senate and the President for the House to adjourn without giving them notification.

The motion to adjourn was decided in the negative, and the House continued in session until 3.38 a. m., when it adjourned without day.

6696. At midnight on March 3, 1851,[1] a question was raised in the Senate as to the expiration of the term of the Congress. Mr. Jefferson Davis, of Mississippi, said that he was inclined to believe that as Washington on his first full term was inaugurated at 12 o'clock on the 4th of March, and as every Presidential term had been for four years from that period, and as every Senatorial term runs for six years, the session might continue until 12 o'clock of the 4th of March. But as the weight of very high authority was against his opinion, he desired to test the question. Therefore he would present himself at the Chair and ask to be sworn in as a Member of the new Congress.

The Chair did not feel at liberty to administer the oath, as the Thirty-first Congress had not adjourned

Mr. Lewis Cass, of Michigan, said that two years before that night, on March 3, 1849, the question was raised. He then stated his opinion that Congress terminated on the night of the 3d of March at 12 o'clock. The bills that would be passed this night would be signed on "the 3d of March." It would be so stated, but it was not true. It was necessary to resort to a fiction to justify holding over. Being of the opinion just given, he should so vote, and after voting should do no more business.

Mr. Samuel Houston, of Texas, said he thought that if they adjourned on the 4th of March it was all the Constitution required. In his opinion the Senate would have power to sit until to-morrow at sunset.

Mr. Thomas Ewing, of Ohio, said he found no difficulty on the point. The Senate meets at 12 o'clock on the 4th day of March. Then the term commences, and at 12 o'clock on the 4th of March it ends, because it must consist of six years.

In the course of the debate Mr. James M. Mason, of Virginia, expressed a doubt whether the term for which he had been chosen had not expired, and desired, if he continued to act, to be qualified as a Senator for the ensuing term.

Thereupon Mr. Stephen A. Douglas, of Illinois, offered this resolution, which was agreed to, yeas 27, nays 11:

Resolved, That inasmuch as the second session of the Thirty-first Congress does not expire under the Constitution until 12 o'clock on the 4th of March instant, the Hon. James M. Mason, a Senator-elect from the State of Virginia, is not entitled to take the oath of office at this time, to wit, on the 4th of March at 1 o'clock a.m.

On March 3, 1849,[2] after 12 o'clock midnight, the point was made that the Senate had no constitutional right to sit longer, but a motion to adjourn was disagreed to, yeas 7, nays 33.

6697. On March 3, 1881,[3] at midnight, Mr. James W. Singleton, of Illinois, rising to a question of order, said that the hour of 12 o'clock had arrived, and made the point of order that the Forty-sixth Congress had expired.

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[1] Second session Thirty-first Congress, Senate Journal, p. 251; Globe, pp. 818–820.

[2] Second session Thirtieth Congress, Globe, pp. 686, 689.

[3] Third session Forty-sixth Congress, Record, p. 2456.

After debate the Speaker[1] held:

This point of order has from time to time been made in the history of this country, and was the subject of enlarged discussion by some of the ablest men the country has ever produced; such men as Mr. Benton, Mr. Cass, and others. The Chair supposes the practice of Congress in this connection is based on the fact that it does not recognize the calendar day, but recognizes the legislative day. The legislative day of the 3d of March does not expire until 12 o'clock noon on the 4th of March. Practice construes the law. In 1851 this question came up in the House of Representatives, as the Chair is advised, on a resolution offered by the gentleman from Georgia, who is now a Member of this House [Mr. Stephens]. On the 3d of March, 1851, Mr. Stephens offered a resolution to test this question, and on the ruling of Speaker Cobb it was decided that the Congress expired at noon[2] on the 4th of March; which ruling has been in effect ever since.

6698. A concurrent resolution fixing the day for final adjournment may be offered from the floor as privileged, even though a similar resolution may have been offered and considered.

The motion to commit has been admitted pending a demand for the previous question on agreeing to a concurrent resolution.

On October 17, 1888,[3] Mr. C. B. Kilgore, as a privileged question, presented this resolution:

Resolved by the Senate and House of Representatives, That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on Saturday, October 20, 1888, at 1 o'clock p. m.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that this was not a privileged matter, as there was already pending a motion to refer a similar resolution offered the day before.

The Speaker[4] held that any proposition to adjourn was privileged.

The previous question having been demanded, Mr. James D. Richardson, of Tennessee, moved to refer the resolution to the Committee on Ways and Means.

Mr. Kilgore made a point of order against the motion.

The Speaker held the motion to be in order under section 1 of Rule XVII.[5]

6699. The privilege of a resolution fixing the time for final adjournment has been held to extend to a proposition to recall such a resolution from the Senate.—On March 22, 1869,[6] Mr. William Lawrence, of Ohio, moved to suspend the rules and agree to the resolution:

Resolved, That the concurrent resolution for the action of the two Houses of Congress by which the time of adjournment of this Congress is fixed for Friday next, and now pending before the Senate, be recalled for further consideration, and that a message be sent to the Senate requesting the return of the same.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] Sometimes, when the business is not likely to be finished at exactly the hour, the hands of the clock are set back. This is a very old custom. Mr. John Randolph, of Virginia, speaking in 1816, referred to it as a custom of the House. (First session Fourteenth Congress, Annals, p. 944.)

[3] First session Fiftieth Congress, Record, pp. 9546, 9547; Journal, p. 2941.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] See section 5443 of this volume.

[6] First session Forty-first Congress, Globe, p. 200.

The Speaker[1] said:

The Chair will rule that this is a question of privilege and a suspension of the rules will not be needed. The resolution is now before the House.

6700. Instance wherein a concurrent resolution fixing the time of final adjournment was rescinded by action of the two Houses.—On March 26, 1804,[2] the Senate agreed to this resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the resolution of the 13th instant, authorizing the adjournment of Congress on the 26th instant, be rescinded, and that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on Tuesday, the 27th instant.

On the same day the House agreed to the resolution, yeas 49, nays 44.[3]

6701. A concurrent resolution providing for an adjournment of the two Houses for more than three days is privileged.

An instance wherein the Speaker submitted the decision of a question of order to the House.

On May 20, 1862,[4] Mr. Sydenham. E. Ancona, of Pennsylvania, having proposed to submit the following resolution:

Resolved (the Senate concurring), That the House of Representatives adjourn from Wednesday, 28th instant, to Monday, June 2—

The Speaker[5] stated that inasmuch as he entertained doubts as to the propriety of holding such propositions to be privileged, notwithstanding the practice in the last Congress, he would submit the question, Will the House entertain the said resolution?

Pending this question, on motion of Mr. Clement L. Vallandigham, of Ohio, at 4 o'clock and 35 minutes p. m., the House adjourned.

On May 21, 1862, the Speaker having announced as the business first in order the question of entertaining the resolution which was pending when the House adjourned yesterday, the question was put, Will the House entertain the said resolution? And it was decided in the affirmative, yeas 58, nays 55.

So the House decided to entertain the resolution. Pending the question on agreeing thereto, Mr. Edward H. Rollins, of New Hampshire, moved that it be laid on the table. And the question being put, it was decided in the affirmative, yeas 78, nays 46.[6]

6702. A simple resolution providing for an adjournment of the House for more than three days, and for asking the consent of the Senate thereto, has been ruled to be privileged.—On April 18, 1860,[7] Mr. Milledge L. Bonham, of South Carolina, submitted the following resolution:

Resolved, That when this House adjourns on Friday next, it shall stand adjourned until Monday, the 30th of April instant, and that a message be sent to the Senate asking its consent thereto.

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[1] James G. Blaine, of Maine, Speaker.

[2] First session Eighth Congress, Senate Journal, p. 399; Annals, p. 303.

[3] House Journal, p. 691; Annals, p. 1240.

[4] Second session Thirty-seventh Congress, Journal, pp. 718, 720; Globe, pp. 2246, 2262.

[5] Galusha, A. Grow, of Pennsylvania, Speaker.

[6] On December 19, 1882 (second session Forty-seventh Congress, Record, pp. 438, 439), Mr. Speaker Keifer, following this precedent, held a similar resolution to be privileged.

[7] First session Thirty-sixth Congress, Journal, pp. 753, 759; Globe, pp. 1735, 1789, 1814.

Objection having been made thereto, the Speaker pro tempore [1] decided, in conformity with former decisions of the Chair, which had been acquiesced in by the House, that the said resolution, being a privileged question, was in order.[2]

Mr. Israel Washburn, jr., of Maine, having appealed, the decision on the appeal was not made until the succeeding day. Then, in putting the question, the Speaker [3] declared the ruling of the Speaker pro tempore had been in accordance with his own ruling.

The appeal was then laid on the table.

The resolution was then laid on the table.[4]

6703. On March 23, 1871,[5] Mr. John F. Farnsworth, of Illinois, claiming the floor for a question of privilege, presented the following:

Whereas the Senate has adopted a resolution declaring that the Senate will consider at the present session no other legislative business than the deficiency appropriation bill, etc. (naming several other measures), thereby refusing to consider any business which may originate in the House of Representatives: Therefore,

Resolved (the Senate concurring), That this House will adjourn, when it adjourns to-morrow, until the first Monday in December next, at 11 o'clock a. m.

Points of order being raised, the Speaker [6] held that the resolution was not debatable, and that it was privileged.

Mr. Horace Maynard, of Tennessee, made the point of order that it would not be in order for the House to adjourn in this way without an adjournment of the Senate also.

The Speaker overruled this point of order, saying:

The provision of the Constitution is that neither House shall adjourn for more than three days without the consent of the other; but this resolution proposes an adjournment of the House for a longer time, with the consent of the Senate.

The question being taken, the resolution was agreed to, yeas 113, nays 68.

In the Senate, on March 24, the resolution was laid on the table, without debate or division, on motion of Mr. George F. Edmunds, of Vermont.

6704. The privilege of a resolution providing for an adjournment of more than three days is limited in its exercise.—On March 22, 1871,[7] Mr. John F. Farnsworth, of Illinois, as a question of privilege, proposed the following:

Resolved by the House of Representatives (the Senate concurring), That this House will, when it adjourns on Friday next, adjourn to meet again on the first Monday in December next, at 11 o'clock a. m.

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[1] John S. Phelps, of Missouri, Speaker pro tempore.

[2] Such a decision was made by the Speaker on April 16. (Globe, p. 1735.)

[3] William Pennington, of New Jersey, Speaker.

[4] The House has never taken a recess of more than three days without consent of the Senate. In 1862 the Congress took a holiday recess from December 23 to the first Monday in January. The House at first sent to the Senate a resolution intended to give to the House the authority to adjourn over without the Senate participating in the recess. But the Senate amended the resolution so as to provide for adjournment by both Houses. The form of the House resolution was criticized in the Senate as unprecedented. (Third session Thirty-seventh Congress, Journal, pp. 117, 124; Globe, p. 170.)

[5] First session Forty-second Congress, Journal, pp. 104, 105; Globe, pp. 241, 242, 249.

[6] James G. Blaine, of Maine, Speaker.

[7] First session Forty-second Congress, Globe, pp. 229, 230.

The Speaker[1] said:

The Chair doubts this being a question of privilege until the time expires covered by the resolution of the House which has been already sent to the Senate. * * * The Chair would not hold it to be a question of privilege until the time had passed. The House has sent a resolution to the Senate proposing to adjourn to-morrow at 12 o'clock noon. Until that time has expired, and the House is advised of the action or nonaction of the Senate, the Chair would hold that another resolution of that kind was not a question of privilege, because the House has adopted and sent to the Senate, and has reconsidered and laid on the table the vote by which it was adopted, a proposition to adjourn to-morrow at 12 o'clock noon. It is not a matter of courtesy to the Senate until the time has expired within which it may act on that resolution to introduce another resolution on the same question, and the Chair would not hold it to be a question of privilege until that time has expired.

6705. A concurrent resolution extending the time of a recess of Congress already determined on is privileged.—On December 21, 1869,[2] Mr. William E. Niblack, of Indiana, submitted as privileged the following:

Resolved by the House (the Senate concurring), That the recess provided for by the concurrent votes of the two Houses, and to commence on the 22d instant, be, and is hereby, extended from Wednesday, the 5th, to Monday the 10th day of January next.

Mr. William H. Kelsey, of New York, raised a question of order as to the privilege of the resolution:

The Speaker[1] said:

It is a privileged motion. It is a question of the highest privilege.

6706. Privilege has been given to a resolution providing for a recess of Congress, the length of which might be fixed by the President or the presiding officers of the two Houses.—On July 20, 1866,[3] Mr. Thaddeus Stevens, of Pennsylvania, proposed, as a question of privilege, to submit the following resolution:

Resolved (the Senate concurring), That when Congress adjourns on the —— day of ——— it will adjourn to meet again on Saturday, the first day of December next, unless sooner convened by the President, or by the joint call of the presiding officers of both Houses, who are hereby authorized to exercise that power in case of emergency.

The question being submitted to the House, it was decided, after debate, that the resolution should be entertained as a question of privilege.

The question being taken on the resolution, it was disagreed to.

6707. When the House adjourns sine die in pursuance of a concurrent resolution of the two Houses, the adjournment is pronounced by the Speaker without motion from the floor.—On Monday, August 7, 1854,[4] the hour of 8 o'clock a. m. having arrived, the Speaker[5] announced that, in pursuance of the resolution of the two Houses fixing the time for the adjournment of the present session of Congress, the House stood adjourned until the first Monday in December next.

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[1] James G. Blaine, of Maine, Speaker.

[2] Second session Forty-first Congress, Globe, p. 293.

[3] First session Thirty-ninth Congress, Journal, p. 1070; Globe, pp. 3981–3985.

[4] First session Thirty-third Congress, Journal, p. 1345.

[5] Linn Boyd, of Kentucky, Speaker.

6708. On June 14, 1858,[1] Mr. Henry Bennett, of New York, called up the motion to reconsider the vote by which the report of the geological survey, by Doctor Evans, of Washington and Oregon Territories was ordered to be printed.

Pending this, the hour of 6 o'clock p. m. having arrived, the Speaker' announced that, in pursuance of the concurrent resolution of the two Houses, the House of Representatives stood adjourned for the present session of Congress.[3]

6709. When the House adjourns sine die at an hour before the expiration of the constitutional term of the Congress it does so by a simple motion made and carried, without concurrent action of the Senate.

When the House has sat to the limit of the constitutional term of the Congress, the Speaker pronounces an adjournment sine die, without a motion being put and carried. (Footnote.)

On March 3, 1845,[4] the House was considering a bill relating to the building of revenue cutters and steamers, which the President had returned to the Senate with his veto and which the Senate had passed over the veto.

The previous question was ordered, and then the question on the passage of the bill was taken, as the Constitution requires, by yeas and nays. When the roll had been called about half through, Mr. Thomas H. Bayly, of Virginia, rose to a question of order. Pointing to the clock, the hands of which were just at 12, he said that it had been stopped for five minutes, and that by the Constitution the House was adjourned. The Clerk proceeded to call the roll again, when Mr. Bayly again rose to raise a constitutional question.

The Speaker[5] said he could not entertain any motion when the House was dividing. The roll call concluded, and the Speaker announced that the bill was passed by the constitutional majority of two-thirds, the President's veto notwithstanding.

Business then continued until ten minutes after 2 before the House finally adjourned sine die[6] on motion put and carried.[7]

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[1] First session Thirty-fifth Congress, Journal, p. 1148; Globe, p. 3050.

[2] James L. Orr, of South Carolina, Speaker.

[3] There has been one decision out of harmony with this well-established practice. On August 31, 1842 (second session Twenty-seventh Congress, Journal, p. 1446; Globe, p. 979), on the last day of the session, Mr. Edward J. Black, of Georgia, rose to a question of order, and, pointing to the clock, which indicated that it was past 2 o'clock, called attention to the fact that by the resolution of the two Houses it had been determined to adjourn at 2 o'clock, the exact words of the resolution being "that the Speaker of the House and President of the Senate adjourn the two Houses of Congress sine die on Wednesday, the 31st instant, at 2 o'clock p.m."

The Speaker (John White, of Kentucky), while admitting that the resolution so provided, declared that the Speaker was not the timekeeper of the House, and if the House determined that it was not 2 o'clock it was the business of the House and not of the Chair.

The pending business was disposed of, the report of the committee to wait on the President was received, a resolution notifying the Senate that the House was ready to adjourn was agreed to, and then the House adjourned sine die.

[4] Second session Twenty-eighth Congress, Globe, p. 396; Journal, p. 580.

[5] John W. Jones, of Virginia, Speaker.

[6] It seems quite evident from the Globe that Mr. Bayly's point of order was made at midnight of March 3, and that the adjournment was at 10 minutes after 2 on the morning of March 4.

[7] In this and preceding Congresses the House was not accustomed to continue in session until the expiration of the full term of the Congress at noon March 4, and so the adjournment was on motion

6710. On the legislative day of March 2, 1905[1] (calendar day of March 4), at the hour of 11.55 a. m., five minutes before the expiration of the constitutional term of the Congress, Mr. Sereno E. Payne, of New York, moved that the House adjourn sine die.

The motion was agreed to and the House adjourned.

6711. When the House has sat to the limit of the constitutional term of the Congress, a motion to adjourn may be put and carried, or the Speaker may declare the adjournment sine die without motion.—On March 3, 1853,[2] Mr. George W. Jones, of Tennessee, from the joint committee appointed to wait on the President of the United States, reported that the committee had discharged the duties for which they were appointed, and had received for answer from the President that he had no further communication to make to the present Congress.

A motion was then made by Mr. George W. Jones, at 12 o'clock m.,[3] that the House do now adjourn sine die.

And the question being put, it was decided in the affirmative.

Thereupon, the Speaker[4] addressed the House, and at the conclusion of his address announced that the House stood adjourned sine die.

6712. On March 3, 1857[5] Mr. Lewis D. Campbell, of Ohio, from the joint committee appointed to wait upon the President of the United States and to ascertain whether he had any further communication to make to Congress, reported that the committee had discharged that duty, and that the President had informed them that he was not aware of any other communication that it was necessary to make.

A motion was then made by Mr. Lewis D. Campbell, at 12 o'clock m.,[6] that the House adjourn.

And the question being put, it was decided in the affirmative.

Thereupon the Speaker,[7] having addressed the House, declared it adjourned sine die.

6713. On the legislative day of March 1, 1901[8] (but the calendar day of March 4), at the hour of the expiration of the constitutional term of the Congress,

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made and carried. (See third session Twenty-seventh Congress, Journal, pp. 579, 581.) In the later Congresses, since the House has sat until the moment of the expiration of the term, no motion is made to adjourn, but the Speaker declares the House adjourned sine die in accordance with the existing fact. (See second session Fiftieth Congress, Journal, p. 776.) Of course the two Houses by concurrent action always inform the President that they are about to adjourn sine die.

[1] Second session Fifty-eighth Congress, Journal, p. 454.

[2] Second session Thirty-second Congress, Journal, p. 431.

[3] It is evident from the Globe (p. 1167) that this was 12 m. of the calendar day of March 4, the hour of the expiration of the constitutional term of the Congress. The legislative day was journalized as March 3.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Third session Thirty-fourth Congress, Journal, p. 691; Globe, p. 1000.

[6] It is evident (Globe, pp. 984, 1000) that this was 12 m. of the calendar day of March 4.

[7] Nathaniel P. Banks, of Massachusetts, Speaker.

[8] Second session Fifty-seventh Congress, Journal, p. 333.

the Speaker,[1] without motion or vote of the House, declared the House adjourned sine die.[2]

6714. The two Houses having fixed. the time for adjournment sine die, the House may not adjourn finally before the arrival of the hour.—On August 14, 1848[3] on the last day of the session, Mr. Thomas H. Bayly, of Virginia, moved that the House adjourn.

The Speaker[4] decided that the motion to adjourn was not in order. The two Houses, by a joint resolution, had fixed 12 o'clock to-day as the time for the adjournment sine die. By the Constitution of the United States neither House, without the consent of the other, could adjourn for more than three days. If the motion to adjourn were received and agreed to, the House would stand adjourned until the first Monday in December.[5] The motion, therefore, was not in order.

6716. The Speaker interrupts a roll call and declares the House adjourned sine die, without motion or vote of the House, when the hour of expiration of the term of the Congress arrives.—On June 17, 1842,[6] the House proceeded to the consideration of the concurrent resolution of the Senate to extend this session of Congress until 2 o'clock p. m. this day.

A motion was made by Mr. Edmund Burke, of New Hampshire, that the resolution be laid upon the table. On this question the yeas and nays were ordered. When the roll had been partially called the hour of 12 o'clock meridian arrived, when the Speaker[7] directed the Clerk to suspend the call, and then rose and said:

> The hour fixed for the adjournment of the present session of Congress having arrived, I now declare that this House stands adjourned sine die.

And so the House, at precisely 12 o'clock meridian, adjourned until the first Monday in December, A. D. 1844, the day fixed by the Constitution of the United States for the annual meeting of Congress.

6716. On March 3, 1859,[8] the House had passed a bill for the relief of Sheldon McKnight, when Mr. David S. Walbridge, of Michigan, moved to reconsider and then to lay the latter motion on the table. On the latter motion the yeas and nays were ordered, and at twenty minutes to 12 o'clock the call of the roll commenced.

Before the result of the vote was announced, the hour of 12 o'clock having arrived, the Speaker[9] arose, delivered his address of farewell, and declared the Thirty-fifth Congress at an end.

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[1] David B. Henderson, of Iowa, Speaker.

[2] This is in accordance with the custom for many years under similar circumstances. (See Journal, second session Forty-ninth Congress, p. 887; second session Forty-seventh Congress, p. 658; third session Forty-fifth Congress, p. 696, etc.)

[3] First session Thirtieth Congress, Globe, p. 1080.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

[5] This was not exactly the case of an adjournment before the hour of the expiration of the term of Congress.

[6] First session Twenty-eighth Congress, Journal, p. 1175; Globe, p. 696.

[7] John W. Jones, of Virginia, Speaker.

[8] Second session Thirty-fifth Congress, Journal, p. 625; Globe, p. 1684.

[9] James L. Orr, of South Carolina, Speaker.

6717. On March 3, 1877,[1] Mr. William R. Morrison, of Illinois, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. 4691 (army appropriations), reported that the committee were unable to agree.

Mr. Morrison having, by unanimous consent, submitted a statement as covering the position taken by the managers at the conference on the part of the House, moved that the House insist on its disagreement to the amendments of the Senate to the bill and demanded the previous question thereon.

The previous question was seconded and the main question ordered and put.

The Clerk thereupon proceeded to call the roll, and, at 11 o'clock and 57 minutes a. m. (Sunday, March 4), having called the name of Mr. Thomas L. Jones, the Speaker[2] stated that as it was a physical impossibility for the Clerk to complete the roll call before 12 o'clock m., he would direct him to suspend.

The Speaker thereupon announced the appointment of visitors to the Military Academy, under and in accordance with the requirements of section 1327 of the Revised Statutes of the United States.

Then, having addressed the House, he declared it adjourned without day.

6718. On March 3, 1871,[3] in the midst of a roll call that would, had the proportion of votes continued as they were, have completed final action on a bill, Mr. Speaker Blaine interrupted the call, and, after addressing the House, declared it adjourned sine die. This was the last session of the Congress.

6719. At the time fixed for adjournment sine die the Speaker has interrupted a roll call, even when its continuance might have passed a resolution extending the session.—On September 30, 1850,[4] the hour fixed for the adjournment of the session finally arrived, during the calling of the roll. Mr. Speaker Cobb directed the Clerk to suspend the call, and declared the House adjourned sine die.

6720. On August 18, 1856,[5] Mr. Speaker Banks interrupted a roll call to declare the session adjourned sine die, although the roll was being called on a motion to agree to a concurrent resolution, sent to the House by the Senate, providing for an extension of the session.

6721. The hour fixed for adjournment sine die having arrived the Speaker delivered his valedictory and declared the House adjourned, although no quorum was present.—On March 3, 1835,[6] in the closing hours of the session, the House was debating the fortifications bill. In the midst of the debate, Mr. Churchill C. Cambreleng, of New York, having apparently concluded his remarks, Mr. Dixon H. Lewis, of Alabama, asked if there was a quorum in the House.

A count being had, it appeared that only 114 Members were in attendance, which was not a quorum.

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[1] Second session Forty-fourth Congress, Journal, p. 698; Record, p. 2251.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Third session Forty-first Congress, Journal, p. 513; Globe, p. 1942.

[4] First session Thirty-first Congress, Journal, p. 1603.

[5] First session Thirty-fourth Congress, Journal, p. 1539; Globe, p. 2241.

[6] Second session Twenty-third Congress, Globe, p. 332.

No quorum again appeared, and, after some futile attempts at business, the Speaker[1] delivered his valedictory and declared the House adjourned sine die.

6722. Form of concurrent resolution of the two Houses terminating a session of Congress.—The form of concurrent resolution providing for the final adjournment of a session other than the final session, which terminates March 4, is as follows:[2]

Resolved by the House of Representatives (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on—, — —, at — o'clock ——.

6723. Form of resolution authorizing a joint committee to notify the President of the approaching adjournment of Congress.—The committee to notify the President of the adjournment of Congress is authorized by a resolution in this form:[3]

Resolved,[4] That a committee of three Members[5] be appointed by the Chair, to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed the business of the present session and axe ready to adjourn unless the President has some other communication to make to them.[6]

6724. At the adjournment of the last session of a Congress, even at the expiration of the constitutional term of the House, the two Houses send a joint committee to inform the President.

The last session of a Congress may be adjourned before the expiration of the constitutional period. (Footnote.)

Instance wherein the House held two legislative days within the limits of one calendar day. (Footnote.)

On March 2, 1907[7] (calendar day of March 4), at the close of the last session of the Congress, in the Senate Mr. Eugene Hale, of Maine, offered the following resolution, which was agreed to:

Resolved, That a committee of two Senators be appointed by the Vice-President to join a similar committee appointed by the House of Representatives to wait upon the President of the United States and inform him that the two Houses, having completed the business of the present session, are ready to adjourn, unless the President has some other communication to make to them.

When this resolution was received by message in the House, Mr. Sereno E. Payne, of New York, offered the following, which was agreed to:

Resolved, That a committee of three Members be appointed by the Speaker to join a similar committee appointed by the Senate to wait upon the President of the United States and inform him that the two Houses have completed the business of the present session and are ready to adjourn unless the President has some other communication to make to them.

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[1] John Bell, of Tennessee, Speaker.

[2] First session Fifty-fifth Congress, Record, p. 2973.

[3] Second session Fifty-fifth Congress, Record, p. 6801.

[4] The practice from the earliest days of the House has sanctioned the creation of this joint committee by independent simple resolutions of the two Houses, although usually joint committees are created by a concurrent resolution agreed to by both Houses.

[5] The number of this committee is sometimes two. (See first session Fifty-fifth Congress, Record. p. 2972.)

[6] This resolution is adopted at the last session of a Congress, even on the year of an inauguration. (Second session Fifty-fourth Congress, Record, p. 2981.)

[7] Second session Fifty-ninth Congress, Record, pp. 4657, 4671.

Thereupon the Chair appointed the committee, Mr. Payne being made chairman.

After a time the committee appeared at the bar of the House, and Mr. Payne reported orally:

Mr. Speaker, the committee appointed by the Speaker to join a like committee on the part of the Senate to wait upon the President of the United States and inform him that the Houses have completed their business and are ready to adjourn and to ask him if he had any further communication to make, report that they have performed the duty and that the President commends Congress for the good legislation which it has accomplished during the session, and said that he had no further communications to make.[1]

6725. The resolution notifying the President that the House is ready to adjourn sine die is usual, but has sometimes been omitted.—On March 3, 1835,[2] by reason of the failure of a quorum in the closing hours of the session the House adjourned without adopting the usual resolutions notifying the President that the House had completed its business and was ready to adjourn.

6726. On August 14, 1848,[3] the House adopted the resolution that a committee wait on the President and inform him that the House would adjourn at 12 o'clock that day; but afterwards reconsidered this action on the ground that it was unnecessary.

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[1] This ceremony of informing the President that the two Houses are about to adjourn unless he have some other communication to make to them takes place at every session of Congress, although in fact under present practices of remaining in session until the last moment of the constitutional term of the Congress, it seems somewhat out of place at the adjourment of the last session. The practice dates from the early years of the Government.

When the last session of the First Congress adjourned a message was sent to the Senate informing it that the House had completed its business and was about to adjourn sine die, but not to the President. (Third session First Congress, Journal, p. 409.) At the end of the last session of the Second Congress the two Houses sent a joint committee to wait on the President and inform him that they were about to adjourn. (Second session Second Congress, Journal, p. 735.) In those days the House and Senate apparently did not prolong their sessions until noon of the calendar day of March 4, i. e., to the extreme constitutional limit, and it might well be that the President might desire them to remain longer in session. But under the practice for many years now, of holding the session until the very hour of 12 m. March 4, the Congress could not defer adjournment even should the President so request.

The early Congresses evidently did not remain in session until the last moment permitted by the Constitution. The last day's sitting of the Second Congress was March 2, 1793. This was Saturday, and the House met at the usual hour, held a session during the day, and at the close of the afternoon adjourned until 7 p. m. of the same day. At 7 p. m. it met in what was really another legislative day, but also a legislative day of March 2. While the Journal does not disclose the hour of adjournment sine die, it was probably before midnight of March 2. (Second session Second Congress, Journal, p. 735; Annals, p. 966.) The Fourth Congress also held two legislative days on Friday, Much 3, 1797, one during the day and the other during the evening, and the latter terminating in adjournment sine die, probably by midnight, although the Journal does not state the hour. (Second session, Fourth Congress, Journal, pp. 742, 746.) Indeed, it was many years later that the House and Senate confronted and settled the question whether or not sessions might be held after midnight Much 3 on the year of the expiration of a Congress. (See sees. 6694–6697 of this volume.) In the early morning hours of March 4, 1835, Mr. Samuel Beardsley, of New York, declined to vote on the ground that the term of the Twenty-third Congress had expired, but the House went on with business. (Second session Twenty-third Congress, Journal, p. 527; Debates, p. 1660.)

[2] Second session Twenty-third Congress, Journal, pp. 531–533.

[3] First session Thirtieth Congress, Journal pp., 1284, 1286; Globe, p. 1081.

6727. All business pending and unfinished in the House or in committee, or awaiting concurrent action in the Senate, at the end of a session, is resumed at the next session of the same Congress.

Instance of a practice which survived after the rule creating it had been inadvertently dropped.

Instance wherein the House has abandoned a usage of Parliament as inapplicable to existing conditions.

Form and history of Rule XXVIL

Rule XXVII provides:

All business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

In the second session of the First Congress [1] it was decided that business unfinished, whether before committees or between the two Houses, at the end of a session must be taken up as new business at the beginning of the next session. This decision was made in conformity with the practice of the British Parliament, which had been followed in Virginia, although not in Pennsylvania. But in 1816 [2] a joint committee of the House and Senate investigated this subject and reported in favor of a rule that business of all kinds pending at the close of the then existing session should be resumed at the same point the next session; but no action was taken on the report. On March 17, 1818,[3] Mr. John W. Taylor, of New York, in order to expedite public business by preventing the repetition of the labor of committees, secured the adoption of this rule:

After six days from the commencement of a second or subsequent session of Congress all bills, resolutions, and reports which originated in the House, and at the close of the next preceding session remained undetermined, shall be resumed and acted on in the same manner as if an adjournment bad not taken place.

It does not appear, however, that this rule reached House bills sent to the Senate and not acted on there during the same session, and a question that arose in the House on May 14, 1828,[4] indicates that such bills were again acted on by the House at the next session and again sent to the Senate. This was remedied in 1848 [5] by making the rule already adopted in the House a joint rule of the House and Senate, and although the joint rules have ceased to exist the practice of the two Houses continues in accordance therewith.

These rules, however, did not reach business before committees. In 1818 [6] we find the House required to authorize an investigating committee to continue and report at the next session; and in 1858 [7] the Committee on Rules recommended an additional rule which was adopted in 1860,[8] and which, in order to obviate the

[1] See Annals of Congress, Proceedings of the House, January 11, 20, and 25, 1790.

[2] First session Fourteenth Congress, Journal, p. 614; Annals, p. 1353.

[3] First session Fifteenth Congress, Annals of Congress, Vol. II, p. 1402.

[4] First session Twentieth Congress, Journal, p. 734; Debates, p. 2674.

[5] First session Thirtieth Congress, Journal, pp. 1106, 1228; Globe, p. 994.

[6] First session Fifteenth Congress, Journal, p. 447.

[7] Second session Thirty-fifth Congress, House Report No. 1.

[8] First session Thirty-sixth Congress, Globe, pp. 1179, 1187.

necessity of referring business anew at the beginning of a subsequent session, provided that all business before committees of the House at the end of one session should be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

The rule as amended in 1860 was adopted in the revision of 1880[1] with no material change. In 1890[2] the portion of the rule adopted in 1818 was stricken out, with the result, in practice, not of returning to the practice prior to 1818, but of removing the restriction of six days, the fact apparently having been overlooked that the main original object of the rule was not the six days' limitation, but the continuation of pending business from one session to another. And in practice the House has continued to observe the rule of 1818 in everything except the six days' limitation, although, except for a brief period by the Fifty-second Congress, the rule has not been restored. All that remains of the rule now is the portion adopted in 1860 relating to committee business:

On August 24, 1852,[3] the House agreed to this resolution:

Resolved, That all bills, resolutions, and other matters referred to the standing and select committees of this House, upon which no report shall have been made at this session, shall be returned informally to the Clerk, and shall by virtue of this resolution, stand recommitted at the commencement of the next session to said committees, into whose possession the Clerk is directed to restore them.

On December 9, 1850,[4] at the beginning of the second session, the House, by resolution, referred anew memorials and petitions referred to committees at the preceding session and not acted on by the committees.

6728. An adjournment does not necessarily take place at 12 m. Saturday, the House having power to continue in session on Sunday if it be so pleased.

The propriety of continuing a session into Sunday does not constitute a question of order for the Speaker, who may not adjourn the House against its will.

For many years the House has continued its sessions of Saturday into Sunday when under stress of business.

On March 26, 1836,[5] the House had under consideration the North Carolina contested election case of Newland *v.* Graham, and there was a succession of roll calls, caused by an alternation of the motion to adjourn with motions to suspend the rules in order to make the case a special order at some future date.

Finally, at 12 o'clock at night, Mr. Joab Lawler, of Alabama, rose to a question of order, and inquired whether it was in order for the House to continue in session after 12 o'clock at night on Saturday night—that is, to continue its session on the Sabbath day.

The Speaker[6] decided that, as a question of order, he had no power over the subject; that he could not adjourn the House against the sense of the House; that

[1] Second session Forty-sixth Congress, Record, p. 207.

[2] House Report No. 23, first session Fifty-first Congress, Record, p. 1171 et seq.

[3] First session Thirty-second Congress, Journal, p. 1070 Globe, p. 2315.

[4] Second session Thirty-first Congress, Journal, p. 33.

[5] First session Twenty-fourth Congress, Journal, pp. 577–582; Globe, p. 265.

[6] James K. Polk, of Tennessee, Speaker.

the rules invested him with no power to do so. He stated the practice of the House at some preceding sessions, which, from the journals it appeared, had been occasionally for the House to continue in session on Saturday night until after 12 o'clock. It was a question which must be left to be decided by the judgment and discretion of the House itself, which alone could determine upon the necessity or propriety of continuing its session and to adjourn or not, as a majority should determine; that he had no power to declare it to be against order to continue in session, if the majority so determined.

Mr. Lawler, having made and withdrawn an appeal, made his question of order in writing, in the words following:

The Member from Kentucky, being on the floor and engaged in addressing the House, was called to order, whereupon he took his seat and a Member from Alabama raised the following question: Whether, the hour of 12 having passed and the Sabbath arrived, the House, in the absence of any urgent necessity, would proceed in the business before it.

The Speaker decided as in the case of the first appeal by Mr. Lawler.[1] From this decision Mr. Lawler again took an appeal to the House and, after debate and roll calls on motions to adjourn, Mr. Lawler withdrew his appeal, and at 4.30 a. m., March 27, the House adjourned.

On Monday, March 28, Mr. Bellamy Storer, of Ohio, moved to suspend the rules to enable him to move a resolution of inquiry into the propriety of prohibiting sessions of the House on Saturday after 12 o'clock Saturday night and of prohibiting sessions during Sunday except in cases of urgent public necessity, to be previously determined by the House. The motion failed, 64 yeas to 87 nays.

6729. Upon the legislative day of Saturday, March 3, 1877,[2] the House was in session after midnight, and on motion of Mr. William S. Holman, of Indiana, at 2 o'clock and 35 minutes a.m. (March 4) the House took a recess until 8 o'clock a. m.

The recess having expired, the House reassembled at 8 o'clock a. m. (Sunday, March 4).

The House then continued the transaction of business until noon, when the Speaker declared the House adjourned without day.

6730. The House has declined to affirm that it may not transact business on Sunday.—During the legislative day of Saturday, May 20, 1826,[3] at the close of a session of Congress, Mr. Alfred H. Powell, of Virginia, offered this resolution:

Resolved, That Sunday is not, in the contemplation of the laws and Constitution of the United States, a legislative day upon which business ought to be transacted by the House of Representatives.

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[1] The Globe (p. 265) shows that the Speaker quoted in support of his ruling a precedent at the first session of the Nineteenth Congress, when the question was raised at 12 o'clock Saturday night, the last night of the session, and it was within the memory of the Chair as well as of other Members present that the then Speaker (Speaker John W. Taylor, of New York) had decided that as a question of order there was no difficulty about it, since during the war Congress had sat all day Sunday at times and had passed important bills. The debates and Journal of the first session Nineteenth Congress are silent on this ruling, but the Journal gives (p. 635) a statement that the following resolution was offered by Mr. Powell and ordered to lie on the table by the House:

"Resolved, That Sunday is not, in the contemplation of the laws and Constitution of the United States, a legislative day upon which business ought to be transacted by the House of Representatives."

[2] Second session Forty-fourth Congress, Record, p. 2242.

[3] First session Nineteenth Congress, Journal, p. 635; Debates, p. 2688.

The House laid the resolution on the table and continued its session until 4.30 a. m., Sunday.

6731. Sunday has been made a legislative day by concurrent action of the two Houses.—On Saturday, March 2, 1839,[1] Mr. John Quincy Adams, of Massachusetts, proposed a resolution, joint in form, that when the two Houses should adjourn on that day they should adjourn to meet on the succeeding day (Sunday) at 10 o'clock.

This resolution was disagreed to, but soon after a message from the Senate asked the concurrence of the House in the following:

Resolved by the Senate (the House of Representatives concurring),[2] That when the Senate and House of Representatives adjourn they will adjourn to meet at 10 o'clock a. m. on the 3d of March instant.

The House agreed to this resolution.

Accordingly, on Sunday, March 3, the two Houses met in a new legislative day.

6732. By vote of the House Sunday has been made a legislative day.— On Saturday, March 2, 1811,[3]

Ordered, That this House will meet again to-morrow.

Accordingly, on Sunday, March 3, a legislative day was held and is so journalized. It was the last day of the Congress.

On June 10, 1902,[4] on motion of Mr. Sereno E. Payne, of New York, and by unanimous consent, it was—

Ordered, That when the House adjourn on Saturday, June 28, it adjourn to meet on Sunday, June 29, at 11 o'clock, the session to be devoted to eulogies upon the life, character, and public services of the late Amos J. Cummings, of New York.

Accordingly, on Sunday, June 29, at 11 a. in., the Speaker called the House to order, the Journal was read and approved, and then the House proceeded with the special order.

6733. In computing the days of a session Sunday has not always been treated as a dies non.—On Friday, August 11, 1848[5] (when the House was to adjourn finally on Monday, August 14), the House passed the bill making appropriations for rivers and harbors.

The bill having been passed, the Speaker[6] said that he entertained doubts as to whether this bill (it being an original bill of this House) could be sent to the Senate this day without a suspension of the joint rule which provided that no bill originating in either House should be sent to the other on the three last days of the session, and asked the direction of the House.[7]

Thereupon it was—

Ordered, That the Clerk request the concurrence of the Senate in the said bill.

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[1] Third session Twenty-fifth Congress, Journal, pp. 689, 698, 700; Globe, p. 229.

[2] This is one of the first instances, if not the very first, when this form of resolving clause for the concurrent resolution appears in the journals of Congress.

[3] Third session Eleventh Congress, Journal, p. 610 (Gales & Seaton ed.); Annals p. 1106.

[4] First session Fifty-seventh Congress.

[5] First session Thirtieth Congress, Journal, p. 1249.

[6] Robert C. Winthrop, of Massachusetts, Speaker.

[7] This joint rule is no longer in force. It should be remembered that an adjournment of the House on Saturday always carries to Monday unless special order be made that it carry to Sunday.

6734. When, through an erroneous announcement of the vote, the House is declared adjourned and in fact disperses, when actually it had voted not to adjourn, the session when it next meets is nevertheless a new legislative day.—On Tuesday, December 21, 1886,[1] after prayer by the Chaplain and the reading of the Journal, the Speaker[2] made this announcement:

The Chair desires to call the attention of the House to an error in the announcement of the vote yesterday afternoon upon the question of adjournment. The vote as passed up to the Chair showed 124 in the affirmative and 121 in the negative. Thereupon the Chair so announced it, and the House adjourned. Upon reexamination of the roll call it appears that the vote was 121 in the affirmative and 127 in the negative, so that by the vote the House really refused to adjourn. The error, the Chair thinks, grew out of the fact that during the roll call there was considerable confusion, and after the call was completed quite a number of gentlemen rose and changed their votes, one after another, in rapid succession, so that the tally clerk failed to get them all recorded accurately. * * * But it is not the legislative day of Monday. * * * The Chair thinks the House did adjourn. The Chair announced the vote; the House acquiesced in the announcement and adjourned. The Chair has simply called attention to the matter this morning in order that the fact might be disclosed exactly as it occurred. * * * It is true that the House voted not to adjourn, as appears upon an inspection of the Record; but the Chair announced that the affirmative vote prevailed, and the House thereupon did in fact adjourn.

6735. When the hour previously fixed for an adjournment arrives, the Speaker declares the House adjourned.—On February 28, 1896,[3] at the close of a Friday evening session, in the midst of the consideration of the bill (H. R. 1185) granting a pension to Rachel Patton, the Speaker pro tempore[4] arose and announced:

The hour of 10.30 o'clock having arrived, under the rule[5] the Chair declares the House adjourned until to-morrow at 12 o'clock noon.

6736. The Committee of the Whole being in session at the hour fixed for the daily meeting of the House, it rests with the Committee and not the Chairman to determine whether or not it will rise.—On June 9, 1836,[6] the House was in Committee of the Whole House on the state of the Union considering the bills (S. No. 177, S. No. 178) for the admission of the States of Michigan and Arkansas.

The session continued all night, and when 10 a.m. of June 10 arrived, Mr. Henry A. Wise, of Virginia, having the floor, Mr. John Chambers, of Kentucky, raised the point of order whether the gentleman could longer proceed, the hour of the meeting of the House having arrived.

The Chairman[7] said there was no difficulty. If a motion was made that the Committee rise, the Chair would put the motion.

Messrs. Wise, and Thomas M. T. McKennan, of Pennsylvania, raised the point that under the rules of the House the, Speaker should take the chair at 10 a. m.[8] and that the Committee could not violate a rule of the House.

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[1] Second session Forty-ninth Congress, Record, p. 314.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-fourth Congress, Record, p. 2293.

[4] William P. Hepburn, of Iowa, Speaker pro tempore.

[5] Section 2 of Rule XXVI. (See see. 3281 of Vol. IV of this work.)

[6] First session Twenty-fourth Congress, Globe, p. 434.

[7] Jesse Speight, of North Carolina, Chairman.

[8] The House has for many years met at 12 m., but sometimes fixes an earlier hour of meeting when there is a pressure of business, as in the last days of a session.

Mr. McKennan moved that the Committee rise, but this motion was negatived. Mr. Wise continued his remarks, and the Committee at 11 a.m. rose and reported the bills to the House.

6737. On March 24, 1840,[1] the House had under consideration in Committee of the Whole the bill (H. R. 18) to provide for issuing Treasury notes. Dilatory proceedings having been entered upon, the session of the House and Committee continued all night and the next forenoon, the House no sooner getting into Committee of the Whole than business would be prevented by Members declining to vote and thus breaking the quorum.

When the hour of 12 m. arrived, the Committee of the Whole being in session, Mr. Joseph R. Underwood, of Kentucky, made the point of order that, it being now the usual hour for reading the Journal and proceeding to the regular business of the House, under its standing rules, the Committee must rise.

The Chairman[2] said that there was an analogous case in the year 1836, in the case of the admission of the States of Arkansas and Michigan, in which the same point had been raised. In that case the Committee did not rise, and the decision of the Chair would now be governed by that precedent.

This legislative day finally terminated at 5.15 p. m., March 25, having begun at 12 m. March 24.

6738. There must be an adjournment before the legislative day will terminate, and an adjournment does not take place by reason of the arrival of the time for the regular daily meeting of the House.

The legislative day continues until terminated by an adjournment, irrespective of the passage of calendar days.

Instance of prolonged dilatory proceedings in the House.

Form of the resolution by which general debate was closed in Committee of the Whole in former years.

On May 11, 1854[3] (Thursday), the House was considering the following resolution, submitted by Mr. William A. Richardson, of Illinois:

> *Resolved,* That all debate in the Committee of the Whole House on the state of the Union on the bill of the House (No. 236) to organize the Territories of Nebraska, and Kansas shall cease at 12 o'clock m. to-morrow (if the Committee shall not sooner come to a conclusion upon the same); and the Committee shall then proceed to vote on such amendments as may be pending or offered to the same, and shall then report it to the House with such amendments as may have been agreed to by the Committee.[4]

By the alternation of dilatory motions[5] the proceedings on this resolution were greatly prolonged, and after there had been 65 roll calls, the hour of 12 o'clock m. (Friday) having arrived, Mr. Gilbert Dean, of New York, rose and inquired whether, under the first rule,[6] it was not now the duty of the Chair to cause the Journal of the preceding day to be read.

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[1] First session Twenty-sixth Congress, Globe, p. 285.

[2] William C. Dawson, of Georgia, Chairman.

[3] First session Thirty-third Congress, Journal, pp. 804, 811; Globe, p. 1177.

[4] This was the form then used for closing general debate in Committee of the Whole.

[5] See also section 6737 for another instance of dilatory proceedings.

[6] See section 1310 of Vol. II of this work.

The Speaker[1] stated that the rule referred to required the Speaker "to take the chair precisely at the hour to which the House shall have adjourned on the preceding day;" but as there had been no adjournment, he thought there could be no new meeting of the House, and that the legislative day, which commenced yesterday at 12 o'clock m., would not terminate until the adjournment did take place. He consequently decided that the Journal could not now be read.

Mr. Nathaniel P. Banks, of Massachusetts, then made the further point of order that the House had adjourned by force of the order of the 5th of December last, "that 12 o'clock m. be fixed as the hour to which the House shall each day adjourn until otherwise ordered."

The Speaker overruled this point of order also, and decided that the House could not be declared adjourned without an express vote of the House, or by the expiration of the limitation of the session under the Constitution, saying:

The gentleman from Massachusetts, Mr. Banks, raises the question that, by the order of this House, passed on the first day of the present session of Congress, the House stands adjourned to 12 o'clock to-day. The Chair overrules that question of order upon the ground that there can not be a meeting of this body without an adjournment; and upon the further ground that when this House does adjourn, even if it is a week hence, it will meet again as directed by its own order. The legislative day will continue until the House adjourns, and when the House, after such an adjournment, meets at 12 o'clock, or at such other time as the House shall fix, it will be the duty of the Speaker, under the rule which has been referred to by him, to take the chair, call the Members to order, and cause the Journal of the preceding day to be read, and a portion of that Journal must necessarily be a motion and a vote to adjourn; without that it is incomplete.

The Speaker could not take the chair at 12 o'clock to-day for the reason that he was continuing to occupy it, and the House was continuing to progress in its proceedings upon a legislative clay, and must continue to do so until it adjourns. One of the three hundred and sixty-five days of the year has passed over, the Chair admits; but one of the legislative days allowed to this Congrem is now being consumed.

Mr. Banks appealed, but subsequently withdraw the appeal.

6739. On the legislative day of Monday, March 23, 1868[2] (but the calendar day of Tuesday, March 24), during proceedings relating to the impeachment of Andrew Johnson, President of the United States, the hour of 12 m., the time fixed for the daily meeting of the House, arrived.

Thereupon Mr. Fernando Wood, of New York, as a question of order, insisted that the House should begin the session of Tuesday.

The Speaker[3] overruled the point of order, saying:

The House of Representatives continues its session of Monday till the final adjournment, even if the session runs for several calendar days. In the great parliamentary struggle on the Missouri Compromise the session continued two days and two nights, and the House of Representatives received on Monday a message sent from the Senate on Tuesday.

6740. The hour at which the House adjourns each day is entered on the Journal.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] Second session Fortieth Congress, Globe, p. 2075.

[3] Schuyler Colfax, of Indiana, Speaker.

The rule making the motions to adjourn, to fix the day to which the House shall adjourn, and for a recess in order at any time was dropped to prevent the continued use of those motions for purposes of obstruction.

Present form and history of section 5 of Rule XVI.

Section 5 of Rule XV1 provides:

The hour at which the House adjourns shall be entered on the Journal.

This section is the last clause of a rule which was formerly of great importance, but all of which, except this remnant, was stricken out in the revision of 1890.[1]

When the first rules were adopted on April 7, 1789,[2] this was among them:

A motion to adjourn shall always be in order, and shall be decided without debate.

On March 13, 1822,[3] the rule was amended and became:

A motion to adjourn shall always be in order after 4 o'clock p. m., but before that hour it shall not be in order if there be at the time any question pending before the House; that and the motion to lie on the table shall be decided without debate.

Four years later all that portion forbidding the motion before 4 p. m. was dropped, and the rule as then changed continued until January 14, 1840,[4] when the motion to fix the day to which the House shall adjourn was added.

On October 9, 1837,[5] a rule was adopted providing that the hour at which every motion to adjourn was made should be entered on the Journal.

In the revision of 1880[6] the two rules were united in the following form:

A motion to fix the day to which the House shall adjourn, a motion to adjourn, and to take a recess shall always be in order, and the hour at which the House adjourns shall be entered on the Journal.

The committee changed the provision requiring that the hour of making the motion to adjourn be entered on the Journal, because the House sometimes did not actually adjourn until long after the motion was made.

Between 1880 and 1890 the high privilege given these motions was held to justify their indefinite alternation, thus producing a very effective system of obstruction. It was to do away with that that the change of 1890 was made. The old form was restored in the Fifty-second and Fifty-third Congresses, but dropped again in the Fifty-fourth and succeeding Congresses.

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[1] First session Fifty-first Congress, House Report No. 23.

[2] First session First Congress, Journal, p. 9.

[3] First session Seventeenth Congress, Journal, pp. 350, 352; Annals, Vol. II, p. 1301.

[4] First session Twenty-sixth Congress, Globe, p. 121.

[5] First session Twenty-fifth Congress, Journal, p. 106; Globe, p. 117.

[6] Second session Forty-sixth Congress, Record, pp. 199, 206.

Chapter CXLI.

THE RULES.

1. Provision of the Constitution. Section 6741.
2. In practice the rules a permanent system. Section 6742.
3. Rules of one House not binding on its successor. Sections 6743–6755.[1]
4. House exercises its constitutional power within limits fixed by itself. Section 6756.[2]
5. Jefferson's Manual and general parliamentary law. Sections 6757–6763.[3]
6. Binding effect of the rules, especially in reference to conflicting statute. Sections 6764–6768.
7. Amendments to the rules, especially as to functions of Committee on Rules. Sections 6769–6781.[4]
8. The joint rules. Sections 6782–6789.

6741. The Constitution confers on the House the power to determine the rules of its proceedings.—The Constitution, in Article IV of section 1, provides:

> Each House may determine the rules of its proceedings.

6742. Each House has usually adopted the rules of its predecessor, sometimes with additions or changes, thus building up what has become in fact a permanent system.—According to the practice of the House for the whole of its existence, except a brief period,[5] a system of rules is adopted when each new House organizes for the Congress in which its term falls. While in theory these rules are new in each Congress, yet in fact the essential portions of the system

[1] See also sections 82, 210, 187, 194, 499 of Volume I and 6002 of this volume. (Ruling of Mr. Speaker Reed.)

[2] House declines to adopt rules until the Members are sworn. (Sec. 140 of Vol. I.) Adoption of rules at the organization of the House. (Secs. 93–102 of Vol. I.)

[3] See also sections 757 of Volume I, and 5604 and 6727 of this volume.

[4] See also Chapter LXXXVIII of Volume IV, sections 3152–3265, as to special orders. Relation of the question of consideration to reports from the Committee on Rules. (Secs. 4961–4963 of this volume.)

Dilatory motions forbidden while reports from the Committee on Rules are pending. (Secs. 5738–5742 of this volume.)

[5] See sections 6743–6755 of this chapter.

of rules are continued from Congress to Congress, and become an existing code,[1] permanent in its essential provisions.[2]

6743. For a time the rules provided for their own continuance in a new Congress, thus affording a rule for election of officers.—On March 19, 1860,[3] the House adopted a rule:

> These rules shall be the rules of the House of Representatives of the present and succeeding Congresses, unless otherwise ordered.

At the same time another rule was adopted, providing:

> All elections of officers of the House, including the Speaker, shall be conducted in accordance with these rules, so far as the same are applicable; and, pending the election of a Speaker, the Clerk shall preserve order and decorum, and shall decide all questions of order that may arise, subject to appeal to the House.[4]

At the organization of the Thirty-eighth Congress the validity of these rules seems to have been considered doubtful and questionable, although no issue was raised.[5]

The rule continuing the rules of one Congress during the next remained through the Fiftieth Congress,[6] but was dropped in the Fifty-first, in 1890. The House at that time proceeded on the assumption that the rules of the Fiftieth Congress

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[1] Thus, the present code of rules has been readopted by each succeeding House with practically no change of importance since 1895. This code, known as the "Reed rules," has in it certain portions which embody the reforms instituted under the leadership of Mr. Speaker Reed, but while in essence these changes were of far-reaching importance, verbally they amounted to minor changes only in the code as it had gradually grown up from the foundation of the Government. For the form of the rules and their history see "Rules" in the Digest Index.

[2] Criticism of the rules has often been very severe, as the increase of membership and business has required that they be more strict. On January 14, 1828, speaking of the rules, Mr. John Randolph, of Virginia, said that when he came to the House he knew all the rules, but after having grown gray in the service of the House, he had grown out of knowledge of them. They had become complicated and extremely unparliamentary. (First session Twentieth Congress, Debates, p. 1002.)

On September 3, 1850, a proposition to have the Manual and rules published gave rise to a discussion of the rules, in which they were criticized as cumbersome and useless. (First session Thirty-first Congress, Globe, p. 1735.)

On February 16, 1853, the chairman of the Committee of Ways and Means defended the rules and the Speaker and committees against the charge that they were responsible for the obstruction of the public business. (Second session Thirty-second Congress, Globe, pp. 651, 652.)

On May 24, 1872, the House agreed to a resolution providing for a revision of the rules so as to "facilitate the presentation of reports of committees, enlarge the means of intelligent transaction of general business, and secure to every Member a proper opportunity to examine all legislative measures before they are submitted for consideration and action by the House." (Second session Forty-second Congress, Journal, p. 946; Globe, p. 3819.)

In 1860, at the time of an important general revision of the rules, there was much criticism of them; and again in the general revision of 1880, the burden of complaint being that the liberty of the individual Member suffered under them. Of course, these complaints have not tended to diminish, as the membership of the House has still further increased. In 1890, at the time Mr. Speaker Reed instituted his far-reaching reforms, the agitation over the rules reached the dignity of a national political issue.

[3] Thirty-sixth Congress.

[4] First session Thirty-eighth Congress, Journal, p. 1051; Rules, 146, 147.

[5] First session Thirty-eighth Congress, Globe. pp. 5, 8.

[6] Second session Fiftieth Congress, Journal, p. 795.

had lapsed, and on December 2 and 9, 1889,[1] adopted a few rules temporarily; but generally proceeded under general parliamentary law until February 14, 1890, when a code of rules was adopted,[2] which did not include the rule of 1860.

On December 5, 1881,[3] at the organization of the House, before the adoption of rules, and as the vote was about to be taken for choice of Speaker, the Clerk[4] announced:

> The rule of the House provides that the votes shall be viva voce.

In this case the motion to proceed to the election of Speaker had not specified the method of voting.

6744. The theory that a House might make its rules binding on the succeeding House was at one time much discussed, and even followed in practice.—On December 7, 1875,[5] Mr. Samuel J. Randall, of Pennsylvania, offered a resolution providing that the rules of the House of the Forty-third Congress be the rules of the present House until otherwise ordered, except two specified rules.

Mr. James A. Garfield, of Ohio, raised the point of order that the rules were existing without a resolution of that sort.

The Speaker[6] said:

> The Chair overrules it on the ground that the Constitution clearly gives to each House the right to adopt its own rules. Whatever may have been the rules or orders of a preceding House in reference to this matter, they can not supersede the constitutional right of this House to adopt its own rules.[7]

6745. On March 3, 1877,[8] when the House adopted a rule giving the Sergeant-at-Arms authority to enforce order under the direction of the Clerk pending the election of a Speaker or Speaker pro tempore, Mr. James A. Garfield, of Ohio, objected that the present House might not bind by a rule a succeeding House, recalling that the Speaker had very recently ruled that such was the case. The House at this time had among its rules the following, dating from March 19, 1860: "These rules shall be the rules of the House of Representatives of the present and succeeding Congresses unless otherwise ordered."[9]

The House, however, adopted the rule against which Mr. Garfield protested.

6746. In 1879,[10] at the beginning of the Congress, on March 29, a question was raised as to the rule providing that the rules of the last House should be the rules of the succeeding until new ones should be adopted, and was discussed at some length. Mr. Speaker Randall laid before the House the history of the rule, and expressed an opinion indicating that he thought the rule proper, and that the rules of

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[1] First session Fifty-first Congress, Record, pp. 83, 130.

[2] Journal, p. 233.

[3] First session Forty-seventh Congress, Record, p. 8.

[4] George M. Adams, of Kentucky.

[5] First session Forty-fourth Congress, Record, p. 174.

[6] Michael C. Kerr, of Indiana, Speaker.

[7] It is to be noted that the rule of 1860, whereby it had been sought to impose the rules of one House on its successor, had been a part of the rules of the preceding House, and was at this time in effect, if it had validity—which it did not.

[8] Second session Forty-fourth Congress, Record. pp. 2234, 2235.

[9] Rule 147; Journal. p. 719.

[10] First session Forty-sixth Congress, Record, pp. 110–112.

preceding House would continue under it until superseded. After this it seems to have been assumed that the rules of the previous House continued without the customary resolution adopting them, for on April 8 a resolution proposed to enforce a certain rule, and on April 9 [1] the Committee on Rules submitted certain amendments to the rules, which were adopted. But the rules themselves were not adopted by any vote, it being assumed that they were in existence.

On February 27, 1880,[2] Mr. Edward H. Gillette, of California, proposed a rule providing that the rules should not be the rules of a succeeding House until adopted by that House. He declared that the existing rule which made the rules of one House those of its successor until amended or changed was destructive of the liberty of the House. His amendment was not agreed to by the House.[3]

6747. The question as to whether or not one House might make its rules binding on the next House was discussed incidentally, but at some length, on January 18, 1882.[4]

The theory finally disappeared in 1889 and 1890, when Mr. Speaker Reed, having in mind the destruction of the system of obstruction which had existed for many years, and which was intrenched in the code of rules as they had existed in the preceding Congress, disregarded the provisions of the rule of 1860, and held that the House was governed by general parliamentary law until it should itself adopt rules.[5] Mr. Speaker Carlisle had proceeded on the same assumption,[6] but the rule had been readopted.

6748. Although the House becomes functus officio at the end of its term, yet in practice certain rules and regulations have extended beyond that time.—On March 3, 1861,[7] an effort was made to repeal so much of the House resolutions of May 17, 1858, as reduced during the recesses the force employed by the Doorkeeper. It is evident from this that these resolutions had a certain binding effect with Congresses succeeding that by which they were adopted.

6749. On January 13, 1845,[8] on motion of Mr. John B. Weller, of Ohio, and under suspension of the rules, the House agreed to the following:

Resolved, That the Doorkeeper of the House of Representatives be authorized to retain John Thomas McDuffie as a page to the end of the present session, the fact that he is over 16 years of age to the contrary notwithstanding.

Mr. Weller explained that the rules prescribed the age of 16. But no such rule appears among the standing rules. The usage of the House as established by former Houses was probably meant.

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[1] Journal, pp. 48, 57.

[2] Second session Forty-sixth Congress, Record, p. 1207.

[3] See also section 6759.

[4] First session Forty-seventh Congress, Record, pp. 486–491.

[5] See section 6002 of this volume. Mr. Speaker Reed's two most important rulings, one as to counting a quorum and the other as to dilatory motions, which destroyed obstruction, were made while the House was operating under general parliamentary law.

[6] Section 6759.

[7] Third session Thirty-seventh Congress, Journal, p. 602.

[8] Second session Twenty-eighth Congress, Journal, p. 202; Globe, p. 129.

6750. In 1888,[1] the House having been invited to attend the centennial celebration of the inauguration of President Washington, the Committee on the Judiciary reported that as the term for which the Members were chosen would expire on the 4th of March preceding the event, the House would be functus officio, and could not as a House participate in the ceremonies. Furthermore, the House might not accept the invitation for the succeeding House. Therefore they reported against the acceptance of the invitation.

6751. March 2, 1827,[2] at the close of the Congress, the House ordered that the Hall of the House should not be used during recesses of Congress.

6752. The House has made rules which have been followed through other Congresses by the Executive Departments, although the authority for the rules has been considered doubtful.—On December 30, 1791,[3] the House considered this resolution:

Resolved, That it shall be the duty of the Secretary of the Treasury to lay before the House of Representatives, on the fourth Monday of October in each year, if Congress shall be then in session, or, if not then in session, within the first week of the session next following the said fourth Monday of October, an accurate statement and account of the receipts and expenditures of public moneys, etc.

The presentation of this resolution occasioned considerable discussion as to the right of the House to make a rule with the intent of having it binding on future Congresses. It was urged on the one side that the Constitution empowered one Congress to make rules for another, although it was admitted that the House had proceeded on the contrary supposition. Against this argument it was urged that under such a theory one House might choose a Speaker for a subsequent House.

The resolution was finally agreed to.

6753. On February 1, 1830,[4] the House agreed to this resolution:

Resolved, That the Secretary of War cause to be annually laid before this House a number of copies of the printed Army list equal to the number of Members of the House.

6754. On March 20, 1834,[5] the Speaker laid before the House a letter from the Secretary of War accompanied by 250 printed copies of the Army Register for 1834 for the Members of the House. The letter was laid on the table. This was apparently in response to the order of the House passed in a preceding Congress.

On January 28, 1841,[6] the Speaker laid before the House a letter from the Secretary of War transmitting, "in compliance with the resolution of the 1st of February, 1830," a certain number of copies of the Army Register.

On February 28, 1854,[7] the Speaker laid before the House a letter from the Secretary of War transmitting, in compliance with a resolution of the House of of February 1, 1830, 250 copies of the Official Army Register of 1854.

6755. Discussion by the Supreme Court of the power of the House to make its own rules.—On February 29, 1892, the Supreme Court of the United

[1] First session Fiftieth Congress, Report No. 2441.

[2] Second session Nineteenth Congress, Journal, p. 370.

[3] First session Second Congress, Journal, p. 484 (Gales and Seaton ed.); Annals, pp. 300, 301.

[4] First session Twenty-first Congress, Journal, pp. 227, 242.

[5] First session Twenty-third Congress, Journal, p. 426.

[6] Second session Twenty-sixth Congress, Journal, p. 214.

[7] First session Thirty-third Congress, Journal, p. 432.

States, in the case of the United States *v.* Ballin,[1] gave a decision sustaining the action of Mr. Speaker Reed in counting a quorum. In the course of the decision it discussed the power of the House to make its rules, as follows:

The Constitution empowers each House to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

6756. In exercising its constitutional power to change its rules the House has confined itself within certain limitations.—On December 13, 1878,[2] Mr. Roger Q. Mills, of Texas, proposed for immediate consideration a resolution providing for a committee to revise the rules of the House, claiming privilege for the resolution on the ground that the Constitution gave to the House a power in this respect of which it could not divest itself.

The Speaker[3] said:

The House, acting in pursuance of its constitutional power, has adopted certain limitations as to changes of its rules.

6757. The House is governed by the rules of Jefferson's Manual in all cases in which they are applicable and in which they are not inconsistent with the standing rules and orders of the House.

Present form and history of Rule XLIV.

Rule XLIV of the rules of the House is:

The rules of parliamentary practice comprised in Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House and joint rules[4] of the Senate and House of Representatives.

This rule dates from September 15, 1837.[5] The Manual had been written by Mr. Jefferson for the use of the Senate,[6] over which he presided as Vice-President.[7] In the revision of 1880 the Committee on Rules decided to retain the Manual as an authority, although, as they said in their report, "compiled as it was for the use of the Senate exclusively and made up almost wholly of collations of English parliamentary practice and decisions, it was never especially valuable as an authority in the House of Representatives, even in its early history, and for many years past has

[1] 144 U. S., p. 5.

[2] Third session Forty-fifth Congress, Record, pp. 175, 176.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] There are no longer joint rules, and there have not been any since the Forty-third Congress,

[5] First session Twenty-fifth Congress, Globe, p. 1533.

[6] For rules of the Senate, with date of the adoption of each, see Senate Report No. 56, second session Fortieth Congress.

[7] On February 28, 1812 (first session Twelfth Congress, Journal, p. 211; Annals, p. 1112), the House authorized the purchase of copies of Jefferson's Manual, provided the rules of the House should be annexed thereto. On April 15, 1830 (first session Twenty-first Congress, Journal, p. 536), a resolution was presented which indicates that the printing of the Constitution, Rules, and Jefferson's Manual in a volume was usual.

been rarely quoted in the House."[1] This statement, although sanctioned by high authority, is extreme. Many fundamental principles are set forth in the Manual, and while there is much that is obsolete there is also much of use at the present time, as these pages bear witness.

6758. Before rules are adopted the House is governed by general parliamentary law, but the Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of that law.

Before the adoption of rules the motion to commit has been admitted after the ordering of the previous question.

On December 12, 1887,[2] before rules had been adopted by the House, a resolution was presented relating to the certificate of election of Owen G. Chase, claiming to be elected a Delegate from the Territory of Cimarron.

Mr. Ransom W. Dunham, of Illinois, rising to a parliamentary inquiry, asked how the resolution could be in order.

The Speaker[3] replied:

> Under the general parliamentary law of the country,[4] which permits the introduction of a proposition whenever a gentleman is recognized for that purpose. It is for the House, of course, to say what it will do with the proposition. It may refer it to a committee, lay it upon the table, or refuse to pass upon it in any shape.

Again, on the same day, the previous question was ordered on a resolution of inquiry relating to the examination of a certain harbor, which had been presented.

Mr. James H. Blount, of Georgia, having proposed a motion to refer the resolution, the Speaker said:

> The practice of the House heretofore decided by the Chair will prevail in ordinary legislative proceedings, and the gentleman's motion to refer to the committee is in order, notwithstanding the previous question has been ordered.

6759. On December 19, 1887,[5] before the adoption of rules by the House, Mr. Samuel J. Randall, of Pennsylvania, had the floor, when the Speaker informed him that his time had expired.

Mr. John H. Rogers, of Arkansas, rising to a parliamentary inquiry, asked under what rule there was a limitation as to time for debate.

The Speaker[3] replied:

> The Chair has frequently decided that in the absence of a resolution adopting the rules of the House formally the proceedings of the House are governed by the general parliamentary law, of which the practice of the House[6] constitutes a part—in fact, the principal part.

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[1] Second session Forty-sixth Congress, Record, p. 202.

[2] First session Fiftieth Congress, Record, pp. 39 and 41.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] On March 24, 1880 (second session Forty-sixth Congress, Record, p. 1835), Mr. Thomas B. Reed, of Maine, afterwards Speaker), and Mr. J. S. C. Blackburn, of Kentucky, discussed the status of a standard American work on parliamentary law, the former holding that it treated largely of English precedents and was not a sure guide for American procedure. The latter urged that the work was authority.

[5] First session Fiftieth Congress, Record, p. 109.

[6] On December 19, 1881 (first session Forty-seventh Congress, Record, pp. 210, 211) , before the House had adopted rules, Mr. Speaker Keifer intimated his belief that "by immemorial usage or practice, the Speaker of each Congress has recognized the rules of the last House as governing until otherwise ordered." Mr. John H. Reagan, of Texas, dissented from this view. The code of rules in the preceding Congress had contained a rule favoring the Speaker's view. (See sections 6743–6755 of this volume.)

6760. On December 16, 1889,[1] the House was in Committee of the Whole House on the state of the Union considering a deficiency appropriation bill.

Mr. Richard P. Bland, of Missouri, having offered an amendment, Mr. David B. Henderson, of Iowa, made the point of order that it was not germane and therefore not in order.

Mr. Bland called attention to the fact that the House had not adopted rules.

The Chairman[2] said:

The Chair is aware of the common parliamentary law, and while inclined to think, under a strict construction of that law, the amendment would be germane and in order, because amendments have been introduced which changed the entire character of a proposition, the Speaker of the last House decided that common parliamentary law is the law as made up in a large degree by the practice of the House of Representatives. Under the practice of the House of Representatives for years all amendments to a proposition must be germane to that proposition; and if the ruling of the Speaker was correct, of which the Chair has no doubt, then this amendment is not in order; and the Chair so holds.

6761. Before the adoption of rules the House proceeds under general parliamentary law, founded on Jefferson's Manual and modified by the practice of American legislative assemblies, especially of the House of Representatives.[3]—In 1855,[4] prior to the organization of the House by the election of Speaker, or the adoption of rules, the Clerk[5] referred for authority to the parliamentary law as given in the Manual. Another instance occurred on December 26.

6762. During the protracted struggle over the election of a Speaker in the Thirty-sixth Congress,[6] the House was conducted under general parliamentary law, of which Jefferson's Manual was accepted as the basis.

6763. On December 9, 1885,[7] at the beginning of the Congress, and before the adoption of rules, Mr. Nathaniel J. Hammond, of Georgia, proposed the following resolution, which, after debate at length, was agreed to:

Resolved, That pending the consideration of proposed rules, and until this House shall determine the rules of its proceedings, the House be governed by Jefferson's Manual as modified by the parliamentary practice of the House of Representatives.

The rules of the preceding House had contained the clause making them the rules of succeeding Houses until changed. In the debate it was very generally held that one House could not in this way bind its successor. There was considerable discussion as to what would be the general parliamentary law binding the House in the absence of rules. Mr. Thomas B. Reed, of Maine (afterwards Speaker), said: "I believe that in this country an assembly like this, coming together without special rules, would necessarily be remitted to the common parliamentary law, or what I should perhaps more properly call the common legislative law, of the country, the foundation of which is to be found in Jefferson's Manual, and which has been modified by the general action of American legislative assemblies, especially by the action of

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[1] First session Fifty-first Congress, Record, pp. 192, 193.

[2] Julius C. Burrows, of Michigan, Chairman.

[3] See section 5452 of this volume for the opinion of Mr. Speaker White as to the general parliamentary law governing the House before the adoption of rules.

[4] First session Thirty-fourth Congress, Globe, pp. 82, 85.

[5] James W. Forney, Clerk.

[6] First session Thirty-sixth Congress, Globe, pp. 19, 21, 25, etc.

[7] First session Forty-ninth Congress, Record, pp. 144–150; Journal, p. 82.

this legislative assembly." This seemed to voice the general opinion as to the law in existence before the adoption of rules.[1]

6764. A motion which in effect rescinded a rule of the House, having been offered without objection and agreed to by the House, was held to be in force as against the rule.—On February 10, 1899,[2] a Friday, Mr. Joseph G. Cannon, of Illinois, moved that general debate on the sundry civil appropriation bill be closed in Committee of the Whole House on the state of the Union with the legislative day. This motion was admitted without objection and was agreed to by the House.

As the hour of 5 p. m. approached the Committee of the Whole rose; and in the House Mr. William H. Moody, of Massachusetts, as a parliamentary inquiry, asked whether or not general debate on the sundry civil bill would be in order when the House should assemble after the recess for the evening session.[3]

The Speaker[4] said that the expression used in fixing the time when the general debate should end was "the legislative day." Therefore he thought that under the vote of the House general debate would be in order at the evening session.

Thereupon, at the request of Mr. Cannon and by unanimous consent, it was ordered that general debate should close at once, the purpose of the vote not having been to continue the debate in the evening.

6765. The validity of a law passed by a preceding Congress which proposes to govern the House as to its rules or its organization is doubtful.— On February 19, 1841,[5] the Senate, in the course of the discussion of the election of a Public Printer, was the scene of a debate which, besides going into the history of the early arrangements for the printing, brought up again the point as to whether the inherent right of either House to elect its own officers might be modified or limited by law.

6766. On December 4, 1871,[6] Mr. Speaker Blaine said:

> The Chair desires to submit to the House a question which somewhat embarrassed him. The law reorganizing the government of the District of Columbia provided that the Delegate from the District of Columbia should be a member of the Committee for the District of Columbia. The Chair is governed by the rules of the House, which are made under the express provision of the Constitution of the United States giving to each House the right to make its own rules; and the rules of the House provide that the Committee for the District of Columbia shall consist of nine Members of the House. Looking at the duties laid on the Chair by the rule he has referred to under the Constitution, he did not feel at liberty to constitute the Committee for the District of Columbia of ten Members; and it becomes necessary, as between the law which seems to change the rule of the House, and between the rule of the House as it stands, for the House to determine what course shall be taken.

The question was referred to the Committee on Rules, and that committee on December 13, reported a rule making places for Delegates on the committees for the District of Columbia and Territories, the first rule giving them committee places. That rule was adopted by the House after debate.

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[1] At the beginning of the Fifty-first Congress rules were not adopted for several weeks, and during that time Mr. Reed, as Speaker, administered the House under general parliamentary law.

[2] Third session Fifty-fifth Congress, Record, pp. 1691, 1712.

[3] The rule gave Friday evening to pension legislation. (Sec. 3281 of Vol. IV.)

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Twenty-sixth Congress, Globe, pp. 188–193.

[6] Second session Forty-second Congress, Journal, pp. 16, 67: Globe, pp. 11, 117.

6767. A law passed by the then existing Congress was recognized by the House as of binding force in matters of procedure.—On January 31, 1877,[1] while proceedings were pending under "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, Mr. G. Wiley Wells, of Mississippi, moved that when the House adjourn, it adjourn until Friday next.

Mr. Samuel S. Cox, of New York, made the point of order that the motion of Mr. Wells was not in order, being in violation of a law of Congress.[2]

The Speaker[3] sustained the point of order, refusing to entertain the motion.

6768. On the calendar day of February 5, 1877,[4] pending the consideration of a resolution relating to the electoral count, Mr. William J. O'Brien, of Maryland, made the point of order that the House must now proceed to the regular order of business, viz., the call of States and Territories for bills on leave and joint resolutions, as on the regular legislative day of Monday.

The Speaker[3] overruled the point of order, on the ground that the House could not perform an act forbidden by law; that the House having agreed with the Senate to pass a bill,[5] which had become a law forbidding an adjournment pending the counting of the electoral vote for President and Vice-President, the legislative day of Thursday, February 1, must continue, so far as the business of the House was concerned, until otherwise ordered, and that consequently a motion to adjourn not being in order, the call of States and Territories being Monday's business, was not in order.[6]

6769. A proposition to impose upon an officer of the House duties in addition to those prescribed by the rules is in effect an amendment of the rules and should be acted on in the way prescribed for such amendment. (Speaker overruled.)—On February 4, 1850,[7] Mr. John L. Robinson, of Indiana, offered the following preamble and resolution:

Whereas this House, by resolution, has postponed the election of Doorkeeper until the last day of March, 1851: Therefore,

Resolved, That said office being vacant it is competent and proper to provide for the discharge of the duties of said office by devolving the same upon some other officer of this House.

Resolved further, That Adam J. Glossbrenner, the Sergeant-at-Arms of this House, be, and he is hereby, ex officio authorized to perform the duties of Doorkeeper of this House until the day fixed for the election of said officer.

Mr. Albert G. Brown, of Mississippi, moved that the resolution be laid upon the table.

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[1] Second session Forty-fourth Congress, Journal, pp. 348, 349; Record, p. 1156.

[2] Act of January 29, 1877 (19 Stat. L., p. 229), which provided that during the proceedings of the electoral count the joint meeting should not dissolve until the conclusion of the count and that the recesses of either House should be limited as to time.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Forty-fourth Congress, Journal, p. 381; Record, pp. 1266–1271.

[5] Act of January 29, 1877 (19 Stat. L., p. 229).

[6] It will be observed that this law had been passed by this House, so the question as to the right of Congress to bind by law a succeeding House in a matter relating to its procedure, did not arise.

[7] First session Thirty-first Congress, Journal, p. 456; Globe, p. 277.

Mr. Alexander H. Stephens, of Georgia, raised the point of order that the duties of the Sergeant-at-Arms were prescribed by the sixty-seventh rule[1] of the House, and that, as the resolution proposed to impose additional duties on that officer, it was virtuallv an amendment to the rules of the House, which could not be rescinded or changed without one day's notice being given of the motion therefor.[2]

The Speaker[3] overruled the question of order raised by Mr. Stephens and decided the resolution to be in order.

From this decision of the Chair Mr. Stephens appealed; and the question was stated, Shall the decision of the Chair stand as the judgment of the House? And being put, it was decided in the negative, yeas 94, navs 101.

So the decision of the Chair was not sustained and the resolution was declared out of order.

6770. Subjects relating to the rules are referred to the Committee on Rules, which has high privilege for its reports.—Rule XI[4] of the House provides

In section 53:

All proposed action touching the rules, joint rules, and order of business shall be referred to the Committee on Rules.

In section 61:

The following-named committees shall have leave to report at any time on the matters herein stated, viz: The Committee on Rules, on rules, joint rules, and order of business; * * *

It shall always be in order to call up for consideration a report from the Committee on Rules, and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of.

6771. The Committee on Rules may report a resolution for the consideration of a bill, even though the effect be to discharge a committee and bring before the House a bill not yet reported.—On February 4, 1895,[5] Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, reported a resolution for the consideration of the bill of the House, No. 8445.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point that the bill, not having been reported from the Committee on War Claims, it was not in order for the Committee on Rules to report a resolution for its consideration in the House.

The Speaker[6] overruled the point of order, holding that the Committee on Rules had jurisdiction to report a resolution fixing the order of business and the manner of considering a measure, even though the effect of its adoption would be to discharge a committee from a matter pending before it, thereby changing the existing rule relative to the consideration of business. It was for the House to determine

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[1] Now Rule IV.

[2] The old one hundred and thirty-sixth rule provided: "No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor." The rule is different now. (See sec. 6790 of this volume.)

[3] Howell Cobb, of Georgia, Speaker.

[4] For full form and history of these rules see sections 4321 and 4621 of Volume IV of this work.

[5] Third session Fifty-third Congress, Journal, p. 104.

[6] Charles F. Crisp, of Georgia, Speaker.

whether this change in the mode of consideration should be made, as recommended by the committee.

6772. It was established in practice, even when a rule suggested otherwise, that a proposition to change the rules, in order to be agreed to by majority vote, should be referred to and reported by the Committee on Rules.—On June 4, 1879,[1] the Speaker[2] stated the regular order of business to be the motion to lay upon the table the appeal of Mr. Omar D. Conger, of Michigan, from the decision of the Chair on the last preceding Wednesday in relation to the right of Mr. William M. Springer, of Illinois, to submit as an independent motion an amendment to the rules.

The Speaker had overruled the point of order on the ground that Air. Springer had been recognized for the purpose stated by him, but that, objection being made, the resolution must lie over one day under the rule.

Mr. Conger withdrew the appeal, and the resolution was thereupon read, as follows:

That rule 51 be amended by adding thereto the following:

"And any pending measure reported, but not disposed of, shall be regarded as unfinished business, and shall be in order after the morning hour of any day when such business would be in order."

It was then ordered that the same lie over one day under the rule.

6773. On February 15, 1887,[3] a question arose on this point when the bill to pension the widow of Gen. John A. Logan was before the House, and after long debate the Speaker[4] gave an elaborate opinion.[5]

The Chair has already decided in accordance with the practice which has prevailed in the House for a great many years, and in accordance, also, with several previous decisions on the subject, that a gentleman upon the floor has the right, under clause I of Rule XXVIII,[6] at any time when the House was not engaged in the consideration of other matters, to give notice of a motion to amend the rules and that this might be in the technical form of a notice or in the form of a resolution, the latter having precisely the same effect as a notice, and that it would lie over under the rule. This is the whole right conferred upon such propositions by clause I of Rule XXVIII; and it will be observed that even this right is not given in express terms, but exists only by implication. The rule reads:

"No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor."

Under that it has been held that, inasmuch as this was the only method by which a proposition to amend the rules of the House could be introduced, it conferred upon a Member the right to give the notice and have it lie over one day.

Since that time, however—at the beginning of the present session of Congress—clause 1 of Rule XXIV[7] was so amended as to include simple resolutions of the House among the others which might be introduced on Monday on the call of States and Territories, and it was contended yesterday that this abrogated or rescinded clause 1 of Rule XXIV: but the Chair decided then, and the Chair still thinks decided correctly, that this amendment to the rule at the beginning of the Forty-ninth Congress, instead of abrogating or rescinding clause I of Rule XXIV, was cumulative and provided an additional method

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[1] First session Forty-sixth Congress, Journal, p. 437.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Second session Forty-ninth Congress, Record, pp. 1784, 1785.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] During this debate the origin of the f unctions of the Committee on Rules was considered at some length. (See Record, p. 1781.)

[6] The clause relating to this notice has since been dropped.

[7] This rule also has been changed, and resolutions and bills, instead of being introduced on the call, are filed at the Clerk's desk.

for the introduction of such propositions. Instead of taking away the method already provided for it added another.

But the question now presented is quite a different one. All the right conferred by implication by clause I of Rule XXVIII has been exercised in the case now before the Chair; and if the proposition hereafter has any further privilege, it must be found either in some other rule of the House or in the nature of the subject to which the proposition relates. No other rule of the House conferring such a privilege has been cited in debate, and the Chair is not aware of the existence of any. But it is said by gentlemen on the floor that, inasmuch as the House has the power, under the Constitution, to make rules for the government of its own proceedings, propositions to make or to amend these rules must be privileged for the same reason that propositions in relation to the right of a Member to a seat on the floor and propositions relating to bills disapproved and returned by the President are privileged. The power of the House to make rules is conferred by the Constitution in the following terms:

"Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."

This power is plenary, and the Chair thinks that the power of the House to make rules prescribing the methods which shall be pursued in changing its rules is just as absolute as its power to make rules to govern its proceedings in ordinary matters of legislation. To hold that the House may make rules binding upon its presiding officer and binding upon itself for the government of its proceedings in ordinary matters of legislation, but can not make rules prescribing the methods by which it shall change its rules. would certainly result in a very great and material abridgment of the power conferred by the Constitution. The House has made rules not only for the government of its proceedings in matters of legislation but also for the government of its proceeding when it comes to change its own rules or to consider propositions to change its rules.

It is provided, first, in Rule XXVIII, that such a proposition may be introduced by notice, and, second, in the amendment to clause I of Rule XXIV, that it may be introduced upon the call of the States and Territories on Mondays. It is provided in clause 43 of Rule XI that "all proposed action"—there is no exception made—"touching the rules and joint rules shall be referred to the Committee on Rules." It may be not improper to repeat here that clause 1 of Rule XXVIII, as has been already stated by the gentleman from Georgia [Mr. Hammond], has been in operation more than eighty years, and the Chair has not been able to find a single instance where it has been decided that a proposition brought before the House under that clause had any further privilege; but in every case, so far as the Chair has been able to find a decision upon the subject, it has been held that when the proposition came before the House it was here subject to all the other rules of the House. And it may also be remarked that for a long time after the organization of Congress bills could be introduced only upon notice, but it was never decided, or even contended, that when so introduced they became privileged. The giving of the notice was a matter of right, but it conferred no privilege upon the bill itself when introduced.

During the first session of the Forty-eighth Congress[1] the present occupant of the chair had occasion to decide this very question, and the Clerk will read what then occurred. The Chair will first state, however, that on the 23d of January, 1885, Mr. Valentine, then a Representative from the State of Nebraska, introduced a resolution providing that on and after a certain day the House should meet at a certain hour, and that it should be the duty of the Speaker to recognize gentlemen upon the floor for the presentation of matters for consideration, which should be considered unless objected to by a certain number of Members. On the next day the gentleman called up his resolution, as the gentleman from Iowa [Mr. Henderson] has now called up the resolution upon which the point of order is made; and the Clerk will read from the Journal what took place:

"Mr. Valentine, as a privileged question, called up the following resolution submitted by him on yesterday:

"'*Resolved,* That on and after Monday next the regular meetings of the House during the present session shall be at 11 o'clock each day; that it shall be in order each day for one hour immediately after the reading of the Journal for the Speaker to recognize such Member as he may choose, alternating sides of the House and Members, for the purpose of asking unanimous consent for the immediate consideration of such business as such Member may select; but if, after the reading of the bill or resolution, ten Members object to present consideration the same shall not be considered: *Provided,* That if consideration be had, five minutes shall be given for debate for and five minutes against such measure if asked by any Member.'

[1] This was during the second session Forty-eighth Congress, Journal, p. 332; Record, pp. 984–986.

"Mr. Randall made the point of order that under clause 43 of Rule XI the said resolution must be referred to the Committee on Rules; pending which Mr. Valentine made the further point of order that the said question of order submitted by Mr. Randall could not now be entertained, but should have been made on yesterday when the resolution was presented.

"After debate on said point of order, the Speaker sustained the first and overruled the second point of order, on the ground that the resolution, having been presented under authority of and in conformity with clause 1 of Rule XXVIII, was before the House, subject to all other rules touching its consideration, and that, as the resolution was not presented on yesterday for immediate consideration, the point of order as to such consideration by the Committee on Rules would be in order at any time before such consideration had been entered upon.

"The said resolution must therefore be referred, under clause 43 of Rule XI, to the Committee on Rules."

On the 23d of January, when the resolution was first introduced, certain proceedings occurred which the Clerk will now read from the Record:

"Mr. MILLS. Mr. Speaker, I make the point of order that that would change a rule of the House.

"Mr. MCMILLIN. I demand the regular order.

"The SPEAKER. The regular order has been demanded heretofore, but the gentleman from Nebraska stated that he rose to a privileged question.

"Several MEMBERS. That is not a privileged question.

"Mr. VALENTINE. I admit that it is not privileged for consideration at this time, but must, under the rule, lie over until to-morrow.

"The SPEAKER. The Chair thinks that so far as regards the mere introduction of the resolution, either for the purpose of having it lie over one day or for the purpose of having it referred to the Committee on Rules, it is privileged; but not beyond that.

"Mr. VALENTINE. That is all that I ask for it."

The Chair will also ask the Clerk to read the ruling made on the next day.

"The SPEAKER. Rule XXVIII of the House provides that—

No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor,' etc.

"The Chair supposes that this notice might be given in two ways. A Member might rise in his place and state that on the next day, or upon some succeeding day, he would propose to amend the rules in a certain way; or he might accomplish the same purpose by presenting to the House a proposition to amend the rules in a particular way. And the Chair supposes that the question as to whether or not the point of order can now be made that this proposition must have its first consideration in the Committee on Rules depends upon the same consideration, no matter in which one of those methods the notice might have been originally given.

"Suppose a gentleman had risen on the floor yesterday and simply given notice under this rule that on to-day he would propose a motion to amend the rules, stating the character of the amendment, of course no question could then have been made that it must have its first consideration in the Committee on Rules. So it was on yesterday when the gentleman from Nebraska presented his proposition. It was a mere notice to the House under Rule XXVIII of a proposition to amend its rules, and the Chair thinks that the point of order, if it can be made at all, can properly be made to-day when the subject actually comes before the House.

"The next question is, whether these rules provide two different methods for their own amendment; that is to say, whether they provide two different methods for bringing before the House for actual consideration a proposition to amend the rules. The Chair thinks not. The Chair thinks the two rules axe not at all inconsistent with each other, but they very well stand together.

"A proposition to amend the rules can not be considered by the House at all until there has been one day's notice given, either on the floor, as suggested by the Chair, or by the presentation of the proposition itself; but the giving of that notice in either form does not seem to dispense with the forty-third clause of Rule XI, which provides expressly that it shall be referred to the Committee on Rules. If the Committee on Rules should make a report to the House of a proposition to amend the standing rules or orders of this body which had not been referred to them more than one day before the report was made, the Chair would have no hesitation in saying that the report must lie one day on the table before it could be considered. But when a proposition to amend the rules has been made in the House and referred to the Committee on Rules one day before it is reported on, the Chair would

have no hesitation in holding that it would then come up for consideration, because all the requirements of both these rules of the House in such a case have been complied with.

"The Chair thinks that whatever may be the power of the House itself over its own rules, he is bound by all of them as they stand for the time being, and that this point of order can be made now and is well taken."

The Chair has reviewed not only that decision and the grounds upon which it was based, but all the other decisions which were accessible, and still adheres to that interpretation of the rules. The Chair thinks that no matter how the proposition may in the first instance be introduced, it must go to the Committee on Rules under the forty-third clause of Rule XI. The point of order is therefore sustained.

6774. A special order fixing a day for particular business has been held to be so far in the nature of a change of rules as to permit the Committee on Rules to report it under its leave to report at any time.

In 1886 the former custom of permitting the various committees to propose special orders for the consideration of business reported by them began to cease, the function being absorbed by the Committee on Rules.

On July 10, 1886,[1] Mr. William R. Morrison, of Illinois, as a privileged question from the Committee on Rules, to which was referred a resolution fixing a day for the consideration of business reported from the Committee on Ways and Means, reported the same with the following amendment in the nature of a substitute therefor:

Resolved, That Tuesday, the 13th day of July, immediately after the reading of the Journal, be, and is hereby, set apart for the consideration of such business as may be presented by the Committee on Ways and Means, not to include any bill raising revenue; and if any bill shall be under consideration and not disposed of when the House adjourns on that day the consideration of such bill shall continue from day to day, immediately after the reading of the Journal, until disposed of.

Mr. Abram S. Hewitt, of New York, made on this resolution a point of order:

It is not competent for the Committee on Rules to report in the nature of a rule a regulation of debate which is intended for a single day and a single occasion *pro hac vice.* That is not a rule. The usual practice of the House has been for the committee which desired a day to come in with a resolution, submit it to the House, and take the action of the House upon it under the rules. It seems to me this is a device by which the Committee on Rules, having power to report at any time, come into the House and do that which under the rules can only be done by resolution on the request of the committee from which the application comes.

After debate the Speaker pro tempore[2] held:

As the Chair understands, this resolution on being introduced was referred by the House to the Committee on Rules. It is competent, in the judgment of the Chair, for the House in this manner to change its rules, if this involves a change. The adoption of this resolution would be pro tanto nothing more than a change of the rules; and the proper method of making such a change under the rules is upon a report from the Committee on Rules.[3] Therefore the Chair can see nothing in the point of order made by the gentleman from New York [Mr. Hewitt].

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[1] First session Forty-ninth Congress, Journal, p. 2171; Record, pp. 6759–6760.

[2] Charles F. Crisp, of Georgia, Speaker pro tempore.

[3] On January 26, 1836 (First session Twenty-fourth Congress, Journal, p. 238; Debates, pp. 2342–2344), a resolution making a special order for the consideration of appropriation bills was reported from the Committee on Foreign Affairs. A point of order was made that it ought to come from the Committee on Rules, or at least Ways and Means, which reported the appropriation bills. But Mr. Speaker Polk decided the resolution in order, although its adoption would require a two-thirds vote.

In 1892 the Committee on Library reported a special order for the consideration of business. This was referred to the Committee on Rules. (Second session Fifty-second Congress, Record, p. 509.)

See also second session Forty-fifth Congress, Journal, pp. 734, 735, 819–820.

6775. Instance in 1875 wherein by suspension of the rules a rule was adopted that the Speaker should entertain no dilatory motions.

In 1875 the function of the Committee on Rules in reporting rules for special purposes was so little used that there was doubt as to its validity without a two-thirds vote.

In January, 1875, the passage of the so-called civil rights bill was obstructed by the minority by repetition of dilatory motions so that no progress could be made. On February 1, 1875,[1] on Monday, which under the rules then existing was the time for introducing bills, a resolution was offered for reference to the Committee on Rules providing that dilatory motions should not be entertained.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that a resolution of this kind was not in order for reference at this time, and also that no standing rule or order might be changed without one day's notice.

The Speaker[2] overruled the point of order.

Later in the same day, on motion of Mr. Benjamin F. Butler, of Massachusetts, by a vote of yeas 181, nays 90, the rules were suspended and this resolution was agreed to:[3]

Resolved, That the rules be so far suspended as to allow the Committee on Rules to report to the House, for consideration and action at the present time, any new rules or changes of rules said committee may desire to report; and that during the consideration thereof the Speaker shall entertain no dilatory motions whatever. * * *

Mr. James A. Garfield, of Ohio, then reported[4] the rule, which, after debate was agreed to, yeas 171, nays 85, the Speaker announcing:

To exclude all question of the adoption of this resolution, the Chair will state that it has been adopted by a two-thirds vote.

Mr. Randall asked if the Chair said it required a two-thirds vote, and the reply was:

The Chair does not so state.[5]

The civil rights bill was then passed.

6776. It was held as early as 1876 that a proposition to change the rules might be referred only to the Committee on Rules.—On Monday, August 7, 1876,[6] Mr. Beverly B. Douglas, of Virginia, submitted the following resolution and moved its reference to the Committee on Rules:

Resolved, That the rules be so amended as to allow the committees of investigation to report at any time during this session.

Mr. Stephen A. Hurlbut, of Illinois, objected to the reception of the resolution under this call.

The Speaker pro tempore[7] held that a resolution proposing an amendment to the rules was in order during the first call on Monday for reference to the Com-

[1] Second session Forty-third Congress, Record, pp. 880, 881.

[2] James G. Blaine, of Maine, Speaker.

[3] Record, pp. 891, 892.

[4] Record, pp. 892–902.

[5] Record, p. 902.

[6] First session Forty-fourth Congress, Journal, pp. 1395–1401; Record, pp. 5262, 5263.

[7] Milton Sayler, of Ohio, Speaker pro tempore.

mittee on Rules, and that it was not in order to refer the same to any other committee except the Committee on Rules.

Mr. Eugene Hale, of Maine, moved the reference of the resolution to the Committee on Appropriations.

The Speaker pro tempore overruled the motion, holding that under the rules and practice the resolution must be referred to the Committee on Rules.

Mr. Hale having appealed, the motion to lay the appeal on the table failed because a quorum did not vote. After successive roll calls and calls of the House, Mr. Hale withdrew the appeal and Mr. Douglas withdrew the original resolution.

6777. An instance of the function of the Committee on Rules in affording the House a method of suspending the rules by majority vote.— On February 11, 1903,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Joseph G. Cannon, of Illinois, offered two amendments for the purpose of providing for the construction of an office building near the Capitol, and also for an extension of the Capitol building. Both amendments were ruled out of order.

Thereupon, on motion of Mr. Cannon, the Committee rose, and the Speaker having taken the chair, Mr. John Dalzell, of Pennsylvania, presented from the Committee on Rules the following resolution, which was agreed to by the House:

Resolved, That it shall be in order to consider, as an amendment to the bill (H. R. 17202) making appropriations for sundry civil expenses, a provision for the acquisition of a site and toward the construction of a fireproof building for committee rooms, folding room, and other offices for the House of Representatives, and for the necessary office rooms for Members thereof, to be used in the discharge of their official duties.

Then Mr. Charles H. Grosvenor, of Ohio, also from the Committee on Rules, presented the following, which was likewise agreed to by the House:

Resolved, That it shall be in order to consider as an amendment to the bill (H. R. 17202) making appropriations for sundry civil expenses a proposition to provide for the extension and completion of the Capitol building.

Then the Committee of the Whole resumed its sitting, and the amendments which had previously been ruled out were offered again and agreed to, no point of order being possible.

6778. A resolution changing or construing a standing rule or order is in order only when presented in the manner prescribed for changing the rules.—On July 15, 1861,[2] Mr. Abraham B. Olin, of New York, proposed the following:

Resolved, That the resolution of this House adopted on Monday, 8th instant, restricting the business of the present extraordinary session to questions of immediate national necessity be so construed as to admit of the consideration only of practical measures of legislation on the subjects embraced in the message of the President and the reports of the several heads of Departments, and to exclude all resolutions of a merely declaratory nature; and that the Speaker be directed to rule as out of order all matters thus excluded without waiting for the point of order to be raised thereon.

Mr. William S. Holman, of Indiana, made the point of order that inasmuch as the resolution changed a standing order of the House it was out of order.

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[1] Second session Fifty-seventh Congress, Journal, p. 232; Record, p. 2051.

[2] First session Thirty-seventh Congress, Journal, p. 93; Globe, p. 129.

The Speaker[1] sustained the point of order, saying that it gave construction to the resolution adopted on the previous day, and which had become a rule of the House.

Mr. Olin having appealed, the appeal was laid on the table.

6779. On January 17, 1839,[2] Mr. Speaker Polk decided that a proposed amendment, which, in effect, changed a standing rule of the House, was in order to be offered and agreed to; but that, should the amendment be agreed to, the proposition as amended would, in effect, present a proposition to change the rules, and must therefore be agreed to by a two-thirds vote.

6780. in 1841 it was held that, as the House had given the Committee on Rules leave to report at all times, it might report, in part, at different times.

The first step by which the Committee on Rules became an instrumentality through which the House may exercise special power for a particular piece of legislation.

On July 6, 1841,[3] Mr. William B. Calhoun, of Massachusetts, from the committee appointed on the 7th of June "to revise, amend, and report rules for the government of this House," and which committee, by an order of the House of the 16th ultimo, were directed to "proceed to revise and amend the rules, and that they have leave to report at all times," made a further report in part.

Mr. William Medill, of Ohio, objected to receiving the report on the ground that it was not in order for the committee thus to be making reports, in part, at different times and "by piecemeal."

The Speaker[4] decided that it was in order for the committee thus to report in part.[5]

On an appeal, taken by Mr. Medill, the decision of the Chair was sustained, 127 yeas to 88 nays.

6781. A report from the Committee on Rules, although highly privileged, is not in order after the House has voted to go into Committee of the Whole.—On February 28, 1901,[6] the House had voted to go into the Committee of the Whole House on the state of the Union to consider the bill (H. R. 5499) relating to the Revenue-Cutter Service. The Speaker had announced the result of the vote and declared the motion carried, but had not yet left the chair, when Mr. John Dalzell, of Pennsylvania, proposed to submit a privileged report from the Committee on Rules.

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] Third session Twenty-fifth Congress, Journal, p 310; Globe, p. 123.

[3] First session Twenty-seventh Congress, Journal, p. 204.

[4] John White, of Kentucky, Speaker.

[5] The debate on the appeal (Globe, p. 153) indicates that it had not hitherto been customary for the Committee on Rules to be a continuing committee with power to report at different times. Up to 1841 it had been appointed at the beginning of each Congress to report the rules for the Congress, and after this duty was attended to by a report its functions practically ceased. The Committee on Rules now has the right by rule to report at any time.

[6] Second session Fifty-sixth Congress, Journal, p. 293; Record, p. 3236.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the House had voted to go into Committee of the Whole, and pending that it was not in order to consider any other business.

After debate the Speaker[1] said:

The Chair takes this view of it: The Chair has announced that the motion to go into the Committee of the Whole House on the state of the Union is carried. That, it seems to the Chair, removes the House and substitutes the committee. While it is true that reports of the Committee on Rules are of the highest order and take precedence, still we must be in the House in order to consider them, in the opinion of the Chair. There is an easy remedy for it. If it is the pleasure of the committee, it has a right to rise and go back into the House. The Chair is very clear, however, that the House is in Committee of the Whole and would not be in a position to entertain a motion to adjourn even, which is a motion of the highest privilege if made in good faith, and therefore the Chair sustains the point of order and calls upon the gentleman from Ohio [Mr. Grosvenor] to take the chair.

6782. In 1876 the joint rules were abrogated, the action being accompanied by discussion in both Houses; and subsequent efforts to restore them have failed.—On January 10, 1876,[2] Mr. Hannibal Hamlin, of Maine, made a report in the Senate on a resolution originally proposed by Mr. George F. Edmunds, of Vermont, relating to the joint rules of the two Houses. The conclusion of the report was that as the House expired each two years all rules expired with it, joint rules included, and that therefore the joint rules which had been in existence since the foundation of the Government subsisted only by acquiescence. The committee therefore proposed a concurrent resolution adopting all the former joint rules, excepting the Twenty-second, which provided the method of conducting the count of the electoral votes. This resolution was debated at length on January 17, and was adopted on January 20.

On August 14[3] the Senate, on motion of Mr. Edmunds, adopted a resolution (the House having sent over a concurrent resolution to suspend certain joint rules) informing the House that, as the House had not notified the Senate of the adoption of joint rules this session, as proposed by the Senate to the House, there were no joint rules in force.

On December 12, 1876,[4] the question raised by the action of the Senate in abrogating the joint rules was discussed at some length in the House.

6783. On December 4, 1877,[5] a resolution was offered directing the enforcement of one of the joint rules. Mr. Speaker Randall said:

The Chair desires to say in this connection that he has always held the joint rules were in force, and, notwithstanding the Senate have held otherwise, every day's proceedings between the two Houses are conducted under a system authorized by the joint rules.

The House thereupon proceeded to pass the resolution of instruction.

6784. On January 8, 1879,[6] in the Senate, Mr. George F. Edmunds, of Vermont, proposed a joint rule to revive the old provisions in regard to bills passed and

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Forty-fourth Congress, Record, pp. 309, 431, 517–520.

[3] Record, p. 5567.

[4] Second session Forty-fourth Congress, Record, pp. 146–149.

[5] Second session Forty-fifth Congress, Record, p. 10.

[6] Third session Forty-fifth Congress, Record, pp. 369, 370.

presented to the President in the last days of the session. The proposed rule was not adopted.

6785. On April 1, 1879,[1] the Senate, after debate, adopted a resolution authorizing the Committee on Rules of the Senate to take into consideration the subject of joint rules and confer with the Committee on Rules of the House. This resolution was, in the House on June 10, referred to the Committee on Rules. No action resulted.

6786. In 1885–86[2] the Senate adopted a code of joint rules and sent them to the House, where they were referred to the Committee on Rules, but not acted on. These joint rules included many of the features of the old joint rules and some new provisions relating to legislation on appropriation bills and the matter to be included in conference reports.

6787. In 1889[3] the Senate proposed to the House action looking to the adoption of joint rules, but the resolution was not acted on in the House.[4]

6788. A concurrent resolution suspending a joint rule is agreed to by majority vote.—On March 2, 1837,[5] the House proceeded to the consideration of the following resolution from the Senate:

Resolved, That the sixteenth joint rule of the two Houses be suspended so far as to authorize the sending from one House to the other any bills which passed either House on the 28th ultimo.

Mr. Francis W. Pickens, of South Carolina, raised a question of order as to whether or not a two-thirds vote was required to concur with the Senate resolution.

The Speaker[6] decided that the rule relating to change or suspension of the rules[7] applied only to the rules and orders of the House and not to the joint rules and orders of the two Houses, and that it was competent for a majority to concur with the Senate in their resolution.

Mr. Pickens having appealed, the decision of the Speaker was sustained, yeas 134, nays 43.

6789. On June 20, 1874,[8] Mr. Speaker Blaine held that a joint rule was suspended by a majority vote on a concurrent resolution of suspension from the Senate.

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[1] First session Forty-sixth Congress, Journal, pp. 35, 472; Record, p. 138.

[2] First session Forty-ninth Congress, Journal, pp. 137, 194; Record, pp. 131, 184, 307, 413.

[3] First session Fifty-first Congress, Record, pp. 126, 188.

[4] The two Houses now have no joint rules, unless the concurrent resolution in relation to the enrollment of bills may be considered as such. (See secs. 3433, 3435, of Vol. IV.)

[5] Second session Twenty-fourth Congress, Journal, pp. 573, 574.

[6] James K. Polk, of Tennessee, Speaker.

[7] See section 6790 of this volume for past and present forms of this rule.

[8] First session Forty-third Congress, Record, p. 5309.

Chapter CXLII.

SUSPENSION OF THE RULES.

1. The rule and its history. Section 6790.
2. Recognition at discretion of Speaker. Sections 6791–6794.
3. Application of motion. Sections 6795, 6796.[1]
4. The second of the motion. Sections 6797–6804.
5. The motion on committee suspension day. Sections 6805–6813.
6. The motion as unfinished business. Sections 6814–6819.
7. The forty minutes of debate. Sections 6820–6824.
8. In relation to questions of privilege. Sections 6825, 6826.[3]
9. In relation to the previous question and other motions, Sections 6827–6834.
10. In relation to special orders and other business. Sections 6835–6839.
11. As to modification and withdrawal. Sections 6840–.6845.[4]
12. Scope of the motion. Sections 6846–6857.
13. Effect of the motion. Sections 685–862.[5]

6790. Motions to suspend the rules may be entertained by the Speaker on the first and third Mondays of each month and on the last six days of a session.

In making motions to suspend the rules individuals have the preference on the first Monday of the month and committees on the third.

No rule may be suspended except by a two-thirds vote.

The use of the motion to suspend the rules has gradually been restricted, while the functions of the Committee on Rules have been enlarged.

The gradual abolition of the motion with one day's notice as a means of changing the rules.

Present form and history of section 1 of Rule XXVIII.

Section 1 of Rule XXVIII provides for suspension of the rules:

No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.

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[1] Dilatory motions are forbidden pending motion to suspend rules. (Sees. 5743–5752 of this volume.)

[2] Application of the rule for a call of the House when a motion for a second develops a lack of a quorum. (Secs. 3053–3055 of Vol. IV.)

[3] Motion to suspend the rules may be superseded by a question of privilege. (Sec. 2553 of Vol. 111.)

[4] Motion to amend may not be applied to a motion to suspend the rules. (Sec. 5322 of this volume.)

[5] A division of the question is not in order on the vote on a motion to suspend the rules. (Secs. 6141, 6142 of this volume.)

This rule has been subjected to many changes. In the First Congress, where the membership was small, no limitation was put upon motions to change the rules; but on November 13, 1794,[1] this rule was agreed to:

No standing rule or order of the House shall be rescinded without one day's notice being given of the motion therefor.[2]

On December 23, 1811, the words "or changed" were added after "rescinded."[3]

The next development came on March 13, 1822,[7] when this clause was added:

Nor shall any rule be suspended, except by a vote of at least two-thirds of the Members present.

On April 26, 1828,[5] the rule was still further fortified by a provision:

Nor shall the order of business, as established by the rules, be postponed or changed,[6] except by a vote of at least two-thirds of the Members present.

For nearly twenty years the House continued under this arrangement until December 18, 1847,[7] when this important modification was introduced:

Except during the last ten days of the session the Speaker shall not entertain a motion to suspend the rules of the House at any time except on Monday of every week.

Mr. Joseph A. Woodward, of South Carolina, suggested the ten days' limit. The remainder of the rule was reported by Mr. C. J. Ingersoll, of Pennsylvania, from the Committee on Rules. It was urged on the ground that, as Mr. Daniel M. Barringer, of North Carolina, expressed it, they had seen "week after week, and month after month, the whole morning hour, and perhaps two or three hours each day, consumed in making motions to suspend the rules, a motion which had become so common as to be considered almost a test vote."

The rule was subsequently modified so that motions to suspend the rules should not be in order on Monday until one hour after the reading of the Journal; but on June 8, 1864,[8] this was amended in order to enable the Speaker to entertain motions before the expiration of the hour in case the call for the introduction of bills should be concluded earlier.

On June 22, 1874,[9] Mr. Samuel J. Randall, of Pennsylvania, reported from the Committee on Rules and the House adopted an amendment reducing the limit at the end of a session from ten to six days. It was declared at the time that the limit of ten days was too long.

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[1] Third and Fourth Congresses, Journal, p. 228. (Gales and Seaton ed.)

[2] On June 17, 1850 (First session Thirty-first Congress, Journal, pp. 1026, 1027; Globe, pp. 1225, 1226), Mr. Speaker Cobb ruled that the House might, by a two-thirds vote, on suspension day, change one of its rules without this preliminary notice.

[3] See Report No. 38, first session Twelfth Congress.

[4] First session Seventeenth Congress, Journal, p. 351.

[5] First session Twentieth Congress, Journal, pp. 621, 634.

[6] This rule seems to have been adopted to prevent the postponement of the orders of the day in order to prolong the morning hour wherein Members might present original subjects of legislation in the form of resolutions. See an instance on May 5, 1828 (First session Twentieth Congress, Debates, p. 2575).

[7] First session Thirtieth Congress, Globe, p. 47.

[8] First session Thirty-eighth Congress, Globe, p. 2810.

[9] First session Forty-third Congress, Record, p. 5390.

In the revision of 1880 [1] the Committee on Rules reported this form:

No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor, and no rule shall be suspended except by a vote of two-thirds of the Members present, nor shall the Speaker entertain a motion to suspend the rules except on every Monday after the call of States and Territories shall have been completed, and during the last six days of a session.

When this report was considered by the House, Mr. William P. Frye, of Maine, acting under instructions from the Committee on Rules, proposed as an amendment to strike out the words "every Monday" and insert in lieu thereof the words, "the first and third Mondays in each month," and after the word "completed" insert the words "preference being given on the first Monday to individuals and on the third Monday to committees."

Mr. Frye explained that the object in reducing the number of suspension Monday was to prevent waste of time. The privilege of suspension was used on "foolish propositions," intended merely for political effect, so that it had become a frequent custom of the House to adjourn to get rid of these motions.

It was objected that the amendment would put one more impediment in the way of an individual who wished to get before the House a proposition which a committee would not report. The House agreed to the amendment,[2] and the rule was thus perfected. It remained in that form until the revision of 1890,[3] when the words "after the call of States and Territories shall have been completed" were omitted, as the new order of business had rendered this call unnecessary.[4] In 1890 a clause was added also, providing that the rules might be suspended by a majority vote "to fix a day for the consideration of a bill or resolution already favorably reported by a committee, on motion directed to be made by such committee." This clause was dropped in the Fifty-second Congress and has not been restored.

In the Fifty-third Congress the first sentence of the rule, "No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor," was stricken out. It had been in the rule since 1794, and for many years had afforded the means whereby the rules were amended. The old usage was to introduce a resolution on one day, and on the next it would be agreed to by a majority vote. In this way, in 1842, the hour rule for debate was finally put into the rules,[5] although at that time the practice of the Committee on Rules of reporting amendments to the rules had begun.[6] Gradually the Committee on Rules was intrusted with all amendments, the end of the old system coming formally with a ruling made in 1887.[7]

Previous to this ruling there had been a division of opinion in the House on the subject.

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[1] Second session Forty-sixth Congress, Record, p. 207.

[2] Second session Forty-sixth Congress, Record, pp. 1195, 1196.

[3] First session Fifty-first Congress, House Report No. 23.

[4] See section 3056 of Vol. IV of this work.

[5] Second session Twenty-seventh Congress, Globe, p. 620; Journal, p. 954.

[6] First session Twenty-seventh Congress, Journal, p. 154; second session Twenty-seventh Congress, Globe, p. 152.

[7] See sections 6769–6781.

On July 18, 1882,[1] the question arose as to whether, under the then form of Rule XXVIII, a standing rule or order of the House might be rescinded or changed by one day's notice and action in the House without reference to the Committee on Rules. Mr. Speaker Keifer seemed at first inclined to rule that reference would not be necessary, but Mr. Thomas B. Reed, of Maine, and others protested and he declined to rule, as the proposition to consider without reference was withdrawn. On April 12, 1884,[2] a Member called for a vote on a motion, which he had submitted the previous day under the terms of the rule, to rescind an existing special order. Mr. Speaker Carlisle expressed doubt as to whether the motion was admissible under the rule and submitted the question to the House, which decided it inadmissible, yeas 78, nays 101.

The last change in the rule was made in the Fifty-fourth Congress, when the words "two-thirds of the Members voting, a quorum being present," were substituted for "two-thirds of the Members present."[3]

6791. In the later practice it has been held that the rules permit, but do not require, the Speaker to entertain motions to suspend the rules.—On June 18, 1894,[4] Mr. William H. Hatch, of Missouri, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering bills raising revenue.

Mr. William M. Springer, of Illinois, submitted the question of order whether under provisions of Rule XXVIII,[5] and the practice of the House in respect thereto, it was not the duty of the Chair to call the standing committees for the purpose of enabling them to present motions to suspend the rules.

The Speaker pro tempore[6] held that Rule XXVIII merely permitted, but did not require, the Speaker to entertain motions to suspend the rules on the first and third Mondays.[7]

6792. On May 7, 1900,[8] the first Monday of the month and therefore individual suspension day, Mr. William Sulzer, of New York, demanded recognition, to move a suspension of the rules for the purpose of passing a resolution, which he presented.

The Speaker[9] declined to recognize Mr. Sulzer, saying:

> The Chair will recognize no gentleman unless he has some knowledge of what is going to be called up.

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[1] First session Forty-seventh Congress, Record, pp. 6174, 6175.

[2] First session Forty-eighth Congress, Record, p. 2905.

[3] First session Fifty-fourth Congress, Journal, p. 107.

[4] Second session Fifty-third Congress, Journal, p. 438; Record, p. 6476.

[5] See section 6790 of this chapter.

[6] Joseph W. Bailey, of Texas, Speaker pro tempore.

[7] This ruling followed the practice. On February 28, 1881 (third session Forty-sixth Congress, Record, p. 2230), Mr. Speaker Randall held that recognition for the motion to suspend the rules was within the discretion of the Chair, and affirmed his right to refuse to recognize for the motion. Again, on March I (Record, p. 2297), Mr. Speaker Randall declared that it was not compulsory on the Speaker under the terms of the rule to recognize for the motion to suspend the rules. He further held that it had never been the practice to permit a Member to be taken off the floor by a motion to suspend the rules. But before the time of Mr. Speaker Randall the Speakers do not seem to have exercised this control over the motion.

[8] First session Fifty-sixth Congress, Record, p. 5227.

[9] David B. Henderson, of Iowa, Speaker.

A little later Mr. Sulzer rose and demanded recognition.

The Speaker having asked for what purpose the gentleman arose, Mr. Sulzer replied that he wished to move a suspension of the rules to pass a resolution expressing sympathy with the Boers.

The Speaker said:

The Chair declines to recognize the gentleman from New York at this time. * * * The Chair must exercise his duty to this House and recognize Members upon matters which the Chair thinks should be considered.

6793. On June 7, 1900,[1] Mr. John J. Lentz, of Ohio, rising to a parliamentary inquiry, said:

Inasmuch as the House has fixed upon a resolution to adjourn, is it not in order for me to move to suspend the rules and move that the testimony in the Coeur d'Alene labor troubles be printed?

The Speaker[2] replied:

The Chair refuses to recognize the gentleman for that purpose, and the Chair under the law has that discretion.

6794. On February 3, 1893,[3] Mr. Speaker Crisp, in the course of the discussion of a point of order, said:

The Chair fully appreciates the fact that according to the practice, which has always prevailed the motion to suspend the rules has been one depending on recognition; that is, it can not be made unless the Member is recognized to make it. The Chair, in speaking of this motion as one of the highest privilege, did not mean to convey the idea that necessarily when the day comes for motions to suspend the rules the Chair must recognize a gentleman to make such motion.

This statement was brought about by a question raised by ex-Speaker Reed, who thought that the ruling of the Chair might be construed as laying down the doctrine that the motion to suspend the rules was privileged, and who himself took the view which the Speaker enunciated above.

6795. Instance wherein a motion to suspend the rules was by unanimous consent entertained on a day other than a suspension day.—On February 23, 1906,[4] not a suspension day, Mr. William Richardson, of Alabama, asked unanimous consent that he might make a motion to suspend the rules and agree to a concurrent resolution providing for certain amendments to the enrolled bill (H. R. 297) to authorize the construction of dams and power stations on the Tennessee River at Muscle Shoals, Alabama, which, in response to a concurrent resolution of the Senate and the House, was sent by the President of the United States back to this House.

Mr. John Dalzell, of Pennsylvania, made the point of order that this was not a suspension day, and cited the rule as to suspension, saying:

This rule says:

"Nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month."

Now, it seems to me the request for unanimous consent is against that, and it seems to me it would be a very bad precedent.

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[1] First session Fifty-sixth Congress, Record, p. 6890.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fifty-second Congress, Record, p. 1255.

[4] First session Fifty-ninth Congress, Record, pp. 2889–2891.

I do not wish to be misunderstood with respect to the merits of the bill. I am not talking about that now. I am talking about the question of the rules; and it seems to me that it was the intention of the rule to place a limitation upon the power of the House by placing a limitation on the power of the Speaker. It says that he shall not entertain a motion to suspend the rules. It is very much like the case of the rule that prohibits the Speaker from entertaining a motion to permit parties not permitted by the rule to come upon the floor of the House.

The Speaker[1] said:

But that rule, the gentleman will recollect, prohibits the Speaker from submitting a request for unanimous consent. This rule does not. The Chair could not and would not entertain a motion on any except the two Mondays specified, but this comes by a request for unanimous consent that the Speaker shall entertain a motion to suspend the rules under the terms of Rule XXVIII. It seems to the Chair that the House may under the rule, if it sees proper to do so, give unanimous consent.

6796. A motion to suspend the rules applies to the parliamentary law of Jefferson's Manual as well as to the rules of the House.—On August 23, 1852,[2] Mr. Speaker Boyd held that a motion to suspend the rules applied as well to the parliamentary law of Jefferson's Manual as to the rules of the House.

6797. A motion to suspend the rules is not submitted to the House until seconded by a majority on a vote by tellers.

Present form and history of section 2 of Rule XXVIII.

Section 2 of Rule XXVIII provides:

All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers if demanded.

On January 20, 1874,[3] the House, after long debate, adopted this rule:

All motions to suspend the rules, except where they may be suspended by a majority,[4] shall, before being submitted to the House, be seconded by a majority,[5] as in the case of the previous question.[6]

Two years later this rule was abandoned; but when the revision of 1880[7] occurred it was revived in the form which exists at the present time. It was intended to prevent the offering of "buncombe" resolutions, the idea being that a proposition which could not receive such a second should not take the time of the House.[8]

6798. Reference to a discussion of the nature of the demand for a second.—On May 20, 1858,[9] Mr. Speaker Orr held that when the House refused to order the previous question after the demand was seconded that the vote on the second could not be reconsidered. There was considerable debate as to the nature of the motion to second.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Thirty-second Congress, Globe, p. 2415.

[3] First session Forty-third Congress, Record, pp. 783–792.

[4] Before the revision of 1880 there was a provision for suspending one rule by majority vote. See section 5221 of this volume.

[5] This would be a second by tellers, and the rule was debated at length in respect to its bearing on the constitutional right of one-fifth to demand the yeas and nays, as well as in its relations to the individual Member and the minority. (First session Forty-third Congress, Record, pp. 314, 783.)

[6] The second of the previous question has not been required since 1880.

[7] Second session Forty-sixth Congress, Record, pp. 1195, 1196.

[8] It is quite common, by unanimous consent, to consider a second as ordered. (Record, first session Fifty-fourth Congress, pp. 3628, 3629; second session Fifty-fourth Congress, p. 2568.)

[9] First session Thirty-fifth Congress, Journal, pp. 863, 864; Globe, pp. 2276, 2277.

6799. A motion to suspend the rules may not be debated until a second is ordered.—Mr. Speaker Keifer, on January 16, 1882,[1] held that there might be no debate on a motion to suspend the rules unless a second was demanded and ordered.

6800. On a motion to suspend the rules the right to demand a second is not necessarily precluded by preliminary debate.

When a motion to suspend the rules is entertained the Speaker is accustomed to ask at once, "Is a second demanded?"

On November 3, 1893,[2] the House was considering a motion of Mr. James D. Richardson, of Tennessee, to suspend the rules and concur in a Senate amendment to the joint resolution (H. Res. 86) to pay session and per them employees and other employees, etc.

A motion for a recess having been made and ruled not to be in order, and there having been debate, Mr. Joseph C. Hutcheson, of Texas, thereupon demanded a second to the motion to suspend the rules.

Mr. Richardson, of Tennessee, made the point of order that, there having been debate on the proposition, the right to demand a second had been thereby waived.

The Speaker,[3] being of the opinion that the debate was on the simple motion to concur, and not on the motion to suspend the rules and concur, held that it was in order to demand a second on the latter motion.

The Speaker also stated that it was the practice, when a motion to suspend the rules was entertained and before the question was put, for the Chair to ask, Is a second demanded? which interrogatory had not been propounded by the Chair in the present case.

6801. On a motion to suspend the rules it is the right of a Member to demand a second, but not the duty of the Chair to call for it.—On April 2, 1900,[4] Mr. F. W. Mondell, of Wyoming, moved to suspend the rules and pass the bill (S. 1475) in relation to the completion of a military post near the city of Sheridan, etc.

Debate being about to proceed, Mr. James D. Richardson, of Tennessee, made the point of order that a second had not been ordered.

The Speaker[5] said:

> It is not the business of the Chair to ask whether a second is demanded. It is the privilege of each Member to call for a second. That point is passed; but if the gentleman from Tennessee asks for a second the question will be submitted.

6802. On a motion to suspend the rules a member of the committee which reported the bill is entitled to priority over other opponents of the bill in demanding a second.—On Monday, February 6, 1905,[6] Mr. Frank W. Mondell, of Wyoming, moved that the rules be suspended and that the House pass the bill (H. R. 17994) to ratify and amend an agreement with the Indians residing

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[1] First session Forty-seventh Congress, Record, p. 431.

[2] First session Fifty-third Congress, Journal, pp. 174, 175; Record, p. 3127.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 3660.

[5] David B. Henderson, of Iowa, Speaker.

[6] Third session Fifty-eighth Congress, Record, p. 1941.

on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, and to make appropriations for carrying the same into effect.

Mr. John J. Fitzgerald, of New York, sought recognition to demand a second.

The Speaker announced that Mr. Henry McMorran, of Michigan, who had on a previous day objected to the consideration of the bill by unanimous consent, had requested recognition to demand the second.

Mr. John W. Maddox, of Georgia, was also on his feet asking recognition for the same purpose.

Mr. Fitzgerald than said:

Mr. Speaker, five members of the Committee on Indian Affairs have signed a minority report on this bill, and I think that one of those members is entitled to be recognized for the purpose of requesting a second.

The Speaker [1] said:

The Chair will state to the gentleman from Michigan [Mr. McMorran] that as the gentleman from New York [Mr. Fitzgerald] is a member of the Committee on Indian Affairs, a minority report having been made, if he demands a second, under the usage of the House, the gentleman on the committee making the minority report is entitled to recognition to demand a second.

Thereupon Mr. Fitzgerald was recognized.

6803. On May 7, 1906,[2] Mr. William P. Hepburn, of Iowa, who was chairman of the Committee on Interstate and Foreign Commerce, moved to suspend the rules and agree to an order providing for the consideration of certain bills, among them the bill (S. 88) for preventing the misbranding and adulteration of foods, etc., which bill had been reported from the Interstate and Foreign Commerce Committee.

Messrs. John S. Williams, of Mississippi, and William C. Adamson, of Georgia, each demanded a second.

The Speaker [1] said:

A gentleman who is opposed to the bill and on the committee would be entitled to demand a second.

Mr. Adamson, who was on the committee, stated that he was opposed to the bill, and was thereupon recognized.

6804. On February 26, 1897,[3] Mr. Charles W. Stone, of Pennsylvania, moved to suspend the rules and pass the bill (S. 3547) to provide for an international monetary conference.[4]

Messrs. Thomas C. McRae, of Arkansas, Lemuel E. Quigg, of New York, and Alexander M. Dockery, of Missouri, asked recognition to demand a second.

The Speaker having recognized Mr. Quigg, the following point of order was made by Mr. James D. Richardson, of Tennessee:

The gentleman from Arkansas, Mr. McRae, who is a member of the committee and is opposed to the principle of this proposition, as I understand, rose and demanded a second. The Chair, in his discretion, recognized the gentleman from New York, Mr. Quigg, as calling for a second. The effect of that recognition, under our rules, is to put the control of the time on both sides in the hands of gentlemen on the same side of the question.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 6464.

[3] Second session Fifty-fourth Congress, Record, p. 2365.

[4] For rules relating to suspension of the rules see section 6790 of this volume.

The Speaker[1] said:

The gentleman is correct as to the practice, but the Chair was informed, or supposed he was informed, by the gentleman from Arkansas that he was in favor of the proposition, and therefore told him that he thought he ought to recognize somebody who was opposed to it. If the Chair was mistaken in that, he will accord recognition to the gentleman from Arkansas. * * * The Chair desires to recognize Members in accordance with a distinct understanding that a part of the time goes to one side of the question and a part to the other.

6805. The motion to suspend the rules on a committee suspension day must be authorized formally and specifically by a committee.—On February 17, 1890,[2] Mr. Samuel W. T. Lanham, of Texas, moved that the rules be suspended so as to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill of the House (H. R. 3923) to provide for the sale of the site of Fort Bliss, Tex., the sale or removal of the improvements thereof, and for a new site and the construction of suitable buildings thereon, and pass the same with amendments reported by the Committee on Military Affairs.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the motion was not in order, not being authorized by the Committee on Military Affairs to be made.

Mr. Byron M. Cutcheon, of Michigan, speaking for the Committee on Military Affairs, said that members of the committee had held no meeting on the subject, but had informally assented that the motion to suspend the rules should be made.

The Speaker[1] sustained the point of order on the ground that such direction must be given by the committee acting as a committee.

6806. Also, on February 17, 1890,[3] Mr. Lewis E. Payson, of Illinois, moved that the rules be suspended so as to enable him to introduce and the House to pass a bill providing for the compulsory attendance of witnesses before registers and receivers of local land offices, and for other purposes, as a substitute for H. R. 3179 with the same title.

Mr. Benton McMillin, of Tennessee, made the point of order that unless Mr. Payson was authorized specifically by the Committee on the Public Lands to make the motion it could not be entertained.

Mr. Payson having stated that the committee had not specifically directed such motion to be made, the Speaker[1] held the motion to be not in order.

6807. On May 21, 1900,[4] a committee suspension day, Mr. Vespasian Warner, of Illinois, moved to suspend the rules and pass the bill (H. R. 4345) to create a new Federal judicial district in Pennsylvania.

Mr. John Dalzell, of Pennsylvania, raised a question as to whether the Committee on the Judiciary had authorized the motion to be made.

Mr. Warner stated that the committee had directed him to report the bill and ask for its passage, making no limitation as to how it should be passed.

After debate, the Speaker[5] said:

This is a matter that ought to be thoroughly understood by the Members of the House. The Chair is aware that some committees have usually at the commencement of their work passed a resolution

[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Journal, p. 242; Record, p. 1405.

[3] First session Fifty-first Congress, Journal, p. 242.

[4] First session Fifty-sixth Congress, Record, p. 5821; Journal, p. 604.

[5] David B. Henderson, of Iowa, Speaker.

to the effect that any bill reported from that committee favorably should be subject to the control of the party reporting it, so that he could call it up by unanimous consent or on a call of committees, if on the House Calendar, on committee or individual suspension day by any and all methods known under the rules.

The Chair is aware of one committee where this was done in two Congresses. Of course no question was ever raised on this method; and when a member of the committee, the chairman or others, rose and stated that he was authorized by the committee to report a certain bill and ask its passage under suspension of the rules, no question was made. The gentleman from Illinois in calling up this bill used the expression that it is customary; and the Chair has during this session in many instances, where parties proposed calling up a bill under suspension on committee suspension day, cautioned them to get authority of the committee to pass a specific bill—a specific authority; and the Chair is of the opinion, from what examination he has given to the question, that that is the method that should be pursued.

There are two authorities, which will be found in Hinds's Book of Rules, on pages 837 and 838,[1] which the Chair has just read, and which are thoroughly summed up in what may be termed the caption of the decision:

"The motion to suspend the rules on a committee suspension day must be formally and specifically authorized by a committee."

That certainly contains the thought that the committee must have in mind that particular bill when that particular action is taken. Although in the past the present occupant of the chair has used the other method, by a general rule or motion adopted by the committee of which he was chairman, and which was never called in question, still, when brought face to face specifically with this rule, the Chair feels constrained to hold that in order to move to suspend the rules on a committee suspension day on any bill that bill should be specially considered by the committee reporting it and that the authority to move to suspend the rules on suspension day should be given by the committee. The point made by the gentleman from Pennsylvania [Mr. Dalzell] is sustained.

6808. After a motion to suspend the rules has been seconded and debate has begun it is too late to make the point of order that the motion has not been authorized by a committee.—On December 15, 1890,[2] a committee suspension day, a motion was made on behalf of the Military Affairs Committee to suspend the rules and pass a bill to erect a monument to the victims of British prison ships.

The point of order was made by Mr. Joseph G. Cannon, of Illinois, that the Military Affairs Committee had not directed the motion for suspension to be made; and the debate showed doubt on this point. So the Speaker[3] ruled:

The Chair desires to say in regard to this matter * * * that, while it is perfectly true that the action of the House is dependent upon the prior action of the committee, nevertheless there must of necessity be always a point beyond which a challenge to the fact cannot go. This matter was brought before the House upon the personal declaration of a member of the Committee on Military Affairs, and the proceeding was sustained by the chairman of that committee. The commencement was made with regard to the debate after a second had been ordered upon the motion. The Chair thinks, under rulings hitherto made, that the preliminary facts on which the jurisdiction was dependent can not be contested after the debate begins, and the Chair sees no other way by which such questions could possibly be settled. The Chair, however, has less reluctance in making the decision, because it is a matter entirely within the power of the House, which can always take such action as the House deems suitable with regard to the disposition of the bill itself. The Chair overrules the point of order.

6809. If, on a committee suspension day, an individual motion to suspend the rules is made and seconded it is then too late to make a

[1] Now sections 6805 and 6806 of this work.

[2] Second session Fifty-first Congress, Record, p. 489.

[3] Thomas B. Reed, of Maine, Speaker.

point of order.—On April 16, 1888,[1] on a committee suspension day, Mr. Poindexter Dunn, of Arkansas, announced that the Committee on the Merchant Marine and Fisheries waived its privileges under the call in order that he might yield for a Member to present an important public measure.

Thereupon Mr. Beriah Wilkins, of Ohio, offered, on motion to suspend the rules, a resolution relating to the use of the surplus in the Treasury for the redemption of Government bonds.

A second having been ordered, and Mr. Wilkins having taken the floor for debate, Mr. J. B. Weaver, of Iowa, proposed to raise a point of order.

The Speaker[2] held that it was too late, as a second had been ordered and debate had begun.

After the debate had proceeded, Mr. Charles N. Brumm, of Pennsylvania, made the point of order that the resolution had not been presented by a committee, and this being committee suspension day, was irregularly before the House.

The Speaker said:

> But this does not purport to come from a committee. On the contrary, when the Chair called the Committee on the Merchant Marine and Fisheries, the chairman of that committee, the gentleman from Arkansas [Mr. Dunn], rose and stated that the committee waived its privilege and that he yielded to the gentleman from Ohio [Mr. Wilkins]. Thereupon the gentleman from Ohio, on his individual responsibility as a Member, offered the resolution, and moved to suspend the rules. A second was ordered by the House. Immediately upon that the gentleman from Iowa attempted to make the point of order, but the Chair held it was too late. * * * Motions to suspend the rules are in order on the first and third Mondays of each month. The rule provides that preference shall be given to individual Members on the first Monday and that preference shall be given to committees on the third Monday. The Chair gave preference to the Committee on the Merchant Marine and Fisheries, and called it in the regular order; but the gentleman from Arkansas waived the privilege of his committee under the rule, and yielded to the gentleman from Ohio.
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> While this may be, and the Chair deems it is, a departure from the practice which has heretofore prevailed since the adoption of this rule in the Forty-sixth Congress, yet it is not prohibited by the rule, and the point of order was not made until a second had been demanded and ordered.

6810. On committee suspension days the Speaker has in rare instances called the committees in regular order for motions to suspend the rules, but this method is not required.—On December 20, 1880,[3] a committee suspension day, the Speaker[4] announced:

> This is the third Monday, when, according to the rule, committees of the House are entitled to recognition for motions to suspend the rules. The Chair has given a good deal of reflection as to the manner in which he should discharge this duty under the rule without discrimination among the committees of the House, and he has come to the conclusion as the result of his best judgment, that in the recognition of committees the Chair will call them in the order in which they appear in the rules. By this proceeding each committee will have an opportunity of one recognition for suspension of the rules before any other committee can have two opportunities for recognitions. The Chair thinks it is the most equitable mode to adopt. He therefore calls the Committee on Elections first. Of course these recognitions must be accompanied by the statement on the part of the gentleman moving to suspend the rules that his committee did actually by vote direct such motion to be made.[5]

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[1] First session Fiftieth Congress, Record, pp. 3023, 3026; Journal, pp. 1649, 1650.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Third session Forty-sixth Congress, Record, pp. 273, 274; Journal, p. 104.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] This practice of calling the committees in order did not become firmly established, and has not been followed in later years.

6811. On February 17, 1890,[1] a committee suspension day, the Committee on Coinage, Weights, and Measures was called.

Mr. Edwin H. Conger, of Iowa, said that he desired to reserve the right of the committee, in order that it should not lose its place in the call.

The Speaker[2] said:

The Chair does not mean to decide by making the call that such a course must be pursued in the future.

6812. A bill offered for passage on a committee suspension day may carry with it only such amendments as are authorized by the committee.— On February 18, 1901,[3] a committee suspension day, Mr. W. A. Rodenberg, of Illinois, moved to suspend the rules and pass the bill (H.R. 11709) authorizing a bridge over the Mississippi River at St. Louis, as reported by the Committee on Interstate and Foreign Commerce, with several amendments.

Mr. Oscar W. Underwood, of Alabama, raised a question of order as to the right of the gentleman to offer amendments other than the committee amendments.

The Speaker[4] held that Mr. Rodenberg could present with the bill only such amendments as he had been authorized by the committee to offer.

6813. On a committee suspension day a committee may not present a motion to suspend the rules and pass a bill which has not been referred to it.—On August 18, 1890,[5] Mr. William Vandever, of California, when the Committee on the Irrigation of Arid Lands was called, presented a concurrent resolution authorizing certain expenditure for investigations as to artesian wells.

The point having been made that this had never been regularly referred to that committee, the Speaker[2] held:

The Chair thinks the matters upon which the committees can ask a suspension of the rules must be those matters referred to the committees. They can not originate legislation in this way any more than they can in any other. The Chair desires to call the attention of the House to the fact, in order that this may not be regarded as a precedent.

6814. A motion to suspend the rules pending and undisposed of on one suspension day is first in order on the next, the individual motion going over to committee day, and vice versa.—On May 21, 1888,[6] the Speaker announced as the regular order the motion to suspend the rules made by Mr. Henry H. Bingham, of Pennsylvania, and coming over from the last suspension day.

Mr. Knute Nelson, of Minnesota, made the point of order that the gentleman from Pennsylvania [Mr. Bingham] had made the motion as an individual Member and that it belonged to individual suspension day, and could not come over to a committee suspension day, but must await the next individual day.

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[1] First session Fifty-first Congress, Record, p. 1405.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-sixth Congress, Record, pp. 2598, 2599.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Fifty-first Congress, Record, p. 8772.

[6] First session Fiftieth Congress, Record, p. 4474; Journal, p. 1956.

The Speaker[1] said:

The Chair had occasion to examine and decide this question in the Forty-eighth Congress. The rule provides that it shall be in order on the first Monday and the third Monday in each month to move to suspend the rules, preference being given—that is the language of the rule—to individuals on the first Monday and to committees on the third Monday. Another rule, and the universal practice of the House, is that business unfinished at the time of an adjournment is resumed when that class of business next comes up for consideration. Now, the gentleman from Pennsylvania [Mr. Bingham], although not a member of the Committee on Indian Affairs, had a right, under the rules and practice of the House, to select any bill he chose, and more, as an individual Member, to suspend the rules and pass it. He made that motion with reference to this bill, and when the House adjourned that business was pending. The House this morning resumes the consideration of that class of business to which the gentleman's motion belongs, to wit, suspension of the rules, and it can make no difference whether the motion is made by an individual or by the authority of the committee. It is the class of business which regulates the matter, and that, as the Chair has just said, is suspensions of the rules, and there can not be two motions to suspend the rules pending at the same time. The one pending must be disposed of before another one can be entertained by the Chair. The Chair therefore thinks the point of order is not well taken.

6815. On January 21, 1889,[2] the Speaker announced the regular order to be the consideration of motions to suspend the rules.

Thereupon Mr. William Warner, of Missouri, called up his motion submitted on August 6, 1888, and since that time pending. Mr. Warner withdrew a modification thereof heretofore made by him, and submitted in a new form an order providing for the consideration of the bill (H. R. 10614) to organize the Territory of Oklahoma.

The rules were suspended and the order was agreed to, 163 yeas, 76 nays.

6816. On June 6, 1896,[3] the Speaker[4] announced that the matter before the House first in order was the unfinished business coming over from the last suspension day, being the motion of the gentleman from New York [Mr. James S. Sherman] to suspend the rules and pass the bill (H. R. 7907) for the protection of the people of the Indian Territory, extending the jurisdiction of the United States courts, providing for the laying out of towns, the leasing of coal and other mineral, timber, farming, and grazing lands, and for other purposes.

The question being taken on the motion to suspend the rules and pass the bill, two-thirds voting in favor thereof, the rules were suspended and the bill passed.[5]

6817. A motion to suspend the rules, made on one suspension day but not seconded, comes up as unfinished business on the next suspension day.—On May 2, 1898,[6] the first Monday of the month, Mr. Israel F. Fischer, of New York, rising to a parliamentary inquiry, stated that on April 4, under suspension of the rules, he called up a certain bill (S. 1126) for the relief of Robert Platt, and that after the bill had been read the House adjourned. He therefore inquired whether or not the bill was unfinished business.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Second session Fiftieth Congress, Journal, p. 321; Record, p. 1062.

[3] First session Fifty-fourth Congress, Record, p. 6197.

[4] Thomas B. Reed, of Maine, Speaker.

[5] This day was a suspension day by virtue of a special order from the Committee on Rules.

[6] Second session Fifty-fifth Congress, Record, p. 4521.

The Speaker[1] held that the bill was the unfinished business.[2]

6818. A motion to suspend the rules on which a second fails to be ordered does not come up as unfinished business on the next legislative day.—On March 1, 1893,[3] Mr. William H. Hatch, of Missouri, moved to suspend the rules and concur in the amendments of the Senate to the bill (H. R. 7845) defining "options" and "futures," imposing special taxes on dealers therein, and requiring such dealers and persons engaged in selling certain products to obtain license, and for other purposes.

Mr. C. R. Breckinridge, of Arkansas, made the point of order that when the House adjourned on the preceding day the pending question was on the motion submitted by him [Mr. Breckinridge] to suspend the rules and pass the bill (S. 115) for the relief of William Burns, pending the vote on seconding which motion the House had adjourned.

The Speaker[4] overruled the point of order, holding as follows:

The Chair will call the attention of the House to the rule. It does not seem to the Chair that there can be any doubt about the question:

"All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers."

The day before yesterday the Chair recognized the gentleman from Arkansas [Mr. Breckinridge] to submit a motion to suspend the rules and pass a certain bill. Before the motion was submitted to the House a second was demanded by tellers under the rule. Tellers were appointed, and no quorum having appeared the House adjourned. That motion then was not before the House. It had not been submitted to the House in the language of the rule, for the reason that it had not been seconded by a majority, as the rule required. On yesterday the Chair again recognized the gentleman from Arkansas, and the same question came up before the House. No second was ordered. Now, certainly the most that can be claimed for a motion to suspend the rules and pass a bill, when a gentleman is recognized for that purpose, would be the right to maintain it before the House during that legislative day, and certainly under no system of reasoning that the Chair is familiar with could it go over from day to day. The recognition to make the motion and to ask the House for a second might give the right to hold it before the House until adjournment, but it certainly would not give it the right, as unfinished business, to come up from day to day. Therefore the Chair entertains the motion of the gentleman from Missouri [Mr. Hatch].

6819. A bill which, on a suspension day, was withdrawn with an agreement that it should be unfinished business on the next suspension day was held to continue as unfinished business, although not called up on the day named.—On February 6, 1899,[5] a suspension day, Mr. Israel F. Fischer, of New York, called up the bill (S. 1126) authorizing the President to appoint Lieut. Robert Platt, U. S. Navy, to the rank of commander. This bill had been before the House on a former suspension day, May 2, 1898, and on that day had been disposed of as shown by the following entry in the Journal:

Pending further consideration in the House, the bill was withdrawn to be pending as unfinished business on next suspension day.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] On August 5, 1850 (First session Thirty-first Congress, Globe, p. 1518), Mr. Speaker Cobb held that a motion to suspend the rules, made on one suspension day and unacted on, came up on the next suspension day. This was before the requirement of the second had been instituted.

[3] Second session Fifty-second Congress, Journal, p. 122; Record, p. 2353.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Third session Fifty-fifth Congress, Record, pp. 1501, 1502.

Mr. Joseph W. Bailey, of Texas, made the point of order that a bill undisposed of on a suspension day would not come up again as unfinished business.

The Speaker[1] said:

Probably the reasoning of the gentleman may be correct, but the custom of the House, the Chair thinks, has been different. Matters have gone over to various suspension days; for instance, if the unfinished motion for suspension be made by a committee, it would go over to committee suspension day; at any rate, it would go over to that or the next suspension day.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the bill had been made unfinished business on the "next suspension day," and not having been called up then was not now in order.

The Speaker held:

The Chair thinks the bill is before the House as unfinished business; and if it was unfinished business on the next suspension day, it would come up as unfinished business. The fact that unfinished business is not taken up does not destroy its status.

6820. Except as specially provided by rule, the motion to suspend the rules is not debatable.

When the pressure of business began to make necessary a rigid rule for the order of business, the motion to suspend the rules began to be used frequently to modify the rigors of that rule. (Footnote.)

Illustration of the early method of closing general debate in Committee of the Whole.

On January 12, 1842,[2] Mr. Millard Fillmore, of New York, moved a suspension of the rules for the purpose of enabling him to submit a resolution to close debate in the Committee of the Whole House on the state of the Union on House bill No. 67, to authorize an issue of Treasury notes.[3]

Mr. Robert B. Rhett, of South Carolina, attempted to debate; but on a point of order made by Mr. Edward Stanley, of North Carolina, the Speaker[4] I ruled that a motion to suspend the rules[5] was not debatable.[6]

6821. Forty minutes of debate are allowed on a motion to suspend the rules, one-half for those favoring and one-half for those opposing.

Forty minutes of debate are allowed whenever the previous question is ordered on a proposition on which there has been no debate.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Twenty-seventh Congress, Globe, p. 121.

[3] This was before the rule allowing general debate in Committee of the Whole to be closed by a majority vote had been adopted permanently. It had been tried experimentally in the preceding session.

[4] John White, of Kentucky, Speaker.

[5] Prior to this, on June 1, 1832 (First session Twenty-second Congress, Debates, p. 3236), Mr. Speaker Stevenson ruled that the motion to suspend the rules was not debatable. The motion was at that time coming into frequent use because of the press of business and the necessity for a rigid rule for the order of business.

[6] In the revision of the rules in the second session of the Forty-sixth Congress the principle was adopted of allowing a limited debate (thirty minutes formerly and forty minutes at present) on the motion to suspend the rules.

Present form and history of section 3 of Rule XXVIII.

Section 3 of Rule XXVIII provides:

When a motion to suspend the rules has been seconded, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for forty minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such proposition, and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

This rule is a result of the debate on the report of the Committee on Rules in 1880. It was not in the report of the committee, but as the debate progressed the first clause was offered by the Committee on Rules, with the intention of giving Members an opportunity to explain their motion to suspend the rules.[1] There had recently occurred several conspicuous instances showing the desirability of this rule. On November 5, 1877,[2] the House, on motion of Mr. Richard D. Bland, of Missouri, passed, under suspension of the rules, without any debate being possible, a bill providing for the free coinage of silver. On January 28, 1878,[3] the House in the same way and against the protest of Mr. James A. Garfield, of Ohio, passed a concurrent resolution from the Senate declaring the coin bonds of the United States payable in a silver dollar of 412½ grains; and on February 24, 1879,[4] the sundry civil appropriation bill carrying an appropriation of nineteen millions of dollars.[5] In the first form of the rule, thirty minutes of debate were given. In 1890[6] this was lengthened to forty minutes. In the Fifty-second and Fifty-third Congresses the old limit of thirty minutes was restored; but since the Fifty-fourth Congress the time has been forty minutes.

The second clause of the rule, giving the same limit of debate after the ordering of the previous question, was offered. as an amendment by Mr. John Randolph Tucker, of Virginia, and adopted.[7] It was intended to prevent passing measures without a word of debate, as had often been done.[8]

6822. On a motion to suspend the rules the forty minutes of debate are allowed, although the proposition presented may not be debatable otherwise.—On March 3, 1893,[9] Mr. William S. Holman, of Indiana, submitted a conference report on the amendment of the Senate to the bill H. R. 10238, and the conference report was agreed to.

Mr. Holman moved to reconsider the vote by which the conference report was agreed to. Thereupon Mr. Holman moved that the rules be suspended, and that the motion to reconsider lie on the table.

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[1] Second session Forty-sixth Congress, Record, p. 1196.

[2] First session Forty-fifth Congress, Record, p. 241.

[3] Second session Forty-fifth Congress. Record, pp. 627, 628.

[4] Third session Forty-fifth Congress, Record, pp. 1870, 1871.

[5] On May 17, 1880 (second session Forty-sixth Congress, Record, p. 3434), a river and harbor bill carrying nine millions of dollars was passed under suspension of the rules, but not under the old conditions.

[6] House Report No. 23, first session Fifty-first Congress.

[7] Second session Forty-sixth Congress, Record, p. 1199.

[8] Thus, in 1842, a resolution censuring Mr. Joshua R. Giddings, of Ohio, was passed under the operation of the previous question, without giving opportunity for debate or even for an explanation by Mr. Giddings. See section 1256 of Vol. II of this work.

[9] Second session Fifty-second Congress, Journal, p. 142; Record, p. 2606.

Mr. David A. De Armond, of Missouri, moved that the House adjourn; which motion was disagreed to.

The motion of Mr. Holman to suspend the rules was seconded on a vote by tellers.

Mr. De Armond claimed the floor to debate the motion; whereupon,

Mr. William D. Bynum, of Indiana, made the point of order that a motion to lay on the table not being debatable, the motion to suspend the rules and agree to the undebatable motion was not debatable.

The Speaker[1] overruled the point of order, holding that the rule for thirty minutes' debate[2] on a motion to suspend the rules applied to all propositions sought to be passed under suspension of the rules, whether the main question was debatable or not under the ordinary rules of the House.

6823. On a motion to suspend the rules the Member demanding a second divides with the mover the forty minutes of debate.—On March 2, 1901,[3] Mr. Nehemiah D. Sperry, of Connecticut, moved to suspend the rules and pass the bill (H. R. 12551) to prevent the sale of firearms, etc., in certain islands of the Pacific.

Mr. Joseph W. Bailey, of Texas, demanded a second.

Mr. Sperry asked unanimous consent that a second might be considered as ordered.

Mr. Bailey having objected, the vote was taken and the second ordered.

Thereupon the Speaker[4] recognized Mr. Sperry to control twenty minutes of time for the measure and Mr. Bailey to control twenty minutes in opposition.

6824. On May 1, 1882,[5] Mr. Speaker Keifer held that the time for debate allowed the Member who demands a second for the motion to suspend the rules should belong to those opposing the measure, but declined to interfere when it was charged that the Member who had demanded the second and was controlling the time in opposition was not acting in good faith.

6825. A question of high privilege being before the House, the Speaker held that a motion to suspend the rules and pass a bill was not in order.— On March 3, 1885,[6] the report of the Committee on Elections in the Iowa contested election case of Frederick *v.* Wilson was before the House, when Mr. Samuel J. Randall, of Pennsylvania, moved to suspend the rules and pass a bill which he presented.

The Speaker[7] ruled that a motion to suspend the rules was not in order if objected to while other motions were pending before the House. * * * Under the rules of the House a motion to suspend the rules was simply a motion which, like any other parliamentary motion, was in order when there was not another matter pending before the House.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Forty minutes are now allowed.

[3] Second session Fifty-sixth Congress, Record, pp. 3444, 3445.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Forty-seventh Congress, Record, p. 3477.

[6] Second session Forty-eighth Congress, Record, p. 2565.

[7] John G. Carlisle, of Kentucky, Speaker.

6826. On December 4, 1876,[1] Mr. George W. McCrary, of Iowa, as a question of privilege, moved that the oath of office be administered to Mr. C. W. Buttz as a Representative from the Second Congressional district of the State of South Carolina.

Thereupon Mr. Abram S. Hewitt, of New York, moved to suspend the rules and adopt certain resolutions submitted by him.

The Speaker[2] decided that, pending the decision of so high a question of privilege as the right of a Member to a seat, a motion to suspend the rules was not in order.

6827. A motion to suspend the rules may be entertained, although a bill on which the previous question has been ordered may be pending.— On August 1, 1892,[3] Mr. William S. Holman, of Indiana, moved to suspend the rules and pass a joint resolution (H. Res. 159) to continue the provisions of existing laws providing temporarily for the expenditures of the Government.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the motion of Mr. Holman was not in order and that the business first in order was the consideration of the amendments of the Senate to the bill (H. R. 7520) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1892, and for other purposes, upon which the previous question had been ordered, which amendments were pending when the House adjourned on Saturday last.

The Speaker[4] overruled the point of order, holding that this being the first Monday of the month it was in order to entertain motions to suspend the rules, that the object of such motion was to suspend all rules, and the effect was to bring the House to an immediate vote on the pending motion.

6828. While the previous question was operating on a series of Senate amendments to a House bill it was held not in order to move to suspend the rules to admit a motion to take the vote on the amendments in gross.

Illustration of the earlier use of the motion to suspend the rules in order to permit the making of a motion not otherwise in order under the rules.

On March 3, 1855,[5] the House had under consideration the Senate amendments to the civil and diplomatic appropriation bill. Mr. John C. Breckinridge, of Kentucky, moved, the rules having been suspended to enable him so to do, that the House agree to the report of the Committee of the Whole House on the state of the Union recommending disagreement to certain amendments of the Senate en masse.

This motion having been made, Mr. Breckinridge moved the previous question;[6] which was seconded and the main question ordered, and under the operation thereof the said motion was agreed to.

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[1] Second session Forty-fourth Congress, Journal, p. 15; Record, p. 11.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] First session Fifty-second Congress, Journal, p. 349; Record, p. 6994.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Thirty-third Congress, Journal, p. 564; Globe, pp. 1176, 1177.

[6] Although the Journal is not definite as to what this motion for the previous question covered, the Chairman's ruling implies what the Globe's statement of the Chairman's ruling indicates (Globe, p. 1177) that it covered not only the amendments on which the Committee of the Whole recommended disagreement, but also all the remaining Senate amendments to the bill.

So the amendments were disagreed to.

Mr. Breckinridge moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Pending the question on agreeing to the remaining amendments of the Senate, Mr. John L. Dawson, of Pennsylvania, moved that the rules be suspended so as to enable him to move that the vote be taken en masse upon the remaining amendments of the Senate.

The Speaker pro tempore [1] decided that the previous question was still operating, and therefore the motion to suspend the rules was not in order.

Upon appeal the Chair was sustained.

6829. On March 23, 1842,[2] Mr. Speaker White ruled that a motion to suspend the rules could not be moved after the previous question had been ordered and before the main question had been put.

6830. On September 27, 1850,[3] the House had ordered the previous question on certain amendments to the civil and diplomatic appropriation bill.

Thereupon Mr. Jacob Thompson, of Mississippi, moved to suspend the rules so as to move that when the House should adjourn it adjourn to 10 a. m. on the next day.

Mr. George W. Jones, of Tennessee, made the point of order that it was not in order to move a suspension of the rules after the main question had been ordered to be put.

The Speaker [4] overruled the point of order.

Mr. Jones having appealed, the decision of the Chair was sustained.

6831. In the later, but not the earlier practice, the motion to suspend the rules has been admitted after the previous question has been moved.— On March 29, 1836,[5] during the consideration of the contested election case of Newland *v.* Graham, from North Carolina, the previous question was moved on the resolutions reported from the Committee on Elections.

Pending this motion Mr. Abraham Rencher, of North Carolina, moved that the rules be suspended in order that he might offer the following resolutions:

Resolved, That by general agreement there shall be no further debate upon the resolutions of the committee or the resolutions proposed thereto in the form of an amendment.

Resolved, therefore, That the call for the previous question ought to be withdrawn, and that the House proceed to vote on each resolution contained in the amendment and that it be done without amendment.

The Speaker [6] decided that pending a motion for the previous question the motion to suspend the rules was not in order.

Mr. Rencher having appealed, the decision of the Chair was sustained, yeas 107, nays 49.

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[1] Solomon G. Haven, of New York, Speaker pro tempore.

[2] Second session Twenty-seventh Congress, Journal, p. 576.

[3] First session Thirty-first Congress, Journal, p. 1550.

[4] Howell Cobb, of Georgia, Speaker.

[5] First session Twenty-fourth Congress, Journal, pp. 591–593; Debates, p. 3011.

[6] James K. Polk, of Tennessee Speaker.

6832. On May 22, 1854,[1] Mr. Speaker Boyd held, during the dilatory proceedings over the Kansas-Nebraska bill, that a motion to suspend the rules was not in order during the pendency of the demand for the previous question.

6833. On January 22, 1877,[2] Mr. Fernando Wood, of New York, had offered a resolution providing for referring to a committee with instructions the message of the President of the United States relating to the use of troops in certain States.

Upon this Mr. Wood had demanded the previous question, when Mr. John A. Kasson, of Iowa, moved to suspend the rules, so as to enable him to submit and the House to adopt the following resolution:

Resolved, That Colorado is a State of the Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to his seat as such.

Mr. Wood insisted upon his right to the floor upon the demand previously made by him for the previous question.

Afier debate the Speaker[3] held the motion of Mr. Kasson to suspend the rules to be first in order, and that the resolution submitted by Mr. Wood, if not disposed of before adjournment, would come up as the unfinished business after the reading of the Journal to-morrow.

6834. A Member who had submitted a motion to refer, which was pending, was permitted to move to suspend the rules to consider an entirely different matter.—On February 27, 1855,[4] the Senate amendments to the Indian appropriation bill were before the House, and Mr. Solomon G. Haven, of New York, moved that they be referred to the Committee on Ways and Means.

Pending this motion, Mr. Haven moved that the rules be suspended so as to enable him to move that the Committee of the Whole House be discharged from the further consideration of the bill of the Senate (No. 285) entitled "An act for the relief of the heirs of Brig. Gen. Richard B. Mason."

Mr. Lewis D. Campbell, of Ohio, made the point of order that the latter motion was out of order, on the ground that a Member can not submit two motions at the same time.

The Speaker pro tempore[5] overruled the point of order, and decided that it was in order for a Member to submit two motions, if, as in the present case, the latter motion took precedence of the former.

From this decision of the Chair Mr. Campbell appealed, but on the succeeding day withdrew it.

6835. A motion to suspend the rules may be entertained, although the yeas and nays may have been demanded on a motion highly privileged under the rules.—On June 8, 1872,[6] on the last legislative day of the session, Mr. James A. Garfield, of Ohio, moved that the rules be suspended so as to enable him to submit, and the House to agree to, the following resolution:

Resolved, That the House nonconcur in the amendments of the Senate to the House bill No. 2705, being the sundry civil appropriation bill, and agree to a conference thereon; and that upon the appointment of such committee the House do take a recess until 8 o'clock to-morrow evening.

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[1] First session Thirty-third Congress, Journal, pp. 875–890; Globe, p. 1246.

[2] Second session Forty-fourth Congress, Journal, pp. 285, 286; Record, pp. 815–817.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Thirty-third Congress, Journal, pp. 483, 486; Globe, pp. 983, 994.

[4] John Letcher, of Virginia, Speaker pro tempore.

[6] Second session Forty-second Congress, Journal, p. 1099; Globe, pp. 4434, 4435.

Mr. Charles A. Eldridge, of Wisconsin, raised the point of order that the motion to suspend the rules was not in order while the motion for a recess was pending.

The Speaker[1] overruled the point of order, saying:

Pending the motion of the gentleman from Pennsylvania [Mr. Samuel J. Randall] that the House take a recess until 10 o'clock this evening, the gentleman from Wisconsin [Mr. Eldridge], moved an amendment, upon which he demands the yeas and nays.[2] Pending that call for the yeas and nays, the gentleman from Ohio [Mr. Garfield] moves to suspend the rules for the adoption of the resolution which has been read from the desk. The gentleman from Wisconsin raises the point of order that it is not in order to move to suspend the rules at this time. The Chair overrules the point of order.

Mr. Eldridge having appealed, the decision of the Chair was sustained.

6836. When the rules are suspended to enable a matter to be considered, another motion to suspend the rules may not be made during that consideration.—On December 16, 1841,[3] on motion of Mr. Millard Fillmore, of New York, the rules were suspended for the purpose of taking up the message of the President. Then Mr. Fillmore offered resolutions distributing the message.

On December 27, the resolutions being still before the House as unfinished business, Mr. Joshua R. Giddings, of Ohio, moved to suspend the rules for the purpose of receiving reports and petitions.

The Speaker[4] said a motion to suspend the rule would not be in order, inasmuch as, in the consideration of the unfinished business, the House was already acting under a suspension of the rule.

6837. On January 18, 1842,[5] Mr. Joseph R. Ingersoll, of Pennsylvania, asked leave to offer a resolution instructing, the Committee on the Judiciary to report a bill to establish a uniform system of bankruptcy, etc., and, objection being made, he moved to suspend the rules for the purpose of presenting the resolution.

The Speaker[4] decided that the motion was not in order, the House being already engaged in business under a suspension of the rule.

6838. A motion to suspend the rules is not in order during consideration of a bill under a special order.—On January 20, 1847,[6] on motion of Mr. Charles J. Ingersoll, of Pennsylvania, the House bill (No. 622) making further provision for the expenses attending the intercourse between the United States and foreign nations (called the "three million bill," and relating to the Mexican war) was made a special order for the 1st of next February, then to take precedence of all other business until disposed of.

By postponement the consideration of the bill was once deferred, and was before the House on February 12, 1847, as unfinished business in Committee of the Whole House on the state of the Union.

On that day Mr. Ingersoll, of Pennsylvania, moved to suspend the rules so as to move that it should not be in order for any Member to move that the Committee of the Whole on the state of the Union rise that evening until 8 o'clock.

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[1] James G. Blaine, of Maine, was Speaker; but the Globe indicates that this ruling was made by Henry L. Dawes, of Massachusetts, who was in the chair.

[2] The motion for a recess was highly privileged at that time.

[3] Second session Twenty-seventh Congress, Globe, pp. 23, 58.

[4] John White, of Kentucky, Speaker.

[5] Second session Twenty-seventh Congress, Globe, p. 142.

[6] Second session Twenty-ninth Congress, Globe, p. 401; Journal, p. 194.

The Speaker[1] said the motion was not in order, because the House was already acting under a suspension of the rules on a special order,[2] and two suspensions could not take place at the same time.

6839. While the House was acting under a special order, a motion to suspend the rules to enable a Member to exceed the hour rule of debate was admitted.—On January 14, 1861,[3] Mr. Thomas Corwin, of Ohio, made the report of the select committee of one from each State "on so much of the President's message as relates to the present perilous condition of the country," which was made the special order for Monday, the 21st instant, at 1 p. m., and from day to day thereafter until disposed of.[4]

On January 21, the report being under consideration, Mr. Corwin having occupied the floor for one hour in debate, on motion of Mr. Sherrard Clemens, of Virginia (the rules having been suspended for that purpose), leave was given him to conclude his remarks.

Mr. John S. Millson, of Virginia, having occupied the hour allowed him by the rules for debate, Mr. Daniel E. Sickles, of New York, moved that the rules be suspended so as to enable Mr. Millson to continue his remarks.

Mr. Henry C. Burnett, of Kentucky, made the point of order that, inasmuch as the House was now acting under a suspension of the rules, a motion to suspend the rules was not now in order.[5]

The Speaker pro tempore,[6] overruled the point of order, on the ground that the present motion was immediately connected with the business now before the House.

From this decision of the Chair Mr. Burnett appealed. The appeal was laid on the table.

6840. A Member may modify his motion to suspend the rules at any time before the House has ordered a second.—On September 3, 1888[7] (a suspension day), the regular order of business was announced as the consideration of the motion of Mr. William Warner, of Missouri, submitted on August 6 last (a suspension day), to suspend the rules and pass a resolution to fix a day for the consideration of the bill (H. R. 10614) to organize the Territory of Oklahoma, etc., and providing for taking a vote thereon.

This resolution had been presented on September 3, and, pending the vote by tellers on the second of the motion to suspend the rules, the House had proceeded to other business and adjourned.

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[1] John W. Davis, of Indiana, Speaker.

[2] Special orders were formerly made by unanimous consent or by suspension of the rules. They are generally made now by reports from the Committee on Rules.

[3] Second session Thirty-sixth Congress, Journal, pp. 190, 212.

[4] This special order while in reality a suspension of the rules was made by unanimous consent rather than by a motion and vote on suspension.

[5] This is the Journal statement, and while technically the official record, is evidently curiously inaccurate. The Globe (Appendix, pp. 75, 79) indicates that Mr. Burnett made the point, not that the House was acting under suspension of the rules, but that another motion to suspend the rules, made on the last preceding suspension day (Journal, p. 190) and relating to another project of legislation, was pending as unfinished business. The Globe also shows that Mr. Burnett made the same point of order on Mr. Clemens's motion.

[6] Garnett B. Adrain, of New Jersey, Speaker pro tempore.

[7] First session Fiftieth Congress, Journal, pp. 271, 2722; Record, p. 8232.

The resolution having come up on September 3, Mr. Warner modified his motion by withdrawing the resolution and submitting a motion to suspend the rules and pass a bill to organize the Territory of Oklahoma.

Mr. Charles E. Hooker, of Mississippi, made the point of order that Mr. Warner could not modify the motion, formerly submitted by him, in the manner proposed.

The Speaker[1] overruled the point of order upon the grounds that a Member had the right to change or modify a proposition submitted by him at any time before the House has taken such action on it as placed it within the control of the House and beyond the control of the Member; that the present instance did not present a question as to the relevancy of amendments, but one merely as to the form in which the Member proposed to submit a proposition upon which the House had not acted in any manner. The Speaker said:

The question as to the right of a Member to change or modify a motion or proposition submitted by him before the House has acted upon it in any way has frequently arisen and frequently been decided. The present occupant of the chair has always held that when a Member has submitted a motion or proposition to the House, whether in the form of an original motion or as an amendment to a pending motion, it is his right to modify or change it at any time before it is voted upon, or before the previous question has been ordered, or before the adoption of any other action on the part of the House which places the matter beyond the control of the Member and within the control of the House.

In the present instance it is not, as the gentleman from Mississippi argues, a question of amendment. It is a question merely as to the form in which the gentleman from Missouri will submit the proposition, the House not having acted upon it in any manner whatever. It is quite true, as stated, both by the gentleman from Illinois [Mr. Payson] and the gentleman from Mississippi, that the proposition is a different one from that submitted by the gentleman some time ago. But it relates to the same subject-matter. The proposition was to fix a day for the consideration of this bill; and this proposition is—that time having passed by—to vote upon the bill now. It is still, however, in the power of the House to determine whether it will or will not second that proposition, so that the matter is entirely and absolutely within the control of the House and not within the control of the Chair.

If the gentleman from Missouri sees proper to modify his proposition or take the risk of having the House second and pass it, of course the Chair has no control over the matter.

Suppose, for instance, the time fixed in the original resolution for the consideration of the bill had now lapsed and the gentleman should so modify his motion as to fix to-morrow for its consideration. The Chair thinks it would be admissible, and the Chair can not see any difference in principle between that and a motion to suspend the rules and pass the bill now.

6841. The rules having been suspended to enable a Member to present a proposition, he may not then modify it.—On January 17, 1850,[2] Mr. Speaker Cobb decided that, in a case where the rules were suspended to enable a Member to present a resolution, the Member lost control of the resolution and could not then modify it.

6842. On September 23, 1850,[3] Mr. Speaker Cobb ruled, and the House sustained him in that decision, that when the rules were suspended to allow a proposition to be introduced the proposition might be amended by any germane proposition.

6843. On September 2, 1850,[4] Mr. Linn Boyd, of Kentucky, moved to suspend the rules to enable him to make the bill in relation to the Texan boundary a special order from day to day until it should be disposed of.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Thirty-first Congress, Globe, p. 1224.

[3] First session Thirty-fourth Congress, Journal, pp. 1508. 1509; Globe, p. 1922.

[4] First session Thirty-first Congress, Globe, p. 1727.

Mr. Jacob Thompson, of Mississippi, suggested that the motion be modified to make the bill a special order each day at 12 o'clock.

Mr. Boyd announced that he would not modify his motion at present.

Thereupon the Speaker[1] announced to the gentleman from Kentucky (Mr. Boyd) that if the rules were suspended it would be beyond the power of the gentleman to modify it, as it would then be in possession of the House.

6844. A motion to suspend the rules may be withdrawn at any time before a second is ordered.—On November 3, 1893,[2] the House was considering a motion of Mr. James D. Richardson, of Tennessee, to suspend the rules and concur in a Senate amendment to a joint resolution (H. Res. 86) relating to certain employees.

The House proceeded to vote by tellers on the question of seconding the motion to suspend the rules.

Mr. Richardson then withdrew the pending motion to suspend the rules.

Mr. C. B. Kilgore, of Texas, made the point of order that, pending the vote on seconding the motion, it was not in order to withdraw it.

The Speaker [3] overruled the point, holding that the motion might be withdrawn at any time before the second was ordered and that the motion was not in possession of the House until seconded.

6845. A second not having been ordered on a committee motion to suspend the rules, the committee may on a succeeding suspension day withdraw the motion.

The admission of the motion to suspend the rules on a committee suspension day is a matter of recognition by the Chair.

On December 15, 1890,[4] the Speaker announced as the pending order of business the motion of Mr. Osborne, on behalf of the Committee on Military Affairs, to suspend the rules so as to discharge the Committee of the Whole House from the further consideration of the bill of the Senate (S. 1636) for the relief of certain officers on the retired list of the Army, and pass the same, coming over from the session of August 18 as unfinished business, the pending question being on the demand of Mr. Dockery for a second to the motion, on which question no quorum voted by tellers. The point of no quorum having been raised, the House adjourned.

Mr. Edwin S. Osborne, of Pennsylvania, withdrew the motion to suspend the rules so as to pass the bill.

Mr. Francis B. Spinola, of New York, by direction of the Committee on Military Affairs, moved that the rules be suspended so as to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill of the House (H. R. 3887) for the erection and completion of a monument to the memory of the victims of prison ships at Fort Greene, Brooklyn, and pass the same.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the unfinished business which the Committee on Military Affairs had the right to have considered

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Fifty-third Congress, Journal, pp. 174, 175; Record, p. 3127.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-first Congress, Journal, p. 55; Record, pp. 488, 489.

at this time having been withdrawn the committee could not now present other and entirely new business.

After debate the Speaker[1] overruled the point of order on the following grounds:

The Chair has been unable to find any authority upon this point, and thinks that perhaps, after all, the matter is one of recognition by the Chair. The Committee on Military Affairs proposed a certain bill. Pending any action whatever upon the subject by the House, an adjournment was had. There being no decision by the House, if an individual Member had proposed the measure he would have had the right to withdraw it without the consent of anyone, and the Chair supposes the committee must be considered as having a similar right. Therefore, in analogy to what would be held if it were the case of an individual Member, the Chair will now call the Committee on Military Affairs.

6846. Under the later practice it is possible by one motion both to bring a matter before the House and pass it under suspension of the rules.[2]—On February 25, 1868,[3] Mr. Elihu B. Washburne, of Illinois, moved to suspend the rules and agree to a resolution providing a special order for considering the impeachment of President Andrew Johnson.

Mr. Lawrence S. Trimble, of Kentucky, made the point of order that the House had a right to vote first on suspending the rules, and then on agreeing to the resolution.

The Speaker[4] overruled the point of order. And then the motion was made, and the House gave consent to introduce the resolution, and also adopted it at one vote.

Immediately before this the House, on motion of Mr. Washburne, had agreed to a rule that after a motion to suspend the rules the Speaker should entertain only one motion to adjourn, and after that no dilatory motion.

6847. On March 22, 1869,[5] Mr. Halbert E. Paine, of Wisconsin, moved to suspend the rules and adopt a resolution relating to the disposal of contested election cases.

Mr. Albert G. Burr, of Illinois, rising to a parliamentary inquiry, asked whether or not the motion to suspend the rules would cut off debate on the resolution after the rules were suspended.

The Speaker[6] said:

The motion as framed by the gentleman from Wisconsin proposes that the rules shall be suspended and the resolution adopted at one vote. It is in order for him to put the motion in that form, and the Chair understands that to be his motion.

6848. On a committee suspension day a committee may not move to suspend the rules and pass a bill over which it has no jurisdiction.—On April 21, 1884,[7] Mr. S. S. Cox, of New York, on a committee suspension day, proposed, by direction of the Committee on Census, to move the suspension of the

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[1] Thomas B. Reed, of Maine, Speaker.

[2] This ruling of 1868 first established the practice which now prevails almost entirely, of combining the motion to suspend the rules with the motion to pass the bill. The older practice is illustrated by sections 6852, 6854 of this chapter.

[3] Second session Fortieth Congress, Globe, p. 1425.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] First session Forty-first Congress, Globe, p. 197.

[6] James G. Blaine, of Maine, Speaker.

[7] First session Forty-eighth Congress, Record, p. 3402.

rules and the passage of a bill relating to the printing of the compendium of the Tenth Census.

Mr. Alfred M. Scales, of North Carolina, made a point of order against the motion on the ground that the bill had never been introduced in the House, and also that it was within the jurisdiction of the Committee on Printing.

After debate the Speaker[1] said:

There is no difficulty, of course, in the case of an individual Member moving a suspension of the rules on the first Monday of the month, because every individual Member of the House has the right to introduce a bill on any subject he chooses. But it is not so with the committees of the House, for their jurisdiction and powers are defined by the rules. A committee has no right to submit any report to the House unless it relates to a subject over which it has jurisdiction by the rules of the House or by the reference of the subject to it by the order of the House. The Chair thinks it would create very great confusion in the administration of the rules and in the business of legislation if on the third Monday of the month a committee were allowed to move to suspend the rules and pass a bill relating to a subject over which the committee had no jurisdiction, and by that means take the subject away from another committee to which it properly belongs. The point of order is sustained.

6849. On one motion to suspend the rules a vote whereby a resolution had been passed was reconsidered, the resolution amended, and as amended passed.—On February 6, 1899,[2] a suspension day, Mr. Eugene F. Loud, of California, offered for reconsideration a resolution which had passed the House on a former day, and asked that the rules be suspended and that the resolution be passed again in an amended form.

In response to a parliamentary inquiry as to the proper form of procedure the Speaker[3] said:

The gentleman can move to suspend the rules, reconsider the vote already taken, and pass the resolution with the amendment which has just been read.

Thereupon on one motion and at one vote the passage of the resolution was reconsidered, the amendment was agreed to, and the resolution as amended was passed again.

6850. A motion to suspend the rules may include in its provisions both the discharge of a committee from the consideration of a bill and the final passage of it.—On March 3,1890,[4] Mr. Bishop W. Perkins, of Kansas, moved to suspend the rules so as to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill of the House (H. R. 6786) to organize the Territory of Oklahoma, to establish courts in the Indian Territory, and for other purposes, and pass the same.

Mr. George T. Barnes, of Georgia, made the point of order that the motion was not in order for the reason that the bill was pending in committee as a substitute for the bill of the Senate (S. 895) to provide a temporary government for the Territory of Oklahoma.

The Speaker[3] overruled the point of order on the ground that the statement of fact was not correct, and that the motion to suspend the rules would, if adopted,

[1] John G. Carlisle, of Kentucky, Speaker.

[2] Third session Fifty-fifth Congress, Record, p. 1504.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-first Congress, Journal, p. 298; Record, p. 1881.

suspend all rules in the way of its immediate consideration and bring the House to a vote on the motion.

6851. The rules may be suspended by a single motion and vote, so as to permit the House to vote first on a specified amendment to a bill and then on the bill itself.—On January 17, 1876,[1] Mr. John D. White, of Kentucky, offered the following resolution:

Resolved, That the rules be suspended so as to enable the House to proceed forthwith to vote on the passage of the following bill:

A BILL to remove the disabilities imposed by the fourteenth amendment to the Constitution of the United States.

"Be it enacted, etc., That all persons now under the disabilities imposed by the fourteenth amendment to the Constitution of the United States, with the exception of Jefferson Davis, late president of the so-called Confederate States, shall be relieved of such disabilities upon their appearing before any judge of a United States court, and taking and subscribing, in open court, the following oath, to be duly attested and recorded, namely:" [Here follows the form of oath.]

The House first, however, voting on the following amendment thereto:

Strike out the following words: "with the exception of Jefferson Davis, late president of the so-called Confederate States."

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that there could not be a vote on a bill and amendment under the suspension of the rules; that the vote must be on the final passage of a proposition intact.

The Speaker[2] said:

In the judgment of the Chair, without making any criticisms upon the form in which the gentleman from Kentucky has put his resolution, it is not competent to exclude any part of his proposition from the consideration of the House. The Chair must therefore regard the latter words of the resolution as it is introduced as constituting in fact a part of the preliminary words, and as in substance, therefore, stating that the desire of the gentleman from Kentucky is to introduce this bill for two purposes: First, that there shall be a vote upon a proposed amendment; and, second, that there shall be a vote upon the bill itself, whether amended or not. It is suggested that it is not competent for the gentleman to do this under a suspension of the rules; but in response to that the Chair will suggest that the very purpose of a suspension of the rules is to get rid of all rules and to let the House run as freely as it pleases. The Chair overrules the point of order and holds that the motion is in order.

The Speaker then stated that the question was on suspension of the rules so as to bring the bill before the House.

6852. In the early practice the motion to suspend the rules was used only to enable a matter to be taken up, and was not permitted when a subject was already before the House.—On March 21, 1842,[3] a Member endeavored to make a motion that the rules be suspended and that the House resolve itself into Committee of the Whole. The Speaker[4] decided that the motion could not be entertained. When the incident was journalized the motion was put in the form that the rules in relation to the order of business be suspended to enable a motion to be made that the House go into Committee of the Whole. This was the original form and use of the motion to suspend. The Speaker in effect decided that the motion to suspend was not in order when another subject was before the House.

[1] First session Forty-fourth Congress, Record, p. 444.

[2] Michael C. Kerr, of Indiana, Speaker.

[3] Second session Twenty-seventh Congress, Journal, p. 560; Globe, p. 342.

[4] John White, of Kentucky.

6853. On February 22, 1855,[1] Mr. Speaker Boyd expressed the opinion, well considered, that generally motions to suspend the rules were not in order while a subject was pending before the House.

6854. Illustration of the earlier practice of moving to suspend the rules in order to introduce for consideration under the rules a proposition that might not otherwise be admissible in the order of business.

By the later practice, when the rules are suspended to enable a Member to submit a proposition, he may withdraw it, but another Member may not renew it.

A motion having been withdrawn pending an appeal from a decision that it was in order, it was held that the appeal did not thereby fall.

On May 16, 1834,[2] the House resumed the consideration of the resolution moved by Mr. Samuel W. Mardis, of Alabama, on the 14th of January, relative to the selection of banks in which to deposit the public money.

The question recurred on the amendment moved by Mr. Thomas Corwin, of Ohio, on the 12th of April, and after further debate the hour expired, when a motion was made by Mr. Franklin E. Plummer, of Mississippi, that the rule setting apart Friday (this day) for the consideration of private business be suspended for the purpose of affording Mr. John Galbraith, of Pennsylvania, an opportunity of closing his remarks upon the resolution. And on the question, Shall the rule be suspended for the purpose aforesaid? it passed in the affirmative, two-thirds voting therefor.

Mr. Galbraith then resumed his remarks; and, having concluded the same, a motion was made by Mr. Ratliff Boon, of Indiana, that the rule be again suspended, to enable Mr. Andrew Stewart, of Pennsylvania, who intimated a wish to do so, to make a motion that the resolution do lie on the table. And on the question, Shall the rule be suspended for the purpose aforesaid? it was passed in the affirmative, two-thirds voting therefor.

A motion was then made by Mr. Stewart that the resolution and the amendment proposed by Mr. Corwin do lie on the table. And before the question was put thereon Mr. Stewart withdrew his motion.

The motion that the resolution and the amendment proposed by Mr. Corwin do lie on the table was then renewed by Mr. S. McDowell Moore, of Virginia; and an inquiry was made whether the motion of Mr. Moore could be received without again suspending the rule.

The Speaker pro tempore[3] decided that the suspension of the rule was for the purpose of receiving a motion to lay the resolution on the table and to come to a decision on that motion, and it was immaterial by whom the motion might be made, and that the motion made by Mr. Moore would therefore be entertained.

From this decision Mr. John Quincy Adams, of Massachusetts, appealed to the House, on the ground that the motion was to suspend the rule for the purpose of enabling Mr. Stewart to move that the resolution do lie on the table, and that Mr. Stewart having made his motion and withdrawn it, it was necessary that the rule should be again suspended, before the motion could be renewed by any other Member.

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[1] Second session Thirty-third Congress, Globe, p. 890.

[2] First session Twenty-third Congress, Journal, p. 631.

[3] Henry Hubbard, of New Hampshire, Speaker pro tempore.

And after debate on the appeal, Mr. Moore withdrew his motion that the resolution and amendment do lie on the table.

An inquiry was then made of the Chair whether the withdrawal of the motion, that the resolution do lie on the table, set aside the question on the appeal made by Mr. John Quincy Adams.

The Speaker decided that the appeal did not fall[1] by the withdrawal of the motion that the resolution do lie on the table, and that the question on the appeal was the question then pending before the House.

Mr. Isaac B. Van Houten, of New York, then renewed the motion that the resolution and amendment do lie on the table.

And the question was then put on the appeal moved by Mr. John Quincy Adams, viz, Shall the decision of the Speaker stand as the judgment of the House? And passed in the affirmative, 150 yeas to 13 nays.

6855. On December 31, 1860,[3] Mr. John G. Davis, of Indiana (the rules having been suspended for that purpose), submitted the following preamble and resolution:

Whereas a convention of delegates chosen by the people of the State of South Carolina lately, to wit, on the —— day of December, 1860, adopted the following ordinance, namely: "We, the people of South Carolina, in convention assembled, do declare and ordain that the ordinance adopted by us in the convention of the 23d of May, 1778, whereby the Constitution of the United States was ratified, and the acts ratifying amendments to the said Constitution, are hereby repealed, and the union now subsisting between South Carolina and the other States, under the name of the United States of America, is hereby dissolved."

And whereas the said State of South Carolina, in pursuance thereof, and the proclamation of the governor of said State, claims to be a separate and independent government, and is attempting to exercise the powers of such separate and independent government: Therefore,

Resolved, That the Committee on the Judiciary be instructed to inquire into the same, and to report to this House, at any time, what legislation, if any, has become necessary on the part of Congress in consequence of the position thus assumed by the said State of South Carolina.

Pending the question on agreeing thereto the House adjourned.

On January 2, 1861, the Speaker having announced as the regular order of business the preamble and resolution submitted by Mr. John G. Davis, and pending when the House adjourned, the pending question being on the demand for the previous question—

The question was put on the demand, when the House refused to second the same.

The question then recurring on the resolution, Mr. Davis withdrew the preamble and resolution.

Mr. John Sherman, of Ohio, having claimed the privilege of submitting anew the preamble and resolution, on the ground that the rules had been suspended for the purpose of enabling the House to consider the same, Mr. Thomas S. Bocock, of Virginia, made the point of order that it was not competent for him to do so.

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[1] On January 4, 1831 (second session Twenty-first Congress, Debates, p. 404), during discussion of a point of order in Committee of the Whole, Mr. Speaker Stevenson, while participating in the debate, expressed the opinion that an appeal fell by reason of the withdrawal of the motion on which it was based.

[2] Second session Thirty-sixth Congress, Journal, pp. 131, 140; Globe, pp. 233, 235, 244.

Mr. Sherman based his claim to the right to renew the motion upon the ruling made in the Twenty-third Congress by Speaker pro tempore Hubbard, which, on appeal by Mr. John Quincy Adams, of Massachusetts, was sustained by a vote of the House.

Mr. Bocock contended that the decision had been wrong when made; had been made not by the Speaker but by a temporary occupant of the chair; had been made many years before and never since affirmed.

The Speaker [1] ruled:

The fortieth rule [2] reads as follows: "After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed to be in the possession of the House, but may be withdrawn at any time before a decision or amendment." The Chair has already decided that the gentleman from Indiana had the right to withdraw his proposition, for the reason that there has been no decision upon it or amendment to it. From that decision no appeal was taken. The gentleman from Ohio now insists that he has the right to renew the proposition of the gentleman from Indiana, and claims that when the rules are suspended to enable the Member to submit a particular proposition, if he fails to submit it, another Member may do so. Now, the question between the gentleman from Ohio and the Chair is whether it can be said, according to a fair construction of the rules, that the gentleman from Indiana has not submitted his proposition. The gentleman from Indiana submitted his proposition, and some time was spent in its consideration, but, before a decision was come to, he withdrew it. Now, the question for the consideration of the Chair is simply this: Whether that is within the rule referred to by the gentleman from Ohio. I confess that I think it is not, and especially as the rules have been suspended to admit the resolution of the gentleman from Indiana; and now, the business having been continued to this day, the rules could not, under the rules of the House, be suspended again. The Chair thinks the proposition could not be renewed.

Mr. Sherman having appealed, a motion to lay the appeal on the table failed, 73 yeas to 77 nays. Then began a contest, during which the vote was reconsidered, but on the second trial the motion to lay the appeal on the table was again negatived, 80 yeas to 82 nays.

On the next day Mr. Sherman withdrew his appeal.

6856. Where the rules have been suspended simply to enable a proposition to be introduced, it has been the practice to permit motions to amend it during consideration.—On April 17, 1848,[3] Mr. Samuel F. Vinton, of Ohio, moved that the rules be suspended for the purpose of enabling him to introduce the following resolution:

Resolved, That the bill making appropriations for the payment of Revolutionary and other pensions, etc.; the bill regulating the appointment of clerks in the Executive Departments, etc. (and five other bills, each an appropriation bill], be severally made the special order of the day for Wednesday next, at 1 o'clock p.m., to be considered in the order named above; and that they continue to be the special order of the day, at the same hour of the day, for every day thereafter, Fridays and Saturdays [4] excepted, till the said bills shall have been finally disposed of.

The rules were suspended and the resolution was introduced. The question was stated on agreeing thereto, when Mr. Orlando B. Ficklin, of Illinois, moved to amend by adding the bill "to establish a Territorial government in Oregon," and the bill "to raise, for a limited time, an additional military force."

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[1] William Pennington, of New Jersey, Speaker.

[2] Now section 2 of Rule XVI.

[3] First session Thirtieth Congress, Journal, p. 692.

[4] These were then private-bill days.

This amendment was agreed to, and the question was then put, Will the House agree to the said resolution as amended? and it was decided in the negative, two-thirds not voting therefor, yeas 74, nays 101.[1]

6857. It was held in order by one motion and vote to suspend the rules so as to permit several bills to be reported.—On February 16, 1857,[2] Mr. Elihu B. Washburne, of Illinois, moved that the rules be suspended, so as to enable him to report sundry bills from the Committee on Commerce, and also to make sundry adverse reports from that committee, in order that the same might be committed to the Committee of the Whole House on the state of the Union.

Mr. Fayette McMullin, of Virginia, made the point of order that it was not competent to include a number of bills in the motion.

The Speaker[3] overruled the point of order.

An appeal having been taken, it was laid on the table.

6858. A motion to amend may not be applied to a motion to suspend the rules.—On January 22,1849,[4] Mr. Henry W. Hilliard, of Alabama, moved that the rules be suspended in order to enable him to introduce two bills,[5] one to authorize the formation of a State government in and the admission into the Union of California, and the other respecting the limits of New Mexico, and to move that they be referred to a select committee of nine Members.

Mr. Thomas O. Edwards, of Ohio, inquired if it was in order to move to amend the motion. He would prefer to have the bill respecting New Mexico go to the Committee on Territories.

The Speaker[6] replied that a motion to suspend the rules could not be amended.

6859. On February 24, 1859,[7] the Committee of the Whole House on the state of the Union reported that the committee, having, according to order, had the state of the Union generally under consideration, and particularly the bill of the House (H. R. 712) making appropriations for the naval service for the year ending June 30, 1860, had come to no resolution thereon.

Mr. John S. Phelps, of Missouri, moved that the rules be suspended, so as to enable him to submit the following resolution:

Resolved, That all debate in the Committee of the Whole House on the state of the Union on the bill (H. R. 712) shall cease at 11 o'clock a. m. to-morrow, and that in the meantime no vote shall be taken in Committee of the Whole except that the committee do rise or take a recess, and afterwards in the House that it do adjourn.

Pending this, Mr. James L. Seward, of Georgia, proposed to submit an amendment thereto.

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[1] The Globe (p. 639) shows that the Speaker [Robert C. Winthrop] decided that the resolution might be amended by a majority; but would require a two-thirds vote for its adoption.

[2] Third session Thirty-fourth Congress, Journal, p. 432; Globe, p. 708.

[3] Nathaniel P. Banks, of Massachusetts., Speaker.

[4] Second session Thirtieth Congress, Globe, pp. 319, 320.

[5] The old rule (Rule CXIV) was still in force: "Every bill shall be introduced on the report of a committee or by motion for leave. In the latter case at least one day's notice shall be given of the motion in the House, or by filing a memorandum thereof with the Clerk and having it entered on the Journal," etc. Now a Member introduces any bill he pleases by filing it at the Clerk's desk, whence it is referred to the committee having jurisdiction.

[6] Robert C. Winthrop, of Massachusetts, Speaker.

[7] Second session Thirty-fifth Congress, Journal, p. 477; Globe, p. 1324.

The Speaker[1] decided that the motion to suspend the rules was not amendable.

From this decision of the Chair Mr. Seward appealed. The appeal was laid on the table.

6860. During consideration of a motion to suspend the rules and pass a bill it is not in order to move to commit the bill, or to demand a separate vote on amendments pending with the bill.—On February 18, 1901,[2] a committee suspension day, the House was considering the bill (H. R. 1917) to limit the meaning of the word "conspiracy," and also the use of "restraining orders and injunctions" as applied to disputes between employers and employees in the District of Columbia and Territories, or engaged in commerce between the several States, District of Columbia, and Territories, and with foreign nations.

A second had been ordered on the motion to suspend the rules and pass the bill with certain amendments recommended by the Committee on the Judiciary.

Mr. John B. Corliss, of Michigan, rising to a parliamentary inquiry, asked if, under a motion to suspend the rules, a motion to recommit was in order.

The Speaker[3] replied that it was not.

Mr. Corliss then asked if there was any way whereby a separate vote could be taken on the bill and the amendments.

The Speaker replied that there was not.

6861. The rules being suspended to enable a bill to be reported and considered, the requirement that it should be considered in Committee of the Whole was held to be thereby waived.—On July 8, 1856,[4] the House resumed consideration of Senate Resolution No. 17 for enlarging and constructing certain public buildings, reported from the Committee on Commerce under a suspension of the rules,[5] with an amendment.

Mr. Fayette McMullin, of Virginia, raised the question of order that the resolution could not be considered in the House until it had first been considered in Committee of the Whole, inasmuch as it contained an appropriation of money.

The Speaker[6] overruled the question of order, on the ground that the rules were suspended not only to enable the resolution to be reported with the accompanying amendment, but also to enable the House to consider the same.

An appeal was taken and laid on the table.

6862. It has long been established that one of the standing rules of the House may be changed by a two-thirds vote on a motion to suspend the rules.—On June 17, 1850,[7] Mr. John Wentworth, of Illinois, moved to suspend the rules in order that the Committee of the Whole House on the state of the Union might be instructed to report the President's message transmitting the constitution of California, and-also a bill admitting California to the Union.

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[1] James L. Orr, of South Carolina, Speaker.

[2] Second session Fifty-sixth Congress, Record, pp. 2589–2592.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Thirty-fourth Congress, Journal, pp. 1172, 1173; Globe, p. 1558.

[5] It is no longer necessary to suspend the rules to get matters reported.

[6] Nathaniel P. Banks, of Massachusetts, Speaker.

[7] First session Thirty-first Congress, Globe, p. 1226.

Mr. Robert Toombs, of Georgia, made the point of order that it was not competent for the House, by a suspension of the rules, to change one of its standing rules and orders. One day's notice was required for a change of the rules.

The Speaker[1] ruled as follows:

The Chair will state to the House his opinion on the point of order raised by the gentleman from Georgia. If this resolution was introduced on resolution day, when the States were called for resolutions,[2] the Chair would unhesitatingly rule it out of order; it is not now proposed as the regular order of business on resolution day, but it is proposed to suspend the rules of the House in order to introduce it. The Chair holds that you may repeal any rule of the House under a suspension of the rules; you may suspend the operation of the rules of the House under a suspension of the rules; and, therefore, a motion to suspend the rules, to offer a resolution of this kind, in the opinion of the Chair, is in order, though such a resolution on resolution day would be very clearly out of order.

The Chair will illustrate: If a motion is made to amend one of the rules of the House, the rule referred to by the gentleman from Georgia would require that the motion should lie over one day;[3] but that rule can be suspended by a vote of two-thirds as well as any other rule, and all the rules of the House conflicting with the resolution proposed to be introduced can, by a vote of two-thirds, be suspended. In taking this view of the subject the Chair will state that he has bestowed much reflection upon this point, it having been suggested to him at an early stage of the session; and he is clearly of the opinion that such a resolution would not be in order on resolution day, because a majority of the House can not suspend the rules of the House on resolution day, or any other day; but two-thirds of the House can suspend the rules at any time, when a motion to suspend is in order.

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[1] Howell Cobb, of Georgia, Speaker.

[2] Resolutions are now introduced by filing them.

[3] This provision of rule no longer exists.

Chapter CXLIII.

QUESTIONS OF ORDER AND APPEALS.

1. **The Speaker decides. Section 6863.**[1]
2. **Must be decided before question out of which it arises. Section 6864.**
3. **Statement and reservation of. Sections 6865–6876.**
4. **Once decided on appeal, may not be renewed. Section 6877.**
5. **May be raised as to whole or part of proposition. Sections 6878–6885.**
6. **Time of making. Sections 6886–6918.**[2]
7. **Debate on. Sections 6919, 6920.**
8. **Reserving on appropriation bills. Sections 6921–6926.**
9. **In Committee of the Whole. Sections 6927–6937.**[3]
10. **The rule relating to appeals. Section 6938.**
11. **Not in order when another appeal is pending. Sections 6939–6944.**
12. **Appeal as unfinished business. Section 6945.**
13. **Instance of appeal not entertained. Section 6946.**[4]
14. **Debate on an appeal. Sections 6947–6952.**
15. **General decisions. Sections 6953–6957.**[5]

6863. The Speaker decides questions of order.—Section 4 of Rule I[6] provides that the Speaker "shall decide all questions of order."[7]

6864. A question of order arising out of any other question must be decided before that question.—Jefferson's Manual, in Section XXXIII, provides:

> But there are several questions which, being incidental to every one, will take place of every one, privileged or not, to wit, a question of order arising out of any other question must be decided before that question. (2 Hats., 88.)

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[1] Speaker may reexamine and revise his opinions. (Sec. 4637 of Vol. IV.)

As to the time of making a decision. (Sec. 2725 of Vol. III.)

Clerk's decisions at the organization of the House. (Secs. 68–72 of Vol. I.)

[2] All points of order should be stated before a decision as to any. (Sec. 3716 of Vol. IV.)

In relation to the question of consideration. (Secs. 4950–4952 of this volume.)

In relation to conference reports. (Sec. 6424 of this volume.)

[3] See also sections 4783, 4784 of Volume IV and 6987 of this volume.

[4] In an impeachment trial. (Secs. 2088, 2100, 2177 of Vol. III.)

[5] Appeals in order during a call of the House to secure a quorum. (Secs. 3036, 3037 of Vol. IV.)

Instances wherein, on a tie, the Chairman voted to sustain his own decision. (Secs. 5239, 5686 of this volume.)

Appeals after the previous question is demanded. (Sec. 5448 of this volume.)

Effect on an appeal of withdrawal of the point of order. (Sec. 6854 of this volume.)

Points of order in impeachment trials. (Sec. 2100 of Vol. III.)

[6] For full form and history of this rule see section 1313 of Vol. II of this work.

[7] When a Speaker pro tempore occupies the chair he decides questions of order; and when the House is in Committee of the Whole the Chairman decides.

6865. The Speaker may require that a question of order be presented in writing.—On January 26, 1842,[1] during proceedings on a proposition to censure Mr. John Quincy Adams, of Massachusetts, for presenting a petition of certain citizens of Massachusetts who prayed for the dissolution of the Union, Mr. Adams rose to a question of order.

The Speaker[2] informed Mr. Adams that thereafter the Chair would entertain no point of order that was not reduced to writing, it being the privilege of the Chair to have the point of order reduced to writing.

6866. It is the better practice for all points of order to be stated before a decision is made as to any.—On March 22, 1904,[3] during consideration of the Post-Office appropriation bill in Committee of the Whole House on the state of the Union, Mr. Thomas S. Butler, of Pennsylvania, proposed an amendment, against which Mr. Jesse Overstreet, of Indiana, raised a point of order.

Mr. James R. Mann, of Illinois, and John S. Snook, of Ohio, having risen to parliamentary inquiries concerning additional points of order, the Chairman[4] said:

The Chair will state that he considers the better practice for all points of order to be made at one time. The Chair thinks that if one makes the point of order against an amendment which should be overruled that other gentlemen have the right to raise points of order against the pending amendment. * * * The Chair stated that the gentleman making the point of order should, according to the best usage, include all the reasons for making his point of order, but that other gentlemen could make other points of order if the Chair overruled the point first made.

6867. The reservation of a point of order must be made publicly, and not by private arrangement with the Member in charge of the bill.—On April 21, 1906,[5] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

Water meters: For the purchase, installation, and maintenance of water meters to be placed in such private residences as may be directed by the Commissioners of the District of Columbia; said meters at all times to remain the property of the District of Columbia; to be repaid from revenues of the water department at the rate of $20,000 per annum, beginning with the fiscal year to end June 30, 1908, $100,000.

After debate had proceeded for some time Mr. Thetus W. Sims, of Tennessee, proposed to make a point of order, stating that he had had an agreement with the Member in charge of the bill that he might do so at any time after the debate had proceeded.

Mr. Frederick H. Gillett, of Massachusetts, in charge of the bill, said:

I must say this, and I trust no Member of the House will interfere with the agreement I made with the gentleman, that I made an agreement with the gentleman from Tennessee that when this came up he should ask a question, and that if later he wished to raise the point of order, even after discussion, I would not then raise the point that it was too late. Therefore I trust that no other Member will do it now.

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[1] Second session Twenty-seventh Congress, Globe, p. 176.

[2] John White, of Kentucky, Speaker.

[3] Second session Fifty-eighth Congress, Record, pp. 3524, 3526.

[4] Henry S. Boutell, of Illinois, Chairman.

[5] First session Fifty-ninth Congress, Record, p. 5669.

Objection being made, the Chairman [1] said:

The Chair will state that the House can not be bound by an agreement of gentlemen.

6868. When a point of order is reserved the pending proposition may be debated on its merits unless some Member demands a decision of the question of order.—On February 19, 1907,[2] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert B. Macon, of Arkansas, proposed to reserve a question of order.

Mr. James R. Mann, of Illinois, insisted that an immediate decision of the point of order be made, and a question arising, the Chairman [3] held:

When a point of order is reserved the merits of the proposition may be discussed until some member of the committee calls for a ruling, and then the Chair will rule. The gentleman from Illinois now calls for a ruling, insists upon the point of order, and the Chair sustains the point of order, and the Clerk will read.

6869. A point of order may not be reserved by a Member if another Member insists on an immediate decision.—On April 26, 1900,[4] the Post-Office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Oscar W. Underwood, of Alabama, reserved a point of order on a paragraph relating to necessary and special mail facilities on trunk lines of railroad.

Mr. William P. Hepburn, of Iowa, objected, demanding that the point of order be decided at once.

The Chairman [1] said:

The Chair think the gentleman can not reserve the point of order in the face of an objection on the part of any member of the committee. If the gentleman from Alabama [Mr. Underwood] desires to insist on his point of order and the gentleman from Iowa [Mr. Hepburn] insists that it shall not be reserved, it must be disposed of now.

6870. On January 24, 1901,[5] during consideration of the naval appropriation bill (H. R. 13705) in Committee of the Whole House on the state of the Union, Mr. James D. Richardson, of Tennessee, reserved a point of order on a paragraph relating to the classification of naval vessels.

After debate Mr. Richardson withdrew the point of order.

Whereupon Mr. John F. Fitzgerald, of Massachusetts, renewed the point of order, desiring to reserve it pending debate.

There being a demand for the regular order, the Chair ruled.

Mr. Fitzgerald rising to a parliamentary inquiry as to his rights in reserving a point of order, the Chairman [6] said:

The gentleman from Massachusetts, as the Chair understood, renewed the point of order which the gentleman from Tennessee abandoned. * * * The gentleman from Massachusetts subsequently

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] Second session Fifty-ninth Congress, Record, p. 3373.

[3] Frank D. Currier, of New Hampshire, Chairman.

[4] First session Fifty-sixth Congress, Record, p. 4717.

[5] Second session Fifty-sixth Congress, Record, pp. 1429 1430.

[6] William H. Moody, of Massachusetts, Chairman.

stated that he reserved the point of order. * * * Then the demand for the regular order became general and manifest; and in accordance with a decision made at the first session of this Congress that a point of order can not be reserved by a Member if any other Member insists on an immediate decision, the Chair, in obedience to the demand for the regular order, ruled upon the question of order and sustained the point.

6871. On March 18, 1904,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph providing for the selection of a site for a post-office station in New York City, when a question arose as to the reserving of a point of order.

The Chairman[2] said:

The Chair will state that if the point of order is reserved it can only be by unanimous consent, and if any gentleman of the committee calls for a ruling upon the point of order it is the duty of the Chair to rule.

6872. An amendment may not be offered to a paragraph in a bill until a point of order reserved against the paragraph has been disposed of.— On March 30, 1904,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

That all the powers now exercised by the Court of Private Land Claims in the approval of surveys executed under its decrees of confirmation shall be conferred upon and exercised by the Commissioner of the General Land Office from and after the 30th day of June, 1904.

Mr. James A. Hemenway, of Indiana, reserved a point of order on the paragraph.

Immediately thereafter Mr. Bernard S. Rodey, of New Mexico, proposed an amendment.

The Chairman[4] said that pending a decision on the point of order the amendment could be read for information only.

6873. On March 31, 1904,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was reserved by Mr. James R. Mann, of Illinois, on a paragraph relating to the use of carriages in the Executive Departments.

Thereupon Mr. Robert Baker, of New York, proposed an amendment.

The Chairman[4] said:

The Chair will state to the gentleman from New York that he can offer his amendment now for the information of the committee, but the point of order must be first decided before the amendment can be considered regularly.

6874. By offering a pro forma amendment in Committee of the Whole a Member does not lose the right to insist on his pending point of order.— On December 16, 1902,[6] the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when Mr. Charles L. Bartlett, of Georgia, reserved a point of order on the pending paragraph. Later Mr. James L. Robinson, of Indiana, announced that he made the point of order.

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[1] Second session Fifty-eighth Congress, Record, p. 3442.

[2] H. S. Boutell, of Illinois, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 3994, 3995.

[4] Theodore E. Burton, of Ohio, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 4068.

[6] Second session Fifty-seventh Congress, Record, pp. 381–383.

Debate was proceeding with the point of order reserved, when Mr. Robinson made the pro forma amendment to strike out the last word, in order to speak to the merits of the proposition.

At the conclusion of Mr. Robinson's remarks, Mr. Jacob H. Bromwell, of Ohio, rising to a point of order, said:

The gentleman from Indiana made the point of order that this is new legislation. Afterwards, in rising to make the speech which he has just finished, he offered an amendment to this bill, moving to amend by striking out the last word. The point of order I want to make is that by offering this amendment and afterwards discussing it, that amendment being to strike out the last word, he has waived the point of order which he originally made, and therefore, as discussion has taken place on a proposed amendment to the bill, the point of order can not be raised either by the gentleman or by anyone else at this time.

After debate the Chairman [1] ruled:

As the Chair understands it, the parliamentary situation is as follows: The gentleman from Georgia raised the point of order as against the paragraph in lines 21 to 25, page 87, and lines 1 to 5 on page 88. He reserved the point of order pending the discussion of the paragraph. The gentleman from Indiana gave notice that if the reservation of the point of order was withdrawn by the gentleman from Georgia he would renew it, and later the gentleman from Indiana made the point of order. During the discussion of the paragraph on which the point of order was made, the gentleman from Indiana [Mr. Robinson], for the purpose of further discussing the paragraph, made a formal amendment. The gentleman from Ohio [Mr. Bromwell] makes the point of order that the offering of the formal amendment by the gentleman from Indiana [Mr. Robinson] was a virtual withdrawal of the point of order.

The Chair is of the opinion that the point of order made by the gentle-man from Indiana was not effected by the formal amendment offered by him for the purpose of discussing the paragraph. Therefore the Chair holds that the point of order made by the gentleman from Ohio was not well taken, and overrules it.

The question is on the point of order made by the gentleman from Indiana on the paragraph in question—that the language objected to is new legislation. That point of order is sustained.

6875. A reserved point of order being withdrawn, a Member may at once renew it.—On February 15, 1901,[2] the bill (H. R. 6038) "for the relief of John W. Penny" and others, was under consideration in Committee of the Whole House, a point of order being pending.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question that the pending point of order was made too late.

The Chairman [3] said:

The Chair calls the gentleman's attention to the fact that the point of order was reserved by the gentleman from Massachusetts [Mr. Moody] before there was any discussion, and later on the gentleman from Massachusetts [Mr. Moody] served notice that he would withdraw the point of order, and it was immediately renewed by the gentleman from New York [Mr. Ray]. There is no doubt but that the gentleman from New York had the right to renew the point of order. If that were not true, some one friendly to a bill might reserve a point of order, and other members of the House by that action would have notice that the point of order had been reserved. Then if the gentleman could later on withdraw the point of order after the bill had been discussed, it would defeat the object of members who possibly would have desired to reserve a point of order.

6876. Where discussion on the merits proceeds while a point of order is reserved, it precludes the making of a second point of order after a deci-

[1] F. W. Mondell, of Wyoming, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 2486.

[3] James A. Hemenway, of Indiana, Chairman.

sion as to the first.—On January 30, 1907,[1] the Agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph making an emergency appropriation for investigation as to the cotton boll weevil.

Mr. John J. Fitzgerald, of New York, reserved a point of order against certain words of the paragraph providing that the appropriation should "be immediately available."

Debate then proceeded on the merits,[2] after which the Chairman[3] sustained the point of order.

Thereupon Mr. George W. Norris, of Nebraska, proposed a point of order against another portion of the paragraph.

The Chair declined to entertain the point of order, saying:

> The Chair is of the opinion that where a point of order is reserved and the merits of the question involved are discussed in addition to the point of order, that constitutes discussion of the paragraph. In this instance the point of order was not discussed at all. The merits of the proposition involved in the portion to which the point of order was raised was discussed.

6877. A question of order just decided on appeal may not be renewed on the suggestion of additional reasons.—On April 16, 1864,[4] the Speaker announced as the business next in order the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

Mr. William S. Holman, of Indiana, made the point of order that the bill must first receive its consideration in Committee of the Whole, and the point was overruled and the Chair was sustained on an appeal.

Mr. Fernando Wood, of New York, also made the point of order on grounds somewhat different from those advanced by Mr. Holman. The Speaker overruled this point of order also, and on an appeal was sustained.

Mr. Holman proposed to renew the point of order just made on the suggestion that other sections of the bill than those already referred to contained an appropriation.

The Speaker[5] decided that the point of order could not be renewed, on the ground that such a practice would open the door to an indefinite number of appeals, and he referred to a decision in the Thirty-second Congress in confirmation of his decision.

From this decision of the Chair Mr. Holman appealed; and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

So the decision of the Chair was sustained.

6878. Where any portion of a proposed amendment is out of order it is sufficient ground for the rejection of the whole amendment.—On

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[1] Second session Fifty-ninth Congress, Record pp. 1983–1985.

[2] Of course this debate on the merits proceeded only by unanimous consent as any Member might have demanded a decision of the question of order.

[3] David J. Foster, of Vermont, Chairman.

[4] First session Thirty-eighth Congress, Journal, p. 537; Globe, p. 1680.

[5] Schuyler Colfax, of Indiana, Speaker.

July 22, 1882,[1] the House had under consideration the bill to regulate rates of postage on second-class mail matter at letter-carrier offices.

Mr. Richard W. Townsbend, of Illinois, moved an amendment which would abolish the postage on second-class mail matter and allow the same to go free.

Mr. Stanton J. Peelle, of Indiana, made the point of order that the amendment was not in order, not being germane to the subject-matter of the bill.

Mr. Hernando D. Money, of Mississippi, made the further point of order that the amendment being the substance of a bill referred to the Committee on the Post-Office and Post-Roads, was not in order under clause 4 of Rule XXI.[2]

After debate on the points of order, the Speaker[3] sustained the same, and held that where any portion of a proposition submitted was out of order it was sufficient ground for the rejection of the entire proposition.

6879. On December 7, 1898[4] the House was considering the bill (H. R. 7130) entitled "An act to regulate commerce," relating to the sale of railroad tickets, and more commonly known as the "anti-scalpers bill."

Mr. Albert M. Todd, of Michigan, presented an amendment relating to the subject of the sale of tickets, but also including other portions relating to the issue of passes by railroads, etc.

Mr. William P. Hepburn, of Iowa, having made a point of order against the amendment, the Speaker[5] held:

> This bill is a proposition to regulate the sale of tickets. The proposition of the gentleman from Michigan seems to be quite different. * * * The Chair listened to the reading of the amendment, and it seemed to the Chair not to be germane. The Chair sustains the point of order. * * * The proposition is encumbered with a great deal that has nothing to do with the topic under discussion.

6880. On February 25, 1904,[6] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Chairman had ruled out of order an amendment proposed by Mr. Theodore A. Bell, of California.

Thereupon Mr. Bell, rising to a parliamentary inquiry, asked if the point of order was sustained as to the entire amendment.

The Chairman[7] said:

> It is well settled that where there is in an amendment any provision which is out of order the whole amendment falls with it.

6881. A point of order may be made to the whole or to a part only of a paragraph.—On February 22, 1904,[8] during consideration of the naval appropriation bill in Committee of the Whole House on the state of the Union, Mr. William W. Kitchin, of North Carolina, rising to a parliamentary inquiry, asked

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[1] First session Forty-seventh Congress, Journal, p. 1704.

[2] This rule no longer exists.

[3] J. Warren Keifer, of Ohio, Speaker.

[4] Third session Fifty-fifth Congress, Record, pp. 43, 44; Journal, p. 21.

[5] Thomas B. Reed, of Maine, Speaker.

[6] Second session Fifty-eighth Congress, Record, p. 2384.

[7] Marlin E. Olmsted, of Pennsylvania, Chairman.

[8] Second session Fifty-eighth Congress, Record p. 2227.

if a point of order must apply to the whole of a paragraph, or if it might apply to certain lines of the paragraph.

The Chairman,[1] held that the point of order might be made as to the whole paragraph, or as to a part of it only.

6882. The fact that a point of order is made against a portion of a paragraph does not prevent another point against the whole paragraph.—On March 2, 1904,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph relating to the reconstruction of the Anacostia Bridge, with certain provisos relating to the future use of said bridge.

Mr. George A. Pearre, of Maryland, made a point of order against certain of these provisos, but not as to the main portion of the paragraph.

There was some debate as to the point of order, but none as to the merits; after which Mr. Charles R. Davis, of Minnesota, made a point of order against the whole paragraph.

Mr. James T. McCleary, of Minnesota, raised the question that the point of order came too late.

The Chairman[3] overruled the point of order.

Thereafter the Chairman sustained the point of order because the provisos were out of order, without expressing an opinion as to whether the main portion of the paragraph was out of order. So the whole paragraph went out.

6883. A point of order being made against an entire paragraph, the whole of it must go out if a portion merely is subject to the objection.—On February 26, 1904,[4] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was made on a paragraph of the bill containing a provision for the erection of an armor plate factory.

Mr. John F. Rixey, of Virginia, rising to a parliamentary inquiry, said:

> As I understand it, the objection to this paragraph is upon the latter part of it, and that the first portion, down to and including line 9, by itself, would not be subjected to the point of order.

The Chairman[5] said:

> The Chair understands that the point of order was made against the entire paragraph from line 6 to line 14, because it contains legislation contrary to the rules, As one portion of it contains such legislation, the point of order must be sustained, and, following other established precedents, the whole paragraph must fall.

6884. A point of order being made against an entire paragraph, and being sustained because a portion only is out of order, the entire paragraph goes out; but it is otherwise if the point is made only against the portion out of order.—On January 10, 1907,[6] during consideration of the Army appropriation bill in Committee of the Whole House on the state of the Union,

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 2699, 2700.

[3] George P. Lawrence, of Massachusetts, Chairman.

[4] Second session Fifty-eighth Congress, Record, p. 2438.

[5] Marlin E. Olmsted, of Pennsylvania, Chairman.

[6] Second session Fifty-ninth Congress, Record., p. 904.

Mr. John A. T. Hull, of Iowa, as a parliamentary inquiry asked whether or not, if part of a paragraph was held subject to a point of order, the whole paragraph would be stricken from the bill.

The Chairman [1] replied:

If the point of order was made against the entire paragraph, yes; but if the point of order was directed against particular words in the paragraph, then only the words designated go out.

6885. On January 24, 1905,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was made against a paragraph on the strength of a proviso involving legislation.

The Chairman having sustained the point of order, the whole paragraph was stricken out.

Mr. James T. McCleary, of Minnesota, having asked if the point of order was good against the whole paragraph, the Chairman [3] said:

The point of order is made against the paragraph. It is not the duty of the Chair to separate that part which is subject to the point of order and that which is not.

6886. An amendment being offered, and the reading having begun, a point of order may interrupt the reading and the Chair may rule the amendment out if enough has been read to show that it is out of order.— On March 11, 1898," the House in Committee of the Whole House was considering the bill (H. R. 4936) for the allowance of certain claims for stores and supplies, etc., reported by the Court of Claims under the provisions of the Bowman Act.

To the first section of this bill Mr. William H. Moody, of Massachusetts, offered a long amendment to provide for the payment of a list of French spoliation claims.

After the reading of the amendment had proceeded for some time, Mr. John S. Williams, of Mississippi, made the point of order that the reading had progressed far enough to show that the amendment was out of order. Therefore he asked that it be ruled out, as further reading would be dilatory.

The Chairman [6] held:

The Chair is ready to rule upon the point of order, and upon the question as to whether the amendment is germane there has been no doubt in the mind of the Chair from the beginning. The Chair is only embarrassed in this particular. The other day an amendment was offered to an appropriation bill which the Chair thought plainly out of order and against the rules of the House, and the Chair ruled it out of order, but the Committee of the Whole very promptly overruled the decision of the Chair. The trouble is that if the Chair decides this point of order well taken, as the Chair is disposed to do, the Chair does not know what the committee may do. The committee may overrule the Chair. * * * If the Chair sustains this point of order, as the Chair is inclined to do, having no doubt that the amendment is not germane to this bill, the Chair does not know but what some gentleman may appeal, and the committee overrule the Chair. * * * Now, in case that contingency should happen—and the Chair does not question the integrity of the House about it, because the House may have one opinion in reference to it and the Chair may have another—if the Committee should overrule the decision of the Chair, then the committee would be in the condition of having an amendment pending which had not been read at all to the committee. Now, that is the difficulty, and the only difficulty which the Chair sees. The Chair thinks that he will take the responsibility of ruling that the amendment is not in order.

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[1] Frank D. Currier, of New Hampshire, Chairman.

[2] Third session Fifty-eighth Congress, Record, p. 1321.

[3] James R. Mann, of Illinois, Chairman.

[4] Second session Fifty-fifth Congress, Record, p. 2735.

[5] Sereno E. Payne, of New York, Chairman.

6887. On January 8, 1901,[1] during consideration of the bill (H. R. 12740) making an apportionment of Representatives in Congress," etc., Mr. Champ Clark, of Missouri, offered as an amendment a proposition for establishing a Territorial government in the District of Columbia.

After a portion of the proposed amendment had been read, Mr. Albert J. Hopkins, of Illinois, made the point of order that the amendment was shown, by that portion already read, not to be germane.

The Speaker[2] sustained the point of order.

6888. A point of order should be made when a matter is presented, and not after consideration, and on a succeeding day.

When it is proposed to refer with instructions, an amendment to the instructions should be germane thereto.

On February 6, 1849[3] a bill relating to the United States district courts of Virginia was under consideration.

The question having recurred on agreeing to the motion made by Mr. Samuel F. Vinton, of Ohio, that the bill be recommitted to the committee with instructions to inquire into the expediency of providing "that, where the salary now allowed by law to any district judge of the United States is less than $2,000, the same shall be raised to the sum of $2,000 from and after January 1, 1849,"

Mr. Howell Cobb, of Georgia, moved the following amendment to the instructions:

> And that the committee be also instructed to inquire into the expediency of equalizing the salaries of the marshals and district attorneys of the United States.

Mr. Robert Toombs, of Georgia, raised a question of order as to these instructions and the instructions heretofore proposed.

The Speaker[4] decided that it was now too late to raise a question of order as to the original instructions, as they had been received without objection when the bill was before under consideration, and had become a part of the Journal of the House. The original instructions, the Chair further stated, though not relating strictly to the particular provisions of the bill, were pertinent to its general subject. The only question of order now before the House was in regard to the amendment to the instructions. The Chair ruled that amendment out of order, on the ground of irrelevancy, under the fifty-fifth rule[5] of the House. The bill which it was proposed to reconsider with these instructions related to a judicial salary, and the original instructions, on which the Chair had already remarked, went no further.

6889. After the House has actually entered upon the consideration of a bill it is too late to make a point of order that it was not properly reported from the committee.—On May 22, 1906,[6] Mr. Lucius N. Littauer, of New York, from the Committee on Appropriations, reported a bill (H. R. 19572)

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[1] Second session Fifty-sixth Congress, Record, p. 744.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Thirtieth Congress, Journal, p. 382.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

[5] Now section 7 of Rule XVI. See section 5767 of this volume.

[6] First session Fifty-ninth Congress, Record, pp. 7246, 7247.

making appropriations to supply additional urgent deficiencies in appropriations for the fiscal year 1906, and for other purposes.

The bill was then considered in Committee of the Whole House on the state of the Union, and after consideration the Committee of the Whole rose and reported the bill with a favorable recommendation.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the bill had not been reported properly from the Committee on Appropriations, Mr. Littauer having admitted during debate in Committee of the Whole that the report of the bill had been authorized at an informal meeting of the committee "by asking the assent of all those members of the committee who were in the neighborhood—a majority."

The Speaker [1] held:

The Chair * * * overrules the point of order which the gentleman from Alabama makes. Turning to page 635 of the Manual and Digest the Chair finds the following decision: "The House having voted to consider a report it is too late to question whether or not the report has been made properly." Now, not only * * * the House has actually considered it by referring it to the Committee of the Whole House on the state of the Union, but that committee has reported it; the big committee consisting of all the Members of the House has reported it back to the House with the recommendation that it do pass, and the Chair could not under the precedents, and the principle if there were no precedents, nullify by a ruling the action of the great committee and of the House in referring the bill to that committee for consideration.

6890. A point of order relating to the manner in which a resolution should be considered, may be made at any time before the consideration begins.—On January 24, 1885,[2] Mr. Edward K. Valentine, of Nebraska, as a privileged question, called up a resolution submitted by him on the previous day, which provided for beginning the sessions of the House at 11 a.m., for devoting an hour immediately after the reading of the Journal to certain business, etc.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that under clause 43 of Rule XI [3] the resolution must be referred to the Committee on Rules.

Pending this, Mr. Valentine made the further point of order that the question of order submitted by Mr. Randall could not now be entertained, but should have been made on the preceding day, when the resolution was presented.

After debate on the points of order, the Speaker [4] sustained the first and overruled the second point of order, on the ground that the resolution, having been presented under the authority of and in conformity with clause 1 of Rule XXVIII,[5] was before the House subject to all other rules touching its consideration, and that, as the resolution was not presented on the preceding day for immediate consideration, the point of order as to such consideration by the Committee on Rules would be in order at any time before such consideration had been entered upon. The said resolution must therefore be referred, under clause 43 of Rule XI, to the Committee on Rules.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Forty-eighth Congress, Journal, p. 332.

[3] Now section 51 of Rule XI. See section 4321 of this volume.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] This rule then provided that notice of one day should be given of motion to change the rules. See section 6790 of this volume.

6891. Under the later practice of the House a point of order may not be made as to a proposition after debate has begun on it.—On July 6, 1848,[1] on motion of Mr. Washington Hunt, of New York, the House resumed consideration of a motion made on the preceding day to reconsider the vote on agreeing to the first of the resolutions accompanying the report made by Mr. Hunt on the 23d of June last from the Committee on Commerce upon the subject of the improvement of rivers and harbors by the General Government, the memorial of the Chicago convention, and upon the veto message of the President of the United States at the present session upon the bill of the last session making appropriations for similar objects.

Mr. Caleb B. Smith, of Indiana, raised the question of order that, the previous question having been ordered on all of the resolutions, the motion to reconsider the first of the resolutions, which Mr. Turner was proceeding to debate, was not, therefore, debatable.

The Speaker[2] decided that it was now too late to raise the point of order, the same having been overruled on the preceding day and the debate having proceeded under that decision.

On appeal the decision of the Chair[3] was sustained.

6892. On January 30, 1884,[4] Mr. Casey Young, of Tennessee, submitted from the Committee on Expenditures in the Interior Department a resolution relating to an investigation into some work being done at the reservation at Hot Springs.

Mr. John H. Rogers, of Arkansas, raised a point of order that the whole question in reference to the resolution was already before the Committee on Public Buildings and Grounds and in process of investigation, and did not belong to the Committee on Expenditures in the Department of the Interior.

The Speaker[5] said:

> The Chair thinks that is not a point of order; but even if it were, the House has already referred this matter, as the report states, to the Committee on Expenditures in the Interior Department.

Mr. Rogers then made a point that an amendment which was proposed by Mr. William S. Holman, of Indiana, was not germane.

The Speaker ruled that the point of order came too late, as the amendment had already been received and discussed.

6893. On December 16, 1889,[6] Mr. William M. Springer, of Illinois, introduced a bill (H. R. 6) to organize the Territory of Oklahoma, and for other purposes; which was read twice and ordered to be printed.

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[1] First session Thirtieth Congress, Journal, p. 989.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] It was evidently the early usage of the House to entertain a point of order at any time. Thus, on January 30, 1836 (first session Twenty fourth Congress, Journal, p. 254; Debates, p. 2447), we find that after a resolution had been debated at length and an amendment proposed Mr. Speaker Polk entertained a point of order that the matter should be considered in Committee of the Whole and overruled it on the ground that no direct appropriation was involved.

[4] First session Forty-eighth Congress, Record, p. 752.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] First session Fifty-first Congress, Journal, p. 21; Record, p. 195.

Pending which Mr. Charles S. Baker, of New York, by unanimous consent, introduced a bill (H.R. 7) to provide a temporary government for the Territory of Oklahoma; which was read twice by title and ordered to be printed.

Mr. Bishop W. Perkins, of Kansas, moved that the bills be referred to a select committee to consist of thirteen Members, with leave to report thereon at any time.

After debate Mr. Perkins demanded the previous question on his motion.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the last part of the motion was not in order, and could only be granted by unanimous consent; and also that it had not been stated by the Chair.

The Speaker [1] overruled the point of order on the ground that the motion had been discussed, and that consequently the point of order came too late, and also held that the motion of Mr. Perkins as modified had been stated by the Chair.

6894. On January 10, 1896,[2] during the consideration of the rules of the House, section 57 of Rule XI being before the House, Mr. Joseph H. Walker, of Massachusetts, moved to insert after the words "Rivers and Harbors" in the list of privileged committees the words "Banking and Currency."

After debate Mr. Frank W. Mondell, of Wyoming, moved as a substitute for Mr. Walker's amendment the following:

> Strike out of Rule XI, reported from the Committee on Rules, the words "Committee on Rivers and Harbors, bills relating to the improvement of rivers and harbors."

After debate Mr. Charles M. Cooper, of Florida, made the point of order that the proposed substitute was in reality an independent proposition relating to a different part of the rule, and therefore not in order.

The Speaker [1] said:

> The gentleman from Florida is right but no point of order was made.

6895. On March 11, 1898,[3] the House was in Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4936) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act, and for other purposes.

As the consideration of the bill was about to begin Mr. James D. Richardson, of Tennessee, raised a question as to points of order.

The Chairman said:

> The points of order were reserved in the House before going into Committee of the Whole. * * * If there is any general point of order against the bill, it should be made now. * * * Of course any point of order as to a paragraph can be made after the paragraph is read.

After some debate had occurred Mr. John Dalzell, of Pennsylvania, made the point of order that it was not competent for the Committee on War Claims to report the bill.

After debate on the point of order the Chairman [4] held:

> The Chair has been examining the bill and report. The Chair finds by the report that this bill is a substitute for House bill No. 4255, and includes nearly all the claims embraced in that bill. The

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-fourth Congress, Record, pp. 567, 572.

[3] Second session Fifty-fifth Congress, Record, pp. 2720–2724.

[4] Sereno E. Payne, of New York, Chairman.

embarrassment of the Chair is in reference to the time when the point of order should be made. The Chair expressly announced that the point of order should be made at a certain time when the question was raised whether there was any point of order against the bill; and no gentleman rose to make a point of order. After that, time for debate had been fixed and had been divided between the gentleman from Tennessee [Mr. Gibson] and the gentleman from Maine [Mr. Dingley]. After that a question was asked as to the parliamentary status of the bill. The Chair thinks that the point of order comes too late.

6896. On March 19, 1898,[1] in Committee of the Whole House on the state of the Union, considering the Post-Office appropriation bill, a paragraph relating to the carrying of mails by electric and cable cars was read, and debate had proceeded and an amendment had been offered when Mr. James H. Lewis, of Washington, proposed to raise a point of order against a portion of the paragraph.

Mr. Sereno E. Payne, of New York, made the point of order that the point of order came too late.

The Chairman[2] sustained the point of order, saying:

The gentleman should have raised the point of order when the paragraph was read, and not have waited until after debate had been had on the paragraph.

6897. On April 21, 1904,[3] Mr. Marlin E. Olmsted, of Pennsylvania, called up A resolution providing for returning to the State of Colorado certain ballots used by the Committee on Elections No. 2, in examining the election case of Bonynge *v.* Shafroth.

After debate had begun, Mr. John S. Williams, of Mississippi, made the point of order that the resolution might not be presented as a matter of privilege.

After debate the Speaker[4] held:

Certain papers necessary to be inspected to determine the right of a Member to his seat in the House seem to be on file with an election committee. It is clearly a question of privilege to obtain the papers. Perhaps it is a question of privilege, having obtained them, to dispose of them, but it is not necessary for the Chair to rule as to that. What the Chair may rule, if it was necessary to make a ruling, it is not necessary to state. The Chair dislikes to make rulings unless it is necessary to do so. We make enough precedents—sometimes mistaken ones—as it is.

The gentleman from Pennsylvania rose in his place and reported the resolution, which was read at the Clerk's desk, and proceeded to discuss it. Then, without a point of order being reserved, he again stated the purpose of the resolution, and then the point of order was made. It does seem to the Chair that even if the resolution were subject to a point of order, that point must be reserved or made at the very inception of the matter. Therefore, without passing upon the question whether the resolution is privileged, it seems to the Chair that it is before the House; and if it were necessary to make it any more before the House, we are informed that unanimous consent can be had. So that, after all, the resolution is here, and it seem to the Chair the House can act touching the matter.

6898. On January 25, 1904,[5] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Richard Wayne Parker, of New Jersey, proposed an amendment, and then immediately took the floor and said:

Mr. Chairman, this is subject to a point of order. The Surgeon-General of the Army finds especially upon a recent decision of the Supreme Court that a contract surgeon in charge of a hospital finds himself

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[1] Second session Fifty-fifth Congress, Record, p. 3001.

[2] John A. T. Hull, of Iowa, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 5277, 5278.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Second session Fifty-eighth Congress, Record, p. 1142.

without authority to control the men in the hospital, and military punishment can not be inflicted for disobedience of his orders, and he desires where a contract surgeon is put in charge of a hospital he shall have authority to give orders. I simply state that, and leave the amendment to the House.

Thereupon Mr. Charles H. Grosvenor, of Ohio, raised a question of order against the amendment.

The Chairman [1] held that the point of order came too late, saying:

The Chair will state that the amendment was reported from the Clerk's desk and was debated by the gentleman from New Jersey with no point 6f order against it having been made, and the Chair is of opinion that the point of order of the gentleman from Ohio comes too late.

6899. On December 16, 1898,[2] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 11191) to extend the laws relating to customs and internal revenue over the Hawaiian Islands.

Mr. William H. Moody, of Massachusetts, offered an amendment providing for the extension also of the laws of the United States relating to the appointment of officers in the customs and internal revenue services.

Mr. Leonidas F. Livingston, of Georgia, asked if it was proposed to extend the civil service laws to Hawaii.

Mr. Moody replied to this question, whereupon Mr. Joseph G. Cannon, of Illinois, suggested a point of order.

Mr. Moody raised the question of order that the point of order came too late.

The Chairman [3] said:

Debate had evidently begun. The Chair thinks the point of order is not in time.

6900. On February 27, 1833,[4] the House proceeded to consider the bill (S. 82) "further to provide for the collection of duties on imports," and Mr. Samuel P. Carson, of North Carolina, having withdrawn a motion which he had previously made to commit the bill to the Committee of the Whole, proceeded to discuss the bill.

Mr. Charles A. Wickliffe, of Kentucky, rising to a question of order, made the point that this bill must, under the rules, be considered in Committee of the Whole.

The Speaker [5] decided that it was not in order for the Member from Kentucky to raise the question of order, and thereby deprive the Member from North Carolina of the floor.

An appeal being taken by Mr. Wickliffe, the decision of the Chair was sustained.

6901. To preclude a point of order, debate should be on the merits of the proposition.—On April 18, 1904,[6] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert R. Hitt, of Illinois, proposed an amendment which embodied legislation for the exclusion of Chinese immigrants.

Mr. Oscar W. Underwood, of Alabama, reserved a point of order, and after discussion withdrew it.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] Third session Fifty-fifth Congress, Record, p. 267.

[3] John F. Lacey, of Iowa, Chairman.

[4] Second session Twenty-second Congress, Journal, pp. 440, 441; Debates, pp. 1823–1925.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] Second session Fifty-eighth Congress, Record, pp. 5031, 5032.

Mr. John H. Stephens, of Texas, renewed the point of order, and after further discussion withdrew it.

Thereupon Mr. James R. Mann, of Illinois, proposed to renew the point of order.

Mr. James A. Hemenway, of Indiana, objected that an interval,and discussion had intervened between the withdrawing of the point of order by Mr. Underwood and the renewal of it.

The Chairman [1] said:

The Chair is of the impression that the discussion was not upon the merits of the bill, but informally with a view of determining some preliminary matters, and under those circumstances it would seem that Members would have the right to make the point of order.

6902. A point of order against the motion to strike out the enacting clause must be made before debate has begun.—On June 11, 1902,[2] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 5) to authorize the construction, etc., of telegraphic cables between the United States of America and the Philippine Islands, when, the reading of the bill for amendment having begun, Mr. William C. Adamson, of Georgia, moved to strike out the enacting clause of the bill.

Debate having begun on this motion, Mr. James R. Mann, of Illinois, made the point of order that the special order under which the bill was considered provided for consideration of the bill under the five-minute rule, and therefore that the motion to strike out the enacting clause might in effect be the means of abrogating that provision of the order.

The Chairman [3] said:

Without deciding the question as to whether, under the special rule under which we are proceeding, objection would have been in order if it had been made in time, the Chair is of opinion that the point of order not having been made, it is now too late to make it, just the same as in case of the rule forbidding legislation on an appropriation bill, if the point is not made when such an amendment is offered, or until after debate, it comes too late. The Chair therefore holds that the point of order is not well taken.

6903. Points of order against a conference report should be made or reserved before discussion begins.—On February 27, 1901[4] Mr. William W. Grout, of Vermont, had presented a conference report on the District of Columbia appropriation bill and debate had begun thereon, when Mr. James M. Robinson, of Indiana, proposed to raise a point of order against the report on the ground that the conferees had exceeded their authority.

Mr. Grout objected that the point of order came too late.

The Speaker [5] said:

The Chair is of the opinion that when discussion has been entered upon and no reservation has been made as to a point of order it comes too late afterwards to make the point, and the Chair will sustain the point of order made by the gentleman from Vermont.

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[1] Edgar D. Crumpacker, of Indiana, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 6634, 6635.

[3] John F. Lacey, of Iowa, Chairman.

[4] Second session Fifty-sixth Congress, Record, p. 3163.

[5] David B. Henderson, of Iowa, Speaker.

6904. On the calendar day of March 3, 1901,[1] but the legislative day of March 1, Mr. Theodore.E. Burton, of Ohio, submitted the conference report on the river and harbor bill.

Before the report bad been read, Mr. William P. Hepburn, of Iowa, asked if it was in order to reserve points of order at this time.

The Speaker[2] replied that it was in order.

6905. On March 3, 1901,[3] Mr. Joseph G. Cannon, presented the conference report on the sundry civil appropriation bill. Before the reading of the report began, the Speaker[2] permitted Mr. James M. Robinson, of Indiana, to reserve all points of order on the bill.

6906. Although a point of order may not be made after debate has begun, yet the Chair does not permit; a few sentences of debate to preclude a point of order made by a Member who has shown due diligence.

When a Member who has reserved a point withdraws it, another Member may renew it immediately.

On June 17, 1898,[4] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

Mr. Melville Bull, of Rhode Island, having offered an amendment relating to clerks for Members, Mr. Joseph G. Cannon rose to debate it, when Mr. Alexander H. Dockery, of Missouri, announced that he reserved a point of order against the amendment.

After debate Mr. Dockery withdrew his point of order, whereupon Mr. Levin I. Handy, of Delaware, announced that he made the point of order.

Mr. James S. Sherman, of New York, raised the question that the point of order came too late.

After debate the Chairman[5] held:

The Chair thinks the question whether the point of order comes too late or not depends entirely upon whether the gentleman from Missouri [Mr. Dockery] reserved the point in time. The reporter's notes show that immediately after the offering of the amendment the following occurred:

"Mr. CANNON. This amendment, as I understand it, is offered by the gentleman from Rhode Island [Mr. BULL], a member of the Committee on Accounts?

"Mr. BULL. It is.

"Mr. CANNON. I want to say that I shall not make a point of order on that provision. A good many Members of the House who are chairmen of committees, having annual clerks, and a good many who are not, have spoken to me about the matter.

"Mr. DOCKERY. I should like to reserve a point of order until I hear what the amendment is.

"The CHAIRMAN. What is the remark of the gentleman from Missouri?

"Mr. DOCKERY. I should like to reserve a point of order.

"Mr. CANNON. There is such a sentiment at least upon the part of some Members that I felt I ought not to make the point of order-and, so far as I am concerned, I shall not. Any other gentleman can, if he chooses."

Now, the Chair is inclined to think that the reservation of the point of order did not come too late from the gentleman from Missouri, and therefore if the gentleman from Delaware [Mr. Handy] insists on the point of order, the Chair holds that it is pending. * * *

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[1] Second session Fifty-sixth Congress, Record, p. 3325.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fifty-sixth Congress, Record, p. 3570.

[4] Second session Fifty-fifth Congress, Record, p. 6092.

[15] Sereno E. Payne, of New York, Chairman.

The Chair would state that the gentleman from Illinois had said that he would make no point of order, or words to that effect. He was proceeding, as a matter of fact, with a, further statement in regard to the amendment being offered by the gentleman, and was, in fact-although the reporter's notes may not show that he was-interrupted in that sentence by the statement of the gentleman from Missouri, that he should like to reserve the point of order, and the Chair asked "What was the observation of the gentleman from Missouri?" and he replied that he reserved the point of order.

Now, when one Member reserves a point of order against any amendment, and reserves it in time, of course it cuts off every other Member from an opportunity to reserve the point of order; and afterwards, if he wishes to withdraw the point of order, it is the privilege of any member of the committee to renew it, and of course the gentleman from Delaware has that right. He does renew it, and makes the point of order. Under the rules this amendment is not in order if the point is made in time; and the Chair thinks that the Committee of the Whole can not afford any other rule and to confine a Member so closely that when a Member rises in debate to say that in his first sentence of debate he can not be interrupted by a point of order by any other Member.

Mr. Bull appealed from the decision of the Chair, but later withdrew the appeal.

6907. A point of order against a proposition must be made before an amendment is offered to it.—On April 26, 1890,[1] the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill.

The paragraph relating to the salary of the Commissioner of Patents had been amended, and the Clerk had begun to read the next paragraph, when Mr. Joseph E. Washington, of Tennessee, raised a point of order as to the salary of the Commissioner.

Mr. Benjamin Butterworth, of Ohio, made the point of order that the point of order came too late.

The Chairman[2] sustained Mr. Butterworth's point of order.

Mr. Washington having appealed, the decision of the Chair was sustained.

6908. On February 26, 1898,[3] the House was considering the sundry civil appropriation bill by paragraphs in Committee of the Whole House on the state of the Union. By unanimous consent, a paragraph relating to river and harbor improvements was returned to, and Mr. William H. Moody, of Massachusetts, offered an amendment.

Mr. William P. Hepburn, of Iowa, rising to a parliamentary inquiry, asked if they had returned to the paragraph for all purposes.

The Chairman[4] replied that the committee had returned to it for all purposes.

Mr. Hepburn then asked if it was in order to make a point of order against the paragraph.

The Chairman said:

The Chair would state that an amendment has been offered and the point of order might hold against the amendment. Against the paragraph, the Chair thinks it comes too late, the gentleman from Massachusetts having been recognized and the amendment read from the desk.

6909. On May 27, 1902,[5] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration

[1] First session Fifty-first Congress, Record, p. 3892.

[2] Lewis E. Payson, of Illinois, Chairman.

[3] Second session Fifty-fifth Congress, Record, p. 2247.

[4] Sereno E. Payne, of New York, Chairman.

[5] First session Fifty-seventh Congress, Record, pp. 6011–6013.

aliens into the United States, when Mr. Charles B. Landis, of Indiana, offered the following amendment:

Add as an additional section after section 4 the following:

"That no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States."

To this, before debate had intervened, Mr. Charles K. Wheeler, of Kentucky, offered an amendment to the amendment.

Mr. Richard Bartholdt, of Missouri, after the amendment to the amendment had been entertained by the Chair, proposed a point of order against the original amendment of Mr. Landis.

The Chairman [1] said:

The gentleman from Missouri makes the point of order that the point of order to the amendment offered by the gentleman from Indiana can now be made. The amendment offered by the gentleman from Indiana was pending and no gentleman of the committee addressed the Chair, and the Chair recognized the gentleman from Kentucky, who offered an amendment to the amendment. It has been uniformly held that under the rule a point of order can not be made after an amendment has been considered, and an amendment offered to an amendment is consideration of the pending amendment. There seems to be no exception to these precedents, and the Chair would hold that the amendment having been offered by the gentleman from Kentucky to the amendment offered by the gentleman from Indiana, it would now be too late to raise the point of order.

6910. On March 29, 1904,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph relating to the enforcement of the Chinese exclusion act.

Mr. E. J. Livernash, of California, immediately proposed an amendment, which was read, and against which a point of order was made.

During debate on the point of order, Mr. James A. Hemenway, of Indiana, proposed to raise a question of order against the original paragraph.

The Chairman [3] said:

When a provision in a bill which is out of order is read and is unobjected to, it becomes a part of the bill. The question whether it is in order or not, whether it is a variation from established law or not, is then foreclosed. The paragraph is settled and passed upon by the committee. Then, if an amendment is proposed here and discussion intervenes no point of order can be allowed to the paragraph; it is beyond that stage.

6911. On April 16, 1904,[4] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph of the bill was read providing for compensation to the clerk of the Committee on Industrial Arts and Expositions.

Mr. George W. Smith, of Illinois, proposed an amendment which was ruled out on a point of order.

Thereupon Mr. Smith raised a question of order against the paragraph in the bill.

Mr. James A. Hemenway made the point of order that the question was raised too late.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 3958, 3959.

[3] Theodore E. Burton, of Ohio, Chairman.

[4] Second session Fifty-eighth Congress, Record, p. 4952.

The Chairman[1] held that a point of order against a proposition must be made before an amendment is offered to it.

6912. The House having voted to consider a matter, a point of order against it comes too late.—On February 15, 1890,[2] Mr. Mark H. Dunnell, of Minnesota, from the Select Committee on the Eleventh Census, to which was referred the bill of the Senate (S. 1181) to require the Superintendent of Census to ascertain the number of people who own farms and homes and the amount of mortgage indebtedness thereon, reported the same without amendment.

Mr. C.B. Kilgore, of Texas, raised the question of consideration against the bill.

And the question being put, "Will the House now consider the bill?" it was decided in the affirmative; and the House accordingly proceeded to its consideration.

Mr. Kilgore made the point of order that the bill must receive its first consideration in a Committee of the Whole.

The Speaker[3] overruled the point of order on the ground that it was made too late, the House having decided to consider the bill.

6913. On March 2, 1891,[4] Mr. William E. Simonds, of Connecticut, submitted a conference report on the bill (H. R. 10881) relating to copyrights, upon which Mr. Albert J. Hopkins, of Illinois, raised the question of consideration.

The House having voted to consider the report, and debate having begun, Mr. Daniel Kerr, of Iowa, made the point of order that the conference report was not complete, and did not comply with the rules of the House.

The Speaker[3] ruled that the point of order was made too late.[5]

6914. On December 11, 1902,[6] the House had voted to consider a report of the Committee on Elections No. 2 in relation to the Missouri election case of Wagoner *v.* Butler, when Mr. James D. Richardson, of Tennessee, as a parliamentary inquiry, raised a question of the power of the House to take the proposed action.

The Speaker[7] said:

> Answering the parliamentary inquiry of the gentleman from Tennessee, the Chair calls attention to several decisions holding that, the House having voted to consider a measure, a point of order against it comes too late. The gentleman from Pennsylvania is entitled to the floor.

6915. When the House is voting on a motion, it is too late to make the point of order that the motion is not in order.—On February 24, 1897,[8] a resolution from the Committee on Accounts was under consideration, when Mr. Grove L. Johnson, of California, moved that it be referred to the Committee on Printing.

Mr. Sereno E. Payne moved the previous question, which was ordered.

The question being taken on the motion to refer there were 72 in the affirmative.

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[1] Edgar D. Crumpacker, of Indiana, Chairman.

[2] First session Fifty-first Congress, Journal, p. 233; Record, p. 1353.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-first Congress, Journal, p. 346; Record, p. 3711.

[5] For a similar ruling, see third session Forty-sixth Congress, Journal, p. 364.

[6] Second session Fifty-seventh Congress, Record, p. 231.

[7] David B. Henderson, of Iowa, Speaker.

[8] Second session Fifty-fourth Congress, Record, p. 2211.

Before the negative vote had been announced, Mr. J. Frank Aldrich, of Illinois, rising to a parliamentary inquiry, asked if it was in order to make the point of order that the motion to refer was not in order.

The Speaker[1] replied:

The point could not be entertained now.

6916. The alleged lateness of a point of order may not be urged after the Chair has ruled.—On December 16, 1904,[2] the Committee of the Whole House was considering the bill (H. R. 8113) for the relief of Agnes W. Hills and Sarah J. Hill. The bill was read, and then, on request of Mr. Sereno E. Payne, of New York, the report of the committee on the bill was read. Thereupon Mr. Payne made the point of order that the bill had been reported from the Committee on Claims, whereas the jurisdiction belonged to the Committee on War Claims.

After debate as to jurisdiction the Chairman sustained the point of order.

Then Mr. Joseph V. Graff, of Illinois, suggested that it was too late for Mr. Payne to make the point of order after the report had been read.

The Chairman[3] said:

The Chair will say to the gentleman from Illinois [Mr. Graff] that that is the general rule; but it would only have been fair to the Chair to have called his attention to that fact prior to his decision. The decision of the Chair was made upon what the Chair understands to be the precedents of the House, and on the case that was made upon the floor. The point of order made by the gentleman from Illinois [Mr. Graff] was not made in time. The Chair stands by his ruling.

6917. A motion once made and carried is binding, although in the first instance it might have been ruled out had a point of order been made in time.—On July 29, 1846,[4] the Speaker announced as the first business in order the bill (S. 57) to amend an act entitled "An act to provide revenue from imports," etc., which had been made a special order for this day.

Mr. Linn Boyd, of Kentucky, moved that the consideration of the bill be postponed until to-morrow, and that the House proceed to the consideration of business from the Senate on the Speaker's table. This motion was agreed to. And so the House determined by a majority to proceed to consider business from the Senate on the Speaker's table.

The Speaker having announced the first bill in order, Mr. Robert C. Winthrop, of Massachusetts, raised a question of order that the motion to postpone the special order and take up the business of the Senate, being carried by a majority and not by a two-thirds vote, only that part of the motion which could be controlled by a majority, viz, the postponement of the special order, could be considered as decided; and that, as it required two-thirds to change the regular order of business, the House must now proceed to the business regularly in order, and not to the business of the Senate on the Speaker's table.

The Speaker[5] decided that this question might have been raised before the question was taken on the motion of Mr. Boyd; that it was now too late to raise

[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Fifty-eighth Congress, Record, p. 379.

[3] P. P. Campbell, of Kansas, Chairman.

[4] First session Twenty-ninth Congress, Journal, p. 1170; Globe, p. 1164.

[5] John W. Davis, of Indiana, Speaker.

the question; and that the House having ordered the special order to be postponed, and directed at the same time what business should be next considered, it was the duty of the Speaker to proceed to the business thus indicated by the House.

6918. One point of order against a resolution having been made and decided, and the previous question having been demanded, it was held to be too late to raise a second question of order.—On February 10, 1860,[1] Mr. Freeman H. Morse, of Maine, offered a resolution relating to the employment of clerks to committees.

A point of order was made that, as this was private bill day, the resolution was not in order.

The Speaker overruled the point of order, and on appeal the decision was sustained by a yea-and-nay vote laying the appeal on the table.

Thereupon, before the resolution had been debated on its merits and while the question was pending on ordering the previous question, Mr. John U. Pettit, of Indiana, raised the question of order that the gentleman from Maine had exhausted his privilege in respect to the introduction of resolutions.[2]

The Speaker[3] decided that the point of order came too late.

An appeal which was taken was laid on the table, yeas 96, nays 63.

6919. Debate on a point of order is for the information of the Chair, and therefore within his discretion.—On April 11, 1874,[4] a point of order having been made against the votes of several Members who were officers of national banks, and who were therefore claimed to have an interest which disqualified them from voting on the pending measure, which related to national banks, some debate began upon the point of order.

Mr. Charles Albright, of Pennsylvania, objected to debate.

The Speaker[5] said:

> The Chair has the right to hear discussions upon a point of order, and on one of this magnitude the Chair has no desire to abridge discussion.

6920. On February 3, 1905,[6] the Post-Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. George W. Cromer, of Indiana, claimed that he was entitled to the floor to debate a pending point of order.

The Chairman[7] said:

> Debate is now proceeding on the point of order, and it is in the discression of the Chair as to how long debate shall proceed on a point of order.

6921. Points of order are usually reserved when appropriation bills are referred to the Committee of the Whole in order that portions in

[1] First session Thirty-sixth Congress, Journal, p. 234; Globe, p. 729.

[2] The rules relating to the introduction of resolutions by Members have been changed since that time.

[3] William Pennington, of New Jersey, Speaker.

[4] First session Forty-third Congress, Record, p. 3020.

[5] James G. Blaine, of Maine, Speaker.

[6] Third session Fifty-eighth Congress, Record, p. 1846.

[7] George P. Lawrence, of Massachusetts, Chairman.

violation of rule may be eliminated by raising points of order in committee.

The Committee of the Whole must report in its entirety a bill committed to it unless the House by a reservation of points of order sanctions the striking out of portions against order.

On June 11, 1884,[1] the House was considering the river and harbor appropriation bill in Committee of the Whole House on the state of the Union, and the committee had reached a paragraph of the bill providing for the construction of a canal from the Illinois River, near the town of Hennepin, to the Mississippi River.

Mr. Burr W. Jones, of Wisconsin, made a point of order against this paragraph, that the Committee on Rivers and Harbors had no jurisdiction of the subject, etc.

The point was then raised that this point might not be made, since points of order had not been reserved[2] on the bill when it was committed to the Committee of the Whole. Mr. Joseph G. Cannon, of Illinois, referred to this paragraph of the Manual and Digest:

In case of an appropriation reported by the Committee on Appropriations in conflict with Rule XXI, clause 3, and committed with the bill, it is not competent for the Committee of the Whole or its Chairman to rule it out of order, because the House having committed the bills (of course it is otherwise where the point was reserved before commitment), are presumed to have received as in order the report in its entirety.

In deciding the question of order the Chairman[3] said:

The Chairman of the Committee of the Whole on the state of the Union is asked to withhold from the consideration of the committee a particular clause in an original bill on the ground that the Committee on Rivers and Harbors reporting the bill to the House did not have jurisdiction over the subject matter of the particular clause. In the view which the Chairman of the Committee of the Whole takes of the question it is not necessary to decide whether the Committee on Rivers and Harbors has jurisdiction over the subject-matter of this particular clause or not. Whether it originally possessed that jurisdiction it is not necessary for the Chair to decide in the view which he takes of this question. Hence the Chair will not take the time to express any opinion in reference to it.

The view of the Chair is this: The action of the House in submitting this bill to the Committee of the Whole on the state of the Union for consideration does not leave it within the province of the Chair to pass upon the question of original jurisdiction in the Committee on Rivers and Harbors. The bill has been committed to the Committee of the Whole for the purpose of consideration, and the chairman of this committee believes that he is but executing the order of the House when he decides that the bill shall be considered. The committal of the bill to the Committee of the Whole House on the state of the Union, the Chair thinks, was not a submission to the committee of the question whether or not the bill should be considered, but an express direction to the committee to consider the bill. To hold that the chairman of the Committee of the Whole on a point of order could go back and inquire into asserted irregularities and errors in the stages of the bill which preceded its reference to the Committee of the Whole would be either to cothe the chairman of the Committee of the Whole with power to review and reverse the order of the House in the matter of the reference or place the House in the anomalous position of having expressly directed the Committee of the Whole to do a particular thing and at the same time left the committee to determine whether the thing directed should be done or not.

The point of order raised by the gentleman from Indiana is overruled.

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[1] First session Forty-eighth Congress, Record, p. 5014.

[2] On March 31, 1882 (First session Forty-seventh Congress, Record, p. 2466), Mr. Speaker Keifer spoke of the practice of reserving points of order as one that had grown up in the House and which he recognized.

[3] Olin Welborn, of Texas, Chairman.

The Chair then read again the paragraph from the Digest which Mr. Cannon had already read, and then went on to say:

The Chair would state further, in connection with that practice in Committee of the Whole, that if all points of order had been reserved upon this bill at the time it was committed to the Committee of the Whole on the state of the Union[1] the chairman of this committee, with the view he entertains of the question, would hesitate before undertaking to pass upon the original jurisdiction of the Committee on Rivers and Harbors. But the very most that could be done (and on this the Chair is not free from doubt) would be to report the point of order back to the House for its decision.

Mr. William S. Holman, of Indiana, called attention to the claim that originally the point of order had been reserved on the bill, but the Chair had the Journal read to show that points of order were not reserved.

On appeal this decision of the Chair was sustained by a vote of 103 to 63.

6922. On January 14, 1896,[2] Mr. Newton M. Curtis, of New York, from the Committee on Military Affairs, reported a bill (H. R. 4043) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1897; which was, with the accompanying report, ordered to be printed and referred to the Committee of the Whole House on the state of the Union.

Mr. Alexander M. Dockery, of Missouri, said:

I desire to reserve points of order on the bill and to make the inquiry whether or not, under the practice of the House, it will be necessary to reserve points of order on appropriation bills when they are referred to the Committee of the Whole House on the state of the Union?

The Speaker[3] said:

The impression of the Chair is that it is necessary so to do.

Again, on January 30, 1896, Mr. Joseph D. Sayers, of Texas, having reserved points of order on the agricultural appropriation bill, Mr. Nelson Dingley, of Maine, asked, as a parliamentary inquiry—

whether it is necessary, on an appropriation bill, when the report is presented, to reserve all points of order, and whether such points can not be made as to new legislation in the Committee of the Whole?

The Speaker said:

The Chair would be willing to hear argument, but the impression of the Chair is that if the House commits a bill to the committee without points of order being reserved, the effect will be that the committee can not disregard the orders of the House to consider that bill in its entirety; but when points of order are reserved, then advantage can be taken of them in the Committee of the Whole.

6923. On March 31, 1896,[4] in Committee of the Whole House on the state of the Union, a point of order was raised by Mr. Martin N. Johnson, of North Dakota, against a certain paragraph in the sundry civil appropriation bill.

It having been ascertained that no points of order were reserved when the bill was committed to the Committee of the Whole, after debate the Chairman[5] held:

In determining this question the Chair thinks it is important to take into consideration the organization and power of the Committee of the Whole, which is simply to transact such business as

[1] The practice of reserving points of order in this way is recognized as early as December 19, 1870 (third session Forty-first Congress, Globe, p. 173), when Mr. Speaker Blaine stated that the reservation of points of order on the pending appropriation bill would prevent propositions changing law in Committee of the Whole.

[2] First session Fifty-Fourth Congress, Record, pp. 581, 1119.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 3411.

[6] Albert J. Hopkins, of Illinois, Chairman.

is referred to it by the House. Now, the House referred the bill under consideration to this committee as an entirety, with directions to consider it. The objection raised by the gentleman from North Dakota would, in effect, cause the Chair to take from the committee the consideration of part of this bill, which has been committed to it by the House. The committee has the power to change or modify this bill as the Members, in their wisdom, may deem wise and proper; but it is not for the Chairman, where no points of order were reserved in the House against the bill. * * * The effect would be, should the Chair sustain the point of order made by the gentleman from North Dakota, to take from the consideration of the Committee of the Whole a part of this bill which has been committed to it by the House without reservation of this right to the Chairman.

Now, inasmuch as no points of order were made in the House and none were reserved against any of the provisions in the bill when it was committed to this Committee of the Whole, the Chair holds that the point of order of the gentleman from North Dakota should be overruled and the Committee of the Whole should be allowed to consider the bill in its entirety, as was proposed by the House when it committed the bill to the Committee of the Whole. In rendering this decision the Chair thinks he is sustained not only by the views of the present Speaker of the House, as intimated to the House in a recent instance, but also by those of Chairmen of the Committees of the Whole in preceding Congresses. In the Forty-eighth Congress this question was presented when the river and harbor bill was under consideration. In that bill, as the Chair now remembers, there was a provision for the project known as the Hennepin Canal. When the bill was under consideration in Committee of the Whole the point of order was made against that provision. In that case points of order had been reserved in the House when the bill was committed to the Committee of the Whole; but the Chair held that if they had not been reserved he would have overruled the point of order and remitted the question to the committee.

In the first session of the Forty-eighth Congress this question was directly considered on a parliamentary inquiry made by the gentleman from Indiana (Mr. Holman), and the Chair then said:

"The Chair will cause to be read what is said by the compiler of the Digest in regard to the practice in Committee of the Whole House on the state of the Union.

"The Clerk read as follows:

"'In a case of an appropriation reported by the Committee on Appropriations in conflict with Rule XXI, clause 3 (the language of which is identical with the corresponding rule that governs this body), and committed with a bill, it is not competent for the Committee of the Whole, or its Chairman, to rule it out of order, because the House are presumed to have received, as in order, the report in its entirety. So far as the proposed amendments are concerned, the current of the decisions of the Committee of the Whole House have been to exclude not only an appropriation not previously authorized by law, but also independent legislation, admitting, however, limitations and provisions which are themselves in order.'"

In accordance with this principle the Chairman then ruled that, inasmuch as points of order had not been reserved by the House when the bill was committed, he therefore could not entertain the point of order made.

With these precedents in view, and in accordance with the reasons given above, the Chair overrules the point of order.

6924. On December 19, 1896,[1] the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph relating to the organization of the Library of Congress having been read, Mr. John S. Williams, of Mississippi, made a point of order against it.

Mr. Henry H. Bingham, of Pennsylvania, raised the question that, as points of order were not reserved when the bill was committed to the Committee of the Whole, the bill was not now subject to the point of order.

After debate the Chairman[2] held:

If this were a new or original proposition, the present occupant of the chair would have no difficulty in sustaining the point of order. But my own recollection is, and I have refreshed my

[1] Second session Fifty-fourth Congress, Record, pp. 311, 312.

[2] William P. Hepburn, of Iowa, Chairman.

recollection by reference to certain precedents, that the practice of the House has universally been to reserve points of order against an appropriation bill, and that where that has not been done-where the bill is sent to the committee without objection-the whole of the bill is to be considered by the committee, and that it is not competent for the committee to refuse to consider any portion of the bill so committed to it.

The Chair therefore overrules the point of order.

6925. On June 17, 1898,[1] the House was considering the general deficiency appropriation bill in Committee of the Whole House on the state of the Union.

Against a paragraph in the bill relating to additional clerks for certain Federal courts, Mr. James A. Connolly, of Illinois, reserved a point of order.

Mr. Joseph G. Cannon, of Illinois, called attention to the fact that no points of order were reserved against the bill when it was committed to the Committee of the Whole.

After debate the Chairman[2] held:

That is the rule which, as the Chair is informed, has always been enforced with reference to appropriation bills; and the present occupant of the chair is inclined to think that the ruling is correct. If a point of order should be submitted to any paragraph of the bill, the Chair would be compelled to overrule it.

6926. Points of order are reserved at the time of reference to Committee of the Whole only on appropriation bills.—On May 14, 1906,[3] Mr. Joseph W. Babcock, of Wisconsin, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of bills on the Union Calendar reported from the District Committee.

Mr. Sydney E. Mudd, of Maryland, interposed to reserve points of order against the bills.

The Speaker[4] held that as they were not appropriation bills[5] such reservation was not called for.

6927. Questions of order relating to procedure (as distinguished from cases of disorder or contempt)[6] I arising in Committee of the Whole, are decided by the Chairman, and the Speaker has declined to consider them.—On March 7, 1838,[7] while the Committee of the Whole was considering the civil and diplomatic appropriation bill, a point of order was made against an amendment which the Chair ruled out. On motion of Mr. Churchill C. Cambreleng, of New York, the Committee rose, and the Chair reported the point of order to the House.

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[1] Second session Fifty-fifth Congress, Record, p. 6083.

[2] Sereno E. Payne, of New York, Chairman.

[3] First session Fifty-ninth Congress, Record, p. 6840.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] General appropriation bills only are meant, since it is only as to such that the rule relating to legislation applies. (See sec. 3578 of Vol. IV.)

[6] See sees. 1348–1351 of Vol. II for cases wherein the Speaker has intervened to preserve order in Committee of the Whole.

[7] Second session Twenty-fifth Congress, Globe, p. 224 et seq.

The Speaker[1] ruled that the question did not come within his jurisdiction, whereupon the House again went into Committee of the Whole, and the amendment was decided to be out of order and fell.[2]

6928. On February 12, 1895,[3] on motion of Mr. Alexander M. Dockery, of Missouri, the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of general appropriation bills, and after some time spent therein the Speaker resumed the chair, and the Chairman reported that the committee, having had under consideration the bill (H. R. 8767) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes, had directed him to report the same with amendments and with the recommendation that as so amended it do pass.

Mr. David A. De Armond, of Missouri, made the point of order against the amendment reported from the committee providing annual clerks to Members that it changed existing law, did not reduce, but increased expenditures, and that the amendment was inhibited by Rule XXI, clause 2, and should not now be considered by the House, although reported from the Committee of the Whole.

The Speaker[4] overruled the point of order, holding that the amendment having been considered in Committee of the Whole and no question of order having been reported to the House from the committee, the question could not now be raised in the House, saying:

> The Chair thinks that under the practice and under the rulings heretofore the House could not possibly review a point of order made in the Committee of the Whole. The point is made and decided by the Chairman of the committee. There is an appeal allowed from the decision of the Chair, and then it rests with the Committee of the Whole whether the decision shall stand as the judgment of the committee or not. Under the practice suggested by the gentleman from Missouri a point of order might be raised in Committee of the Whole and determined by the Chairman, an appeal taken from the decision of the Chair, and the decision affirmed or reversed, as the case may be, in the committee; the same point of order could be brought into the House, debated, and decided by the Chair, with the right of appeal, and a judgment be rendered by the House finally upon it. The Chair does not think it would be consistent with the orderly practice of the House or consistent with the usage heretofore, and therefore overrules the point of order.

6929. In Committee of the Whole, points of order against the germaneness of a section of a bill are made when the bill is read by sections.

The principle of germaneness relates to a proposition by which it is proposed to modify some pending bill, and not to a portion of the bill itself.

On May 14, 1906,[5] the bill (H. R. 14897) providing for the temporary maintenance of the Long Bridge over the Potomac River, and for other purposes, was under consideration in Committee of the Whole House on the state of the Union, when the bill was read at length.

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[1] James K. Polk, of Tennessee, Speaker.

[2] It is the almost invariable practice for the Committee of the Whole to settle its own questions of order.

[3] Third session Fifty-third Congress, Journal, p. 125.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] First session Fifty-ninth Congress, Record, pp. 6854, 6855.

Before general debate or the reading of the bill for amendment had begun Mr. Sydney E. Mudd, of Maryland, proposed to raise a point of order against the, third section of the bill.

The Chairman [1] held that the point of order would have to be raised when the bill should be read by sections.

By unanimous consent Mr. Mudd was permitted to raise the point of order at once. He thereupon stated that section 3 related to the width of tires of vehicles, as follows:

> That from and after the first day of January, nineteen hundred and seven, every wagon or other vehicle of whatsoever kind or description weighing, when loaded, more than four thousand five hundred pounds, used, operated, or propelled on, over, or across any of the streets, avenues, alleys, bridges, or roadways of the District of Columbia, shall have wheel tires not less than four inches broad.

and he urged that this was not germane to a bill having the title of this bill.

After debate the Chairman [1] held:

> The Chair is of the opinion, first, that this bill went to the Committee on the District of Columbia substantially as it now stands, and is reported from the District Committee in that manner, and the committee has no direct control over the bill in respect to its form on a question of order. The Chair is further of the opinion that the principle of germaneness relates to a proposition by which it is proposed to modify some pending original proposition, and the Chair is of the opinion, whether it is cognate to the principal subject-matter of the bill or otherwise, that this section is a part of the original proposition, in effect is the original proposition, now pending before the committee, and therefore the point of germaneness does not lie to the section. And the Chair is advised that this opinion is in accordance with the universal construction of rules of the House, and therefore does not sustain the point of order.

6930. The reading of a bill by paragraphs being completed in Committee of the Whole, it was held to be too late to make a point of order in committee against the title.—On February 20, 1901,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the reading by paragraphs for amendment had been completed when Mr. William P. Hepburn, of Iowa, proposed to make a point of order against the words "for other purposes" in the title on the ground that they were in contravention of existing statute.

Mr. Joseph G. Cannon made the point of order that the question was raised too late, as the reading of the bill by paragraphs had been concluded.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question that the title under the rules could not be considered until the bill had been passed by the House.

After debate as to the proper time for considering the title the Chairman [3] held that the point of order came too late in Committee of the Whole.

6931. A bill being considered under the five-minute rule, a point of order against a paragraph should be made before the next paragraph is read.—On January 24, 1905,[4] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the bill was being read by paragraphs for amendment under the five-minute rule.

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[1] Charles E. Littlefield, of Maine, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 2708.

[3] Albert J. Hopkins, of Illinois, Chairman.

[4] Third session Fifty-eighth Congress, Record, p. 1301.

Mr. C. R. Davis, of Minnesota, raised a question of order as to a paragraph already read.

Mr. James T. McCleary, of Minnesota, made the point of order against the point of order that it came too late.

The Chairman [1] said:

The Chair wishes to be perfectly fair with the gentleman from Minnesota [Mr. Davis], but it seems to the Chair that the point of order comes too late. The paragraph just completed is beyond the paragraph to which the gentleman desires to make the point of order. * * * The Chair will say to the gentleman from Minnesota [Mr. Davis], while it may be true that the gentleman was misled, and naturally misled, in reference to the paragraph, still the bill shows very distinctly on its face where each paragraph commences and where it ends, and in this case the bill on its face shows quite distinctly the paragraph to which the gentleman wishes to make the point of order to be a paragraph distinct by itself which ended before the beginning of the paragraph last read. The usage of the House is that a paragraph is considered as a paragraph, and a point of order must be raised at the end of the reading of the paragraph. The Chair, therefore, is compelled to rule that the point of order comes too late.

6932. The Speaker declines to entertain points of order as to conditions alleged to have existed in Committee of the Whole, when the report has made no mention thereof.—On January 26, 1889.[2] the Committee of the Whole House on the state of the Union rose, and, the Speaker having resumed the chair, the Chairman reported that the Committee of the Whole, having had under consideration the bill (H.R. 10419) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, had directed him to report the same back with an amendment in the form of a substitute.

Mr. William P. Hepburn, of Iowa, rising to a point of order, said:

I desire to say that the provisions of the bill making separate and distinct appropriations have not been considered in the Committee of the Whole, and no vote has been taken upon any provision appropriating a specific sum of money. Before the Committee of the Whole had proceeded beyond the consideration of the eighth line, before any subsequent paragraph had been read, this amendment was offered, and against objection a vote upon it was forced prior to the taking of any vote upon any one of the subsequent provisions of the bill. I make the point of order that the vote can not be taken upon the adoption of this substitute until the provisions of the bill have been separately read and considered in the Committee of the Whole.

The Speaker [3] held:

Of course the House now has nothing before it, and the Chair has nothing before him except the report of the Committee of the Whole House on the state of the Union. The facts stated by the gentle man from Iowa [Mr. Hepburn], if they be facts, might constitute a good reason for the recommitment of the bill by the House to the Committee of the Whole. But the Chair must deal with the report as presented. The bill is out of the Committee of the Whole and in the House by the action of the Committee, which the Chair can not revise or overrule in any manner. The point of order is not sustained.

6933. On March 14, 1902,[4] after the Committee of the Whole House on the state of the Union had risen and the Chairman reported favorably several bills, and

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[1] James R. Mann, of Illinois, Chairman.

[2] Second session Forty-ninth Congress, Record, p. 1059.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Fifty-seventh Congress, Record, p. 2813.

before action on the bills had been taken by the House, Mr. Francis W. Cushman, of Washington, rising to a parliamentary inquiry, said:

I will ask if it is in order to challenge the correctness of the statement made by the Chairman of the Committee of the Whole House to the Speaker? I raise the point that no vote was taken in the Committee of the Whole ordering the Committee to rise and report those bills to the House.

The Speaker[1] said:

The gentleman from Washington will readily see that the Chair can not hold a court of inquiry as to the action of the Committee of the Whole House on the state of the Union. That is a matter that the House only knows from the report of its Chairman. The Clerk will report the first bill.

6934. On December 10, 1877[2] the House having been in Committee of the Whole House on the state of the Union, and having considered the President's message, rose and reported that they had come to no resolution thereon.

Mr. Fernando Wood, of New York, moved that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the President's annual message and the pending resolutions therein in relation to the distribution of the same.[3]

Mr. Joseph G. Cannon made the point of order that the motion was not in order, the Committee not having fully considered and disposed of the subject.

The Speaker[4] ruled that the point of order could not be entertained by the Chair, not having been reported by the Chairman of the Committee of the Whole.

6935. On May 23, 1860,[5] the Committee of the Whole House on the state of the Union rose and reported to the House the sundry civil appropriation bill with certain amendments.

The Speaker having stated the question on agreeing to the amendments, Mr. John Sherman, of Ohio, rose and, after submitting an additional amendment, moved the previous question.

Mr. Thomas B. Florence, of Pennsylvania, made the point of order that, by reason of the haste and precipitancy of the Chairman of the Committee of the Whole, he was denied his rights as a Member, and that the said bill was improperly reported. He asserted that the vote by tellers, according to which the Committee rose, was not reported by numbers, and that had it been a lack of a quorum would have been ascertained.

The Speaker pro tempore[6] said:

The Chair overrules the point of order on the ground, in the first place, that it was not made in time; and in the second place, that it should have been made in Committee of the Whole.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Forty-fifth Congress, Journal, p. 81; Record, p. 108.

[3] At that time Rule CIV provided: "The House may at any time, by vote of the majority of the Members present, suspend the rules and orders for the purpose of going into Committee of the Whole on the state of the Union, and also for providing for the discharge of the Committee of the Whole House and the Committee of the Whole House on the state of the Union from the further consideration of any bill referred to it, after acting without debate on all amendments pending and that may be offered." This rule no longer exists, and was nearly obsolete at that time, in fact.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] First session Thirty-sixth Congress, Journal, p. 915; Globe, p. 2302.

[6] Schuyler Colfax, of Indiana, Speaker pro tempore.

Mr. Florence having appealed, the appeal was laid on the table.

6936. On January 17, 1867,[1] the House proceeded to the consideration of the legislative appropriation bill, which had been reported from the Committee of the Whole House on the state of the Union with sundry amendments.

Among the amendments reported by the Chairman was one which Mr. Thaddeus Stevens, of Pennsylvania, declared had not been adopted by the Committee of the Whole.

The Speaker[2] said:

> The Chairman of the Committee decided that the amendment was agreed to, and it is not within the province of the Speaker to rule in regard to what occurred in Committee of the Whole. All that takes place in Committee of the Whole is subject to revision in the House, and that is the reason why no journal is kept in Committee of the Whole. * * * It is not within the power of the Speaker to rule upon the subject. The gentleman can move to recommit the bill with amendments to the Committee of the Whole.

The motion to recommit was accordingly made, and agreed to by the House.

6937. On December 23, 1851,[3] the Committee of the Whole reported the joint resolution relating to the act "granting bounty lands," etc., with the recommendation that it be referred to the Committee on the Judiciary.

Mr. Amos Tuck, of New Hampshire, made the point of order that it was not in order for the committee to rise and report the said resolution until it had been read by sections, and the amendments thereto, if any, had been considered in Committee of the Whole; consequently that the resolution should go back to the committee, to be considered in the manner prescribed by the rules.

The Speaker[4] overruled the point of order.

Mr. Tuck having appealed, the appeal was laid on the table.

6938. The decision of a question of order by the Chair is subject to appeal by any Member.

In debate on an appeal no Member may speak more than once, unless by permission of the House.

Section 4 of Rule I[5] provides that the Speaker shall decide questions of order:

> * * * subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

6939. An appeal is not in order when another appeal is pending.—On July 6, 1841,[6] the House was considering a report from the Committee on Rules, when Mr. Charles G. Atherton, of New Hampshire, rose and objected to the consideration because the rule (Rule 127)[7] required one day's notice to be given before changing or rescinding any standing rule of the House.

The Speaker overruled the point of order.

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[1] Second session Thirty-ninth Congress, Globe, p. 528.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Thirty-second Congress, Journal, p. 131.

[4] Linn Boyd, of Kentucky, Speaker.

[5] For full form and history of this rule see section 1313 of Volume II of this work.

[6] First session Twenty-seventh Congress, Globe, p. 154; Journal, p. 206.

[7] Now section I of Rule XXVIII. See section 6790 of this volume. The rule has been changed since the time of this ruling.

There was an appeal from this decision, and Mr. Atherton was proceeding to state his views, when the Speaker said that the appeal was not debatable.

Mr. Atherton said that he would appeal from that decision also.

The Speaker[1] held that it was not in order "to pile one appeal upon another."

The House then affirmed the decision of the Speaker on Mr. Atherton's appeal on the question of considering the report.

6940. On January 29, 1847,[2] when the House assembled, there were pending several questions which arose during a parliamentary conflict of the preceding day. A difference had arisen as to the meaning of a resolution which had been adopted to close debate on the naval appropriation bill in the Committee of the Whole House on the state of the Union. During this complication the Chair decided that a motion for a call of the House was not in order (a quorum being present) pending a motion to reconsider.

From this decision Mr. Robert Toombs, of Georgia, appealed; and there was a motion that Mr. George Ashmun, of Massachusetts, be excused from voting on this appeal.

When the House assembled on January 29 the Speaker announced the state of the several pending questions, whereupon Mr. George C. Dromgoole, of Virginia, moved that the House resolve itself into Committee of the Whole House on the state of the Union.

The Speaker[3] announced that he had already decided that motion not in order.

From this decision Mr. Dromgoole appealed.

The Speaker ruled that this appeal could not be entertained. There was already one appeal pending, and by the rule one appeal could not be piled upon another.

6941. On September 20, 1893,[4] Mr. Julius C. Burrows, of Michigan, had appealed from a decision of the Chair in relation to a report from the Committee on Rules.

Mr. Ashbel P. Fitch, of New York, moved to lay the appeal on the table, pending which, Mr. Burrows moved that the House take a recess for one hour.

The Speaker[5] having ruled the motion of Mr. Burrows out of order, Mr. Sereno E. Payne, of New York, appealed from the decision of the Chair.

The Speaker declined to entertain the appeal on the ground that the appeal of Mr. Burrows from the former decision of the Chair was already pending, and that two appeals could not be pending at the same time.

6942. Under certain circumstances Speakers have admitted one appeal while another was pending.—On May 30, 1836,[6] during a call of the yeas and nays on a motion to suspend the rules, Mr. John M. Patton, of Virginia, asked to be excused from voting[7] and demanded that the question of his request be taken before the announcement of the vote on the motion to suspend the rules.

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[1] John White, of Kentucky, Speaker.

[2] Second session Twenty-ninth Congress, Globe, p. 290.

[3] John W. Davis, of Indiana, Speaker.

[4] First session Fifty-third Congress, Journal, pp. 96, 97, 98.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] First session Twenty-fourth Congress, Journal, pp. 899–903.

[7] Such a request is no longer in order, except by unanimous consent.

The Speaker having decided, in conformity with previous decisions, that this was an incidental question to be considered by the House after the original question had been determined, Mr. Patton appealed.

Mr. Amos Lane, of Indiana, having moved to lay this appeal on the table, the question was taken by yeas and nays. During the calling of the roll Mr. Daniel Jenifer, of Maryland, rose and asked to be excused from voting, and at the end of the roll call demanded, as Mr. Patton had done, that the question on his request be taken before the announcement of the result on the vote.

The Speaker having decided as in the case of the request of Mr. Patton, Mr. Henry A. Wise, of Virginia, appealed.

Thereupon, Mr. Thomas L. Hamer, of Ohio, made the following point of order:

> Can two questions of order be pending at the same time? One has been made, decided by the Chair, the decision appealed from, a motion to lay the appeal on the table, and that motion is as yet undecided. The first question, therefore, is still pending, and no other can be raised until it is disposed of.

The Speaker[1] decided that the appeal taken by Mr. Wise should be entertained.

Thereupon the question was put and decided on Mr. Wise's appeal; and then the Speaker announced the result of the vote laying on the table the appeal of Mr. Patton. Then finally the Speaker announced the result on the motion to suspend the rules.

6943. On May 15, 1854,[2] the Speaker[3] ruled out of order a motion made by Mr. Israel Washburn, jr., of Maine, to lay on the table the resolution providing for closing debate in Committee of the Whole House on the state of the Union on the bill (H. R. 236) to organize the Territories of Kansas and Nebraska.

The Speaker having decided this motion to be out of order, Mr. Washburn appealed, and on the question on this appeal Mr. Edwin B. Morgan, of New York, moved to be excused from voting.[4]

Mr. Thomas L. Clingman, of North Carolina, made the point of order that this motion to excuse was not in order, and the Speaker overruled the point of order.

Mr. Clingman thereupon appealed, and a motion to lay the appeal on the table being decided in the negative, the question on sustaining the decision of the Chair was decided in the negative, and the Chair was overruled.

Then the question recurred on Mr. Washburn's appeal, and the question being put the decision of the Chair was sustained.[5]

6944. The Speaker having decided that words spoken in debate on a pending appeal were out of order declined to entertain an appeal from the latter decision.—On July 11, 1832,[6] during consideration of an appeal from a decision of the Chair, Mr. William Stanberry, of Ohio, was called to order for word spoken in debate, and the words were taken down.

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[1] James K. Polk, of Tennessee, Speaker.

[2] First session Thirty-third Congress, Journal, pp. 854–861; Globe, pp. 1192, 1193.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Such a motion is no longer in order except by unanimous consent.

[5] Again, on May 22, we find Mr. Speaker Boyd entertaining an appeal on a question of order over an incidental motion, while another appeal was pending. (Journal, pp. 886, 888.) The Speaker justified the entertaining of the second appeal on the ground of the peculiar circumstances of the case and the fact that the question on excusing a Member from voting concerned his privileges. (Globe, p. 1245.)

[6] First session Twenty-second Congress, Debates, p. 3899.

The words being read, the Speaker decided that they were not in order.

Mr. Stanberry appealed from this decision.

The Speaker[1] declared that the appeal was not in order, since in this way appeals might be multiplied ad infinitum.

6945. An appeal pending at an adjournment on Friday, but related to public and not private business, does not go over to the next Friday, but comes up on the next legislative day.—On June 21, 1890,[2] the Speaker stated the pending question to be the motion of Mr. William McKinley, jr., of Ohio, to lay on the table the appeal of Mr. Richard P. Bland, of Missouri, from the decision of the Chair pending when the House adjourned on the previous day, on which motion the yeas and nays were ordered.

Mr. Bland, of Missouri, moved to reconsider the vote by which the yeas and nays were ordered.

Pending this, Mr. Joseph G. Cannon, of Illinois, made the point of order that the appeal of Mr. Bland having been made on Friday—private bill day—must go over until next Friday as unfinished business of that day.[3]

The Speaker[4] overruled the point of order on the ground that the question at issue was one of privilege, and as such was in order on any day, subject only to the question of consideration.

Mr. James H. Blount, of Georgia, made the point of order that the question was not in order at the present time, for the reason that being unfinished business it could only be taken up after business on the Speaker's table had been disposed of.

The Speaker overruled the point of order on the ground that the question pending, in addition to being privileged, related to the disposal of business on the Speaker's table, and that the order for the yeas and nays brought the subject immediately before the House.

6946. The Chair having used his discretion in recognizing a Member for debate on a point of order, declined to entertain an appeal from this recognition.—On April 20, 1900,[5] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. W. D. Vandiver, of Missouri, offered an amendment for the establishment of a Government armor-plate factory.

Mr. Alston G. Dayton, of West Virginia, having made the point of order against the amendment, Mr. Oscar W. Underwood, of Alabama, asked recognition to speak on the point of order.

The Chairman said that he would hear the gentleman from Alabama for ten minutes.

Mr. Underwood protested that he might not be thus limited.

The Chairman said:

> The Chair declines to recognize the gentleman otherwise than as he has already recognized him.

Mr. Underwood said:

> I wish to appeal from the authority of the Chair to limit debate on this.

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] First session Fifty-first Congress, Journal, pp. 770–772; Record, p. 6353.

[3] For rule relating to Friday, see section 3266 of Volume IV of this work.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-sixth Congress, Record, p. 4494.

The Chairman [1] declined to entertain an appeal on a matter of recognition.

6947. Debate on an appeal in Committee of the Whole has been limited by the Committee itself, on motion put and carried, or by the Committee rising to enable the House to limit it.—On May 25, 1892,[2] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

Mr. Christopher A. Bergen, of New Jersey, having appealed from a decision of the Chair, and debate having proceeded on the appeal at considerable length, Mr. William S. Holman, of Indiana, moved that the Committee rise, his purpose being to limit debate on the appeal.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that it was not competent for the Committee of the Whole to rise to limit debate upon a point of order; that it was within the discretion of the Chair to close the debate at any time.

The Chairman [3] ruled that it was competent for the Committee of the Whole to rise when they might please, and for any purpose they might please.

The Committee having voted to rise, the House, on motion of Mr. Holman, limited the time of debate on the appeal, and then again voted to go into Committee of the Whole.

6948. On January 18, 1898,[4] the House being in Committee of the Whole House on the state of the Union, considering the diplomatic and consular appropriation bill, and the first paragraph of the bill having been read for debate and amendment under the five-minute rule, Mr. D. A. De Armond, of Missouri, offered an amendment recognizing the belligerency of the Cuban insurgents.

Mr. Robert R. Hitt, of Illinois, made a point of order against the amendment, which the Chairman sustained.

Mr. De Armond thereupon appealed.

After the debate had proceeded for some time, Mr. Hitt moved to close debate upon the pending question, which was the appeal.

Mr. Joseph W. Bailey, of Texas, made the point of order that it was not in order to move to close debate in the Committee on that question.

The Chairman [5] ruled that the point of order came too late, as the Committee were dividing.

On a vote by tellers, debate on the appeal was closed, 153 ayes to 118 noes.

6949. On March 25, 1898,[6] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill, under the five-minute rule.

A point of order that Mr. Charles T. Hartman, of Montana, was not confining himself to the subject which was then under debate having been sustained by the Chair, Mr. Joseph W. Bailey, of Texas, appealed.

After a time, Mr. Charles A. Boutelle, of Maine, moved to close debate on the appeal.

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[1] Sereno E. Payne, of New York, Chairman.

[2] First session Fifty-second Congress, Record, p. 4680.

[3] Rufus E. Lester, of Georgia, Chairman.

[4] Second session Fifty-fifth Congress, Record, pp. 730, 731.

[5] William P. Hepburn, of Iowa, Chairman.

[6] Second session Fifty-fifth Congress, Record, pp. 3226–3232.

Mr. Bailey made the point of order that it was not permissible to move to close debate upon the appeal. After debate the Chairman [1] decided:

The Chair would like to make a ruling. He has heard all the discussion he cares to upon this point of order. It always has been held that the Chair can conclude discussion of a point of order when he desires, when his mind is satisfied upon the point, for that is the real purpose of permitting the discus-

sion; but it does not necessarily follow that the Chair can bring to an end debate upon an appeal from the decision already made. Discussion in that case is not to satisfy the mind of the Chair, but of the members of the Committee. But without passing upon whether or not the Chair can bring that debate to a conclusion, the Chair does hold that it is within the power of the Committee to bring the debate to a conclusion, and therefore will put the motion that debate be now closed.

6950. On March 24, 1904,[2] while the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John S. Williams, of Mississippi, took an appeal from the decision of the Chair, and debate proceeded on the appeal.

A question arising as to the time of debate, which had proceeded under the hour rule and not under the five-minute rule, the Chairman[3] said:

A motion to close debate will be in order at any time.

Later Mr. Williams moved to close debate on the appeal, and the question being taken, the motion was agreed to.

6951. In Committee of the Whole, as well as in the House, a Member may speak but once on an appeal.—On January 18, 1898,[4] the House was in Committee of the Whole House on the state of the Union, considering the diplomatic and consular appropriation bill.

Mr. D. A. De Armond, of Missouri, having offered an amendment for recognizing the belligerency of the Cuban insurgents, which the Chair had ruled out of order, and from which ruling Mr. De Armond had appealed, Mr. James Hamilton Lewis, of Washington, arose and addressed the Chair.

Mr. James S. Sherman, of New York, made the point of order that the gentleman from Washington had already addressed the House once on the appeal.

The Chairman[5] sustained the point of order, after having had read section 4 of Rule I.[6]

6952. It was formerly held that appeals on questions relating to priority of business were not debatable.—On January 8, 1850,[7] Mr. Richard K. Meade, of Virginia, proposed the following resolution:

Resolved, That the eleventh rule of the House be, and the same is hereby, repealed.

The Speaker having decided that the resolution offered by Mr. Meade was out of order at that time, Mr. Meade appealed, and was proceeding to debate the appeal.

The Speaker[8] declined to hear Mr. Meade, stating that appeals on questions of order arising upon matters concerning priority of business were not debatable.

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[1] James S. Sherman, of New York, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 3637, 3638.

[3] H. S. Boutell, of Illinois, Chairman.

[4] Second session Fifty-fifth Congress, Record, p. 739.

[5] William P. Hepburn, of Iowa, Chairman.

[6] See section 1313 of Volume II of this work.

[7] First session Thirty-first Congress, Globe, p. 118.

[8] Howell Cobb, of Georgia, Speaker.

6953. The House has overruled a decision of a Speaker admitting an appeal.—On December 13, 1808,[1] the division of a question had been demanded and made, and the question had been put and the vote taken on the first portion. The Chair then stated the question on the second member of the resolution.

A point of order having been made and decided as to the second member, Mr. John Randolph, of Virginia, appealed.

Mr. Thomas Gholson, jr., of Virginia, objected to the appeal after the question had been taken.

The question was then taken—

Is the decision of the Chair upon the appeal of Mr. Randolph correct?

and the House decided in the negative. So the Speaker[2] was overruled, and did not put the question on Mr. Randolph's appeal.[3]

6954. A special order prohibiting "debate on intervening motion," it was held that an appeal should be entertained.—On November 19, 1903,[4] the Committee of the Whole House on the state of the Union rose in accordance with the terms of the following order:

Resolved, That immediately on the adoption of this rule, and immediately after the reading of the Journal on each day thereafter until the bill hereinafter mentioned shall have been disposed of, the House shall resolve itself into Committee of the Whole House on the state of the Union for consideration of the bill H. R. 1921, a bill to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, 1902; that not later than 4 o'clock on November 19 general debate shall be closed in Committee of the Whole, and whenever general debate is closed the Committee shall rise and report the bill to the House; and immediately the House shall vote without debate or intervening motion on the engrossment and third reading and on the passage of the bill.

The bill having been passed to be engrossed and read a third time, Mr. John Sharp Williams, of Mississippi, moved to recommit the bill with instructions.

Mr. Sereno E. Payne, of New York, made the point of order that the motion to recommit was not in order.

Thereupon Mr. Williams appealed.

Mr. Payne made the point of order that the appeal was dilatory.

The Speaker[5] held:

If, under the rules, the previous question has been moved upon the question arising, there are many precedents where points of order would be entertained, and, of course, if entertained, be subject to appeal, unless they be dilatory, when they would come under another rule. Now, the House, after debate, has adopted this special order upon a yea-and-nay vote with a full House, and we are proceeding under the special order, which cuts off a motion to recommit, which motion would otherwise be in order. When the gentleman seeks to make the motion to recommit, the Chair necessarily, under the order of the House, sustains the point of order to that motion. The gentleman appeals from the ruling of the Chair. The Chair thinks the better practice is not to invoke the rule touching dilatory motions except in cases where the purpose to delay is plainly evident, and the Chair would prefer to err, if it errs at all,

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[1] Second session Tenth Congress, Journal, p. 387 (Gales & Seaton ed.); Annals, p. 854.

[2] Joseph B. Varnum, of Massachusetts, Speaker.

[3] On December 13, 1808, objection being made to the admissibility of an appeal from a decision of the Speaker, the Speaker (Varnum) decided the appeal admissible (2d sess., 10th Cong., Journal, pp. 113–117).

[4] First session Fifty-eighth Congress, Record, p. 388; Journal, p. 81.

[5] Joseph G. Cannon, of Illinois, Speaker.

upon giving the House the right to express its will; and although the House may have expressed its will otherwise heretofore, the Chair is proceeding under the order of the House in making the ruling, from which ruling the gentleman from Mississippi appeals. The Chair therefore entertains the appeal.

6955. An appeal may not be taken from a response of the Speaker to a parliamentary inquiry.—On March 30, 1898,[1] Mr. Joseph W. Bailey, of Texas, had presented as a question of privilege the following resolution:

Resolved, etc., That the heroic struggle of the Cuban people against the force of arms and the horrors of famine has shown them to be free; and

Second. The United States hereby recognizes the Republic of Cuba as a free and independent state.

The Speaker having sustained the point of order that this resolution did not involve a question of privilege, Mr. Bailey, as a parliamentary inquiry, asked if the Speaker held that the resolution must be introduced through the box[2] before it could go to the Committee on Foreign Affairs.

The Speaker[3] replied in the affirmative.

Thereupon Mr. Bailey proposed to appeal.

The Speaker said:

The Chair will explain the situation to the gentleman. The gentleman from Texas presented a resolution, which the House has pronounced out of order. That proceeding is ended because it has been submitted to the court of last resort and decided. That matter is ended.

Now, the gentleman from Maine [Mr. Boutelle] had been recognized, pending this proposition, for a privileged motion. While the Chair was putting the question the gentleman from Texas claimed the attention of the Chair and stated that he desired to make a parliamentary inquiry, the inquiry being what had become of the resolution-whether it went to the Committee on Foreign Affairs. And the Chair stated to the gentleman that it certainly did not. Thereupon the Chair proceeded to put the question on the motion presented by the gentleman from Maine; and the gentleman from Texas then appealed. He must have appealed from the result of a parliamentary inquiry, and that can not be tolerated.

6956. When the vote on an appeal has resulted in a tie, the Chair has sometimes given a casting vote in favor of his own decision.[4]—On May 31, 1790[5]

On motion made and seconded, that the House do now proceed to take into consideration a motion which lay on the table, in the words following, to wit: "*Resolved,* That Congress shall meet and hold their next session at ———," it was resolved in the affirmative, by yeas and nays—yeas 32, nays 27.

The House having proceeded to the consideration of the resolution, it was moved to amend by inserting after the word "*Resolved*," the words—

that a permanent seat for the Government of the United States ought to be fixed at some convenient place on the river Delaware, and.

The motion being objected to as out of order, the Speaker[6] declared the motion not in order.

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[1] Second session Fifty-fifth Congress, Record, pp. 3379–3383.

[2] The box at the Clerk's table for the introduction of bills.

[3] Thomas B. Reed, of Maine, Speaker.

[4] See also sections 5239, 5686 of this volume.

[5] Second session First Congress, Journal, pp. 122, 124.

[6] Frederick Muhlenberg, of Pennsylvania, Speaker.

An appeal being taken by two Members, and the question being put, "Is the said motion in order?" [1] there appeared, yeas 29, nays 29.

Whereupon Mr. Speaker declared himself with those who voted in the negative, and the motion was decided not to be in order.[2]

6957. When, on an appeal from the decision of the Chair, the vote would be a tie after the Chair should have voted to sustain his own decision, an interesting question would be presented.—On May 12, 1852,[3] during the consideration of the bill (H. R. 7) known as the homestead bill, an appeal was taken from a decision of the Chairman, and the question was put:

Shall the decision of the Chair stand as the judgment of the Committee?

The tellers reported ayes 63, noes 64.

Mr. George W. Jones, of Tennessee, made the point that if the Chair would add his vote to the affirmative, the vote would stand 64 to 64, and the decision would not be overturned.

The Chairman [4] said:

"The Chair is of the opinion that if his own vote were added it would not change the result. * * * The burden of getting a majority is with the affirmative,[5] in the opinion of the Chair. The vote is, ayes 63, noes 64, and the decision of the Chair is overruled."

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[1] The present form of stating an appeal is: "Shall the decision of the Chair stand as the judgment of the House [or the Committee].

[2] Again, on June 6, 1832 (first session Twenty-second Congress, Debates, pp. 3294, 3295), in Committee of the Whole, Chairman Jesse Speight, of North Carolina, on a tie vote on an appeal, voted in the affirmative to sustain his own ruling. Also see Globe, first session Thirty-first Congress, p. 1608; Record, second session Fifty-fifth Congress, p. 2500. A tie vote on an appeal sustains the Chair (see sec. 185 of Reed's Parliamentary Rules).

[3] First session Thirty-second Congress, Globe, p. 1348.

[4] Harry Hibbard, of New Hampshire, Chairman.

[5] Mr. Speaker Reed, in his Parliamentary Rules, states that on a tie vote on an appeal the decision is sustained. (Reed's Parliamentary Rules, sec. 185.) This should be so when the Chair, being a Member, has not been counted in the vote, for it does not seem reasonable that his decision should be overturned except by a majority; and it is to be assumed that his voice would be in favor of his own decision. Where, after he has voted, there is still a tie, it is evident from the form in which the question is put that the body does not answer it by the required majority, it being an accepted principle that on a tie vote the motion fails. But while this is the aspect of the case from a technical point of view, it seems on the broader view that a decision of the Chair ought not to be reversed unless there be a majority against it. In this connection, however, it is to be noted that a rule of the House declares that on a tie vote the question is lost. (Section 5964 of this volume.) The present form of stating an appeal is: "Shall the decision of the Chair stand as the judgment of the House?" Of course, strictly speaking a tie vote, when the Chair does not vote, would not sustain the decision; but Mr. Speaker Reed thought otherwise. On all considerations it would seem better that the question on an appeal should be put thus: "Shall the decision of the Chair be overruled?" This would leave no doubt that a tie vote would sustain the Chair; and is a form that states accurately the purpose of the Member taking the appeal. (See also section 4569 of Vol. IV of this work.)

Chapter CXLIV.

THE CONGRESSIONAL RECORD.

1. **Rule for appointment of official reporters of debates. Section 6958.**
2. **Evolution of the system of daily verbatim reports. Section 6959.**
3. **Creation of office of official reporter. Sections 6960, 6961.**
4. **As to what should be printed in Record. Sections 6962–6970.**
5. **Revision of remarks of Members. Sections 6971–6974a.**
6. **Disorderly words excluded or stricken out. Sections 6975–6982.**
7. **As to authority of Speaker over. Sections 6983–6985.**[1]
8. **Relation of Committee of Whole to Record. Sections 6986–6988.**
9. **Amendment of the Record secondary to approval of Journal. Section 6989.**
10. **"Leave to print" and questions arising therefrom. Sections 6990–7012.**
11. **Correction of the Record a question of privilege. Sections 7013–7023.**
12. **Rules for publication of Record. Section 7024.**

6958. The Speaker appoints the official reporters of debates and stenographers of committees.

The Speaker supervises the work of the official reporters and stenographers, and may remove "for cause."

Present form and history of section 1 of Rule XXXVI.

Section 1 of Rule XXXVI provides:

The appointment and removal, for cause,[2] of the official reporters of the House, including stenographers of committees and the manner of the execution of their duties, shall be vested in the Speaker.

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[1] See also section 7017 of this chapter.

[2] On March 29, 1882, Mr. Alexander H. Stephens, of Georgia, as a question of privilege, presented correspondence whereby the Speaker (Mr. Keifer) had removed for cause Henry G. Hayes, stenographer to committees, but had declined to specify the cause or causes. The subject was referred to the Committee on the Judiciary without debate (first session Forty-seventh Congress, Journal, p. 930; Record, p. 2376).

On April 25, Mr. John G. Carlisle, of Kentucky, by unanimous consent, presented a resolution relating to the removal of Mr. Andrew Devine, also a committee stenographer, who had been removed by the Speaker for cause, but without specification of the cause. This subject also was referred to the Committee on the Judiciary, which does not appear to have reported at this session on either of the cases (first session Forty-seventh Congress, Journal, p. 1122; Record, p. 3272). It is to be inferred, however, that a majority of the Judiciary Committee upheld the Speaker. This appears from a discussion in Committee of the Whole on July 12, 1882 (first session Forty-seventh Congress, Record, pp. 5967–5976) participated in by Mr. Thomas B. Reed, of Maine, chairman of the Judiciary Committee, and Mr. John G. Carlisle, of Kentucky, and others, as to the meaning of the words "for cause' in the rule relating to

This rule dates from January 15 and June 22, 1874.[1] The old form was slightly changed in the revision of 1880.[2]

The committee stenographers were first authorized by resolution,[3] and now by provisions in the legislative, executive, and judicial appropriation bills,[4] wherein also provision is made for the six official reporters of debates and their assistants.

6959. History of the evolution by which the House has built up the system of a daily verbatim report of its proceedings, made by its own corps of reporters.

The origin, publication, and distribution of the Congressional Record.

The debates were published in a condensed form in the Annals of Congress, from 1789 to 1824. From 1824 to 1837 the Congressional Debates were published. The Congressional Globe began in 1833 and continued until 1873, when the publication of the Congressional Record began. The Record contains each morning a full stenographic report of the proceedings of the preceding day.

The Joint Committee on Printing control the arrangements and style, and have a general supervision of the Record and of its index.[5]

Each Representative and Delegate has sixty copies of the Record.[6]

The Congressional Record may be furnished to subscribers by the Public Printer at the rate of $1.50 per month, or $8 for the long session and $4 for the short session.[7]

Extracts from the Congressional Record may be printed and delivered to Members at cost.[8]

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the dismissal of stenographers by the Speaker. Mr. Reed held that the "Speaker need not specify cause." Mr. Carlisle took the opposite ground. Mr. Reed referred to paragraph 250 of Dillon on Municipal Corporations, and Mr. Carlisle referred to a statement by Mr. Speaker Blaine.

On January 18, 1866, on recommendation of the Committee on Accounts the House agreed to a resolution employing a stenographer for committees. This plan had been tried in the preceding Congress, and worked well. It was to take the place of the old plan of employing stenographers for committees as the occasions arose (first session Thirty-ninth Congress, Journal, p. 162; Globe, p. 300). The original resolution employing a committee stenographer dated from January 5. 1865.

On January 13, 1884, Mr. Carlisle, then Speaker in a new Congress, announced to the House, and the announcement appears in the Journal, the appointment of Andrew Devine as one of the official reporters of the debates (second session Forty-eighth Congress, Journal, p. 247; Record, p. 662). It is not usual, however, for the Speaker to announce an appointment of this nature to the House, although on March 30, 1886, the Speaker (Mr. Carlisle) announced that, in accordance with the act of March 3, 1885, he appointed two committee stenographers, whose names he gave (first session Forty-ninth Congress, Journal, p. 1104; Record, p. 2914).

[1] First session Forty-third Congress, Record, pp. 678, 5390. Also p. 681 of Record for statement of Mr. Blaine that the reporters were officers of the House and removable only for cause.

[2] Second session Forty-sixth Congress, Record, p. 207.

[3] Second session Thirty-fifth Congress, Journal, pp. 79, 80; first session Thirty-ninth Congress, Journal, pp. 162, 1117; first session Fortieth Congress, p. 13; first session Forty-eighth Congress, p. 520; Record, p. 957.

[4] 24 Stat. L., p. 598.

[5] 28 Stat. L., p. 603.

[6] 29 Stat. L., p. 454. For general law governing distribution of Record see 28 Stat. L., pp. 617, 618. Copies are furnished to newspaper correspondents (31 Stat. L., p. 713).

[7] 28 Stat. L., p. 617; 32 Stat. L., p. 786. See these laws also for schedule of general distribution of the Record.

[8] 18 Stat. L., p. 347.

The present system of reporting the proceedings of the House for the Congressional. Record [1] is the result of a slow evolution. At the beginning no provisions were made for reporting the debates. In February, 1795,[2] a committee of the House reported in favor of the appointment of one or more stenographers as officers of the House, but no action resulted; and on December 14, 1796,[3] the House disagreed to a proposition to have the debates reported by contract. On December 6, 1797,[4] a committee reported that as the plan of official reporters of debates had been discountenanced, it was not advisable for the House to assist in unofficial publications. On March 21, 1798,[5] a proposition to permit persons to have places within the bar to take the debates was defeated by a tie vote.

On January 7, 1802,[6] this rule was adopted:

> Stenographers shall be admitted, and the Speaker shall assign to them such places on the floor as shall not interfere with the convenience of the House.

There was much debate over this rule, from which it appeared that previously stenographers had been admitted by authority of the Speaker and under his direction they had remained. It was alleged that the Speakers had used this power arbitrarily, sometimes going to the extent of suppressing the publication of speeches. The rule was agreed to, yeas 47, nays 28.

The rule in the Twelfth Congress, date 1811,[7] was:

> Stenographers wishing to take down the debates may be admitted by the Speaker, who shall assign such places to them on the floor or elsewhere, to effect their object, as shall not interfere with the convenience of the House.

On May 31, 1813,[8] complaint arose that Mr. Speaker Clay had excluded a stenographer, partisan reasons being suggested. The Speaker explained that there were places for but four, and that he had assigned these places by seniority and not by political favor. The stenographers were employees of newspapers, not of the House. The House voted against the petition of the excluded stenographer.

On March 13, 1820,[9] an attempt to require that the stenographers be under oath failed.

On May 2, 1822,[10] a committee, of which Mr. Henry R. Warfield, of Maryland, was chairman, made a report as to a reform in the method of reporting debates. They did not undertake to say that they should be published in extenso, but did believe that "a rigid adherence to fact in whatever is published of the proceedings of Congress is indispensable." They therefore proposed that the Speaker be authorized to receive proposals for the publication of a correct account of the debates, and

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[1] On March 2, 1849 (second session Thirtieth Congress, Globe, p. 646) a brief sketch was given of the compilation of the earlier debates.

[2] American State Papers, Vol. I (miscel.), p. 123.

[3] Second session Fourth Congress, Journal, p. 616.

[4] Second session Fifth Congress, American State Papers (miscel.), Vol. II, p. 159.

[5] Second session Fifth Congress, Journal, p. 233; Annals, pp. 1285–1295.

[6] First session Seventh Congress, Journal, p. 38; Annals, pp. 406, 409.

[7] Journal of the Twelfth Congress, p. 528.

[8] First session Thirteenth Congress, Annals, pp. 112, 127.

[9] First session Sixteenth Congress, Journal, p. 300; Annals, p. 1634.

[10] First session Seventeenth Congress, Journal, pp. 476, 542; Annals, pp. 1778, 1779.

submit these proposals to the next session. This change was objected to on account of the expense, and the matter was tabled.

On January 9, 1826,[1] a proposition was made that the Speaker might admit not exceeding three stenographers to occupy places in front of the Clerk's table. On January 10 this was debated and tabled. It was urged that it would make a distinction among the stenographers, giving to three a better place than the others who came into the Hall would have.

On January 25, 1826,[2] it was developed during a debate on a resolution to make the privilege of the floor to stenographers depend on their "decorum and respect to Members," that under the title and rule as to stenographers there was but one stenographer, the others being simply newspaper reporters. The resolution was aimed against these reporters, who had floor privileges as stenographers. It was not agreed to.

On January 14, 1828,[3] Mr. John Randolph, of Virginia, criticised the inaccuracy of the published reports, giving a humorous blunder made in one of his speeches.

On January 27, 1844,[4] Mr. Edward J. Black, of Georgia, proposed a corps of official reporters to be paid by the House, and to report "faithfully and literally" everything "done or attempted to be done." The resolution was objected to and not considered.

In 1848[5] a joint committee of the House and Senate examined into the subject of devising a system of reporting the debates and proceedings in lieu of the system existing.

On September 2, 1850,[6] a proposition to give the Congressional Globe reporters seats in front of the Clerk's table was decided adversely; but in the next Congress Mr. Alexander H. Stephens, of Georgia, renewed the proposition, and on December 10, 1851,[7] the House voted that the Doorkeeper should place three seats in front of the Clerk's desk for the reporters of the Congressional Globe, although these reporters, like their predecessors, were employees of the printer who published the Globe, for the purchase of which the House made annual appropriations.[8]

In 1853[9] an effort was made by Mr. Alexander H. Stephens, of Georgia, to make the Globe reporters paid employees of the House instead of paying so much a column for reports to the contracting printer. At that time it was noted that by assuming some authority over the reports their character had been improved; and on February 20, 1855,[10] the House adopted an amendment to an appropriation bill providing for the payment at public expense of the reporters of the Congressional Globe.

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[1] First session Nineteenth Congress, Journal, pp. 135, 138; Debates, pp. 925, 926.

[2] Second session Nineteenth Congress, Journal, p. 204; Debates, pp. 815–820.

[3] First session Twentieth Congress, Debates, p. 1002.

[4] First session Twenty-eighth Congress, Journal, pp. 297, 298; Globe, p. 201.

[5] First session Thirtieth Congress, Journal, pp. 1137, 1201.

[6] First session Thirty-first Congress, Journal, p. 1353.

[7] First session Thirty-second Congress, Journal, p. 70; Globe, p. 57.

[8] 9 Stat. L., pp. 6, 616.

[9] Second session Thirty-second Congress, Globe, pp. 388, 733.

[10] Second session Thirty-third Congress, Globe, p. 817.

When the House moved into the new Hall in 1857,[1] the official reporters found seats arranged for them in front of the Clerk's desk.

In 1865[2] Congress provided by law that the Congressional Globe should be published daily and delivered to Members of both Houses at the time of meeting; but the publishers were not to be required to publish daily more than forty columns of proceedings of the two Houses. In 1860[3] a Government printing establishment was authorized, for the printing of Congress; and in 1863[4] the system of annual appropriations for reporting proceedings in the two Houses was established.

On December 20, 1865,[1] a proposition was presented from the Committee on Rules, declaring the reporters of the official proceedings officers of the House, and their appointments and removals subject to the approval of the Speaker. This proposition gave rise to debate as to the relations of the House to the contractors who published the Globe, and the rights of those contractors as to the appointment and removal of the reporters. The matter was referred to the Judiciary Committee to determine the legal relations of the House with the contractors who published the debates.

On January 17, 1867,[6] Mr. Ralph Hill, of Indiana, suggested the reporting of debates by reporters chosen by the House and the publication of the debates at the Government Printing Office, but the suggestion was not adopted.

The next step, in 1872,[7] was a law providing that "no person shall be employed as a reporter of the House without the approval of the Speaker of the House," and in accordance with this changed relation in 1874[8] the law recognized five "official reporters of the proceedings and debates of the House of Representatives." The Senate did not make this change, however, and to this day continues the practice of having the reporting of its debates done by contract.

On March 3, 1873,[9] the House agreed to the following:

> Whereas the present contract for the publication of the debates expires with this session; and whereas the sundry civil appropriation bill about to become a law provides that until a new contract be made the debates shall be printed by the Congressional Printer, but makes no provision for reporting, leaving each House to adopt such arrangement on that subject as it may deem best: Therefore,
>
> *Resolved,* That the reports of the House proceedings and debates shall be furnished to the Congressional Printer by the present corps of Globe reporters, who shall hereafter, until otherwise ordered, be officers of the House, and shall receive the same compensation now allowed to the official reporters of committees.

The Speaker[10] explained in this connection that the Speaker had always had control over the reporters.

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[1] See report of committee to examine the new Hall. First session Thirty-fifth Congress, Globe, p. 32.

[2] 13 Stat. L., p. 460.

[3] 12 Stat. L., p. 117.

[4] 12 Stat. L., p. 683.

[5] First session Thirty-ninth Congress, Journal, p. 96; Globe, p. 98.

[6] Second session Thirty-ninth Congress, Journal, p. 185; Globe, p. 532.

[7] Stat. L., p. 47.

[8] Stat. L., p. 5.

[9] Third session Forty-second Congress, Journal, pp. 582, 583; Globe, p. 2133.

[10] James G. Blaine, of Maine, Speaker.

On December 5, 1873,[1] the House by resolution set apart a room for the use of the official reporters. Before this they had written out their notes in the seats of Members and in other places.

On January 15, 1874,[2] at the time the appointment and removal of the official reporters was vested in the Speaker by rule, Mr. Speaker Blaine announced that he reappointed the existing reporters for this and subsequent Congresses, until removed for cause.

6960. The office of reporter of debates is created by resolution reported from the Committee on Accounts and agreed to by the House.— On December 18, 1903,[3] the following resolution was reported from the Committee on Accounts and agreed to by the House:

Resolved, That the Speaker of the House is hereby authorized to appoint an additional official reporter of debates of the House, at the rate of $5,000 per annum, the same to be paid from the contingent fund of the House until otherwise provided for by law.

6961. On May 15, 1890,[4] by a resolution reported from the Committee on Accounts the Speaker was authorized to appoint an additional reporter of the House, to be paid out of the contingent fund until other arrangement should be made.

6962. The Congressional Record is for the proceedings of the House only, and matters not connected therewith are rigidly excluded.—On February 25, 1897,[5] Mr. William E. Barrett, of Massachusetts, called attention to the following entry in the Record of the previous day:

During the reading of the bill Mr. Bryan entered the Hall and was loudly applauded by Members on the Democratic side.

And asked if it was not an improper thing to put in the Record.

The Speaker[6] said:

The Chair thinks it is a very improper thing to put in the Record. * * * The Chair will order it stricken out.

6963. While a message of the President is always printed in the Congressional Record, the accompanying documents are not permitted.— On January 21, 1896,[7] Mr. James D. Richardson, of Tennessee, rising to a question of privilege, called attention to the fact that the documents accompanying the message of the President relating to speeches of Ambassador Bayard had been printed in full in the Record.

The Speaker[6] said:

The Chair is informed that this was put in the Record by mistake of the printer. * * * Certainly, the criticism of the gentleman is entirely just. The matter ought not to have been printed as a part of the Record. It should have been printed as a document. And the Chair will direct that it be kept out of the permanent Record.[8]

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[1] First session Forty-third Congress, Journal p. 60; Record, p. 72.

[2] First session Forty-third Congress, Record, p. 681.

[3] Second session Fifty-eighth Congress, Journal, p. 76; Record, p. 387.

[4] First session Fifty-first Congress, Journal, p. 613.

[5] Second session Fifty-fourth Congress, Record, p. 2258.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Fifty-fourth Congress, Record, p. 834.

[8] A message of the President always appears in full in the Record.

6964. A Member is not entitled to inspect the reporter's notes of remarks not reflecting on himself, delivered by another Member and withheld for revision.—On June 16, 1894,[1] Mr. Joseph H. Walker, of Massachusetts, stated, as involving a question of privilege, that he had applied for a copy from the original notes of remarks delivered in the House, which request had been denied by the reporters, under the direction, as he was informed, of the Speaker of the House. He claimed that it was his right to have furnished him a copy from such notes.

The Speaker[2] stated that, while there was no rule of the House upon the subject, in his opinion when a Member withheld for revision his remarks, in which remarks was contained nothing personal to or reflecting upon another Member, such other Member was not entitled as a matter of right to be furnished a copy from such original notes, and that he had so advised the reporters in the instance referred to by Mr. Walker.

6965. A message of the President to the two Houses is printed in the proceedings of only one House.—On January 26, 1892,[3] the Senate ordered that whenever a message from the President should be printed in the House portion of the Record it should not be duplicated in the Senate portion.

6966. It is not considered courteous for one House to strike from the Record matter placed therein by permission of the other House.—On April 22, 1880,[4] the Senate passed a resolution striking from the Record "what purports to be a copyrighted argument of a Territorial Delegate, which appears in the Record of to-day, but which was not, in fact, delivered in the House of Representatives." But upon reconsideration it was decided that it would not be courteous for the Senate to strike from the Record matter placed there by permission of the House, so the resolution was withdrawn.

6967. No rule requires the official reporters to insert in full in the Record every resolution or other proposition offered by a Member, regardless of the attendant circumstances.

A Member may not, in a controversy over a proposed correction of the Record, demand the reading of the reporter's notes of the preceding day.

Although a Member in introducing a bill may read it in full to the House, yet it would not therefore appear in full in either the Journal or Congressional Record.

On January 27, 1885,[5] Mr. John D. White, of Kentucky, rising for the purpose of correcting the Journal, made complaint that a joint resolution which he had introduced on the previous day (H. Res. No. 319), "to abolish the office of Commissioner of Internal Revenue and the entire system of internal taxes," should have been printed in full in the Journal. He had read the resolution in full when he introduced it,[6] and declared that a proper report of what transpired would call for the printing in full of the resolution.

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[1] Second session Fifty-third Congress, Journal, p. 435; Record, p. 6418.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Fifty-second Congress, Record, p. 530.

[4] Second session Forty-sixth Congress, Record, p. 2630.

[5] Second session Forty-eighth Congress, Journal, pp. 354, 356; Record, pp. 1020, 1021, 1025.

[6] Bills and resolutions are now introduced by laying them on the Clerk's table.

The Speaker[1] said:

The Chair will state that on being applied to yesterday by the Chief Official Reporter for advice as to whether or not the joint resolution which was read by the gentleman from Kentucky should be printed in the Record, the Chair advised him that the joint resolution did not properly belong there and ought not, therefore, to go into the Record as a part of the proceedings of the House.

The Chair does not know of any rule which would authorize or require the Official Reporter to insert everything that may be read, either on the floor of the House by a Member himself or from the desk by the Clerk, in the hearing of the House. Unanimous consent is frequently asked of the House to insert such matters in the Record, and the Chair knows of no other way in which they can get there under the rules of the House, except that it has been the practice of the House, the Chair thinks, to insert in full resolutions of inquiry addressed to the heads of the Executive Departments of the Government. * * The Chair decides that, under the practice of the House, the joint resolution offered by the gentleman from Kentucky on yesterday is not such part of the official record of the proceedings of the House as can be entered in full either upon the Record itself or upon the Journal of the House; and the Chair decides that the gentleman has now no right to demand, as a matter of right, the reading of the official notes of the reporters of what transpired on yesterday; from which decision the gentleman from Kentucky appeals.

Mr. White having appealed, the appeal was laid on the table; and so the decision of the Chair was sustained.

6968. On October 4, 1893,[2] Mr. David H. Mercer, of Nebraska, submitted and asked unanimous consent for the consideration of the following resolution:

Resolved, That the Committee on Invalid Pensions be instructed to investigate whether employees of the Interior Department are stationed or traveling in the guise of detectives or otherwise for the purpose of obtaining or manufacturing testimony to the detriment of the old veterans who have applied to the Government for Pensions. * * *

Mr. James D. Richardson, of Tennessee, submitted the question of practice, whether the proposed resolution should be printed in the Record.

After debate the Speaker[3] directed the resolution to be printed in the Record, but stated that his action in the premises would not be taken as a precedent for the future action of the House.

6969. On December 6, 1895,[4] Mr. Joseph H. Walker, of Massachusetts, asked unanimous consent that a certain resolution, with accompanying petition, be read for the information of the House, referred to the Committee on Foreign Affairs, and printed in the Record.

Before the reading began Mr. Charles F. Crisp, of Georgia, made this point of order:

A gentleman sends up a resolution such as this—I do not even know what it is—and asks unanimous consent that it be read and printed in the Record. Of course the House is not aware of the contents of the paper until it is read. After it is read, it occurs to some gentleman that it is improper that it be printed, or, unless the mover of the resolution asks unanimous consent for consideration, that it should be considered. Now, Mr. Speaker, the question is, Does the resolution in such a case go into the Record? Having been read at the Clerk's desk, is it to be printed in the Record as part of the proceedings of the House?

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-third Congress, Journal, p. 125.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 47.

The Speaker[1] said:

The present impression of the Chair is that the determination of the question raised by the gentleman from Georgia must depend very much upon circumstances. There might be cases in which it would be essential that the resolution should be printed in order to explain and justify the proceedings of the House; but if objection was made before the proposition was actually read, then it seems to me it might be ruled out entirely. I do not, however, speak advisedly upon the question at this time. * * * In this case, inasmuch as the request is simply to have the resolution read to the House and printed in the Record, if, after the reading, objection is made, the Chair will understand that it is not to be

printed in the Record. That will dispose of this case unless some gentleman objects to the view of the Chair.

6970. The practice of the House does not require that in all cases the texts of bills considered shall be printed in full in the Record.—On February 6, 1903,[2] Mr. David A. De Armond, of Missouri, rising to a question of order, stated that the Record of the preceding day did not have in full the text of the bill (H. R. 17) "requiring all corporations engaged in interstate commerce to file returns," etc., which was on that day considered, although the Record did have in full the amendment in the nature of a substitute proposed by the Committee on the Judiciary. Mr. De Armond therefore contended that the Record should be corrected by the insertion of the text of the bill.

The Speaker pro tempore[3] said:

The mistake consists in printing in the Record, the substitute, not the omission of the other. The Chair will suggest that there is no rule requiring the text of a bill which has been read in the House to be printed either in the Journal or Record. It is not necessary or customary to print it in either of them. * * * The Chair will state that the universal practice is not to print these bills in the Record, but there is a special reason why this particular bill might be excepted, owing to the importance of the bill and the substitute. But that will be a matter for unanimous consent. The Record is made up in the usual way, except in inserting the substitute, which ordinarily would not have been inserted.

6971. It has been the practice to allow a Member, with the approval of the Speaker, to revise his remarks in the Record provided such revision does not affect the remarks of another Member.—On March 27, 1882[4] Mr. John D. White, of Kentucky, claiming the floor on a question of privilege, called attention to the fact that the Record did not contain certain passages of a colloquy which took place on the preceding day between Messrs. John E. Kenna, of West Virginia, and Henry G. Turner, of Georgia.

Points of order were made as to whether or not a Member might bring up such a matter as a question of privilege.

After debate the Speaker[5] said:

The Chair thinks ordinarily a correction of the Record, when a Member is himself affected by it, is a question of privilege. * * * The Chair was of the impression that some portion of the matter alleged to have been stricken out related to remarks made by the gentleman from Kentucky. The Chair has always held that Members should have the privilege of correcting the Record, either by having inserted that which had been omitted, or by striking out what was improperly included. Beyond that

[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-seventh Congress, Record, pp. 1785, 1786.

[3] John F. Lacey, of Iowa, Speaker pro tempore.

[4] First session Forty-seventh Congress, Record, pp. 2302, 2304.

[5] J. Warren Keifer, of Ohio, Speaker.

the Chair has never held that Members had any right to interfere with the remarks of others. In this case the Chair will state for the benefit of any person that it affects, that whatever was omitted from the Record was so omitted by consent of the Chair.

Mr. Samuel J. Randall, of Pennsylvania (ex-Speaker), said:

I desire to say a word in justification of the permission granted by the Chair to these two gentlemen to omit from the Record that which was of more or less personal character, affecting only themselves. It has been the uniform practice where personal controversies have occurred on the floor, to allow language used in debate by Members to be modified with the consent of the parties involved, provided that no change was made affecting anything spoken by another Member. * * * I think it quite wise that permission in such cases should be under the control of the Chair, and I believe the authority in this instance has been very properly exercised.

6972. A Member should not correct the notes of his own speech in such a way as to affect the remarks of an opponent in controversy without bringing the correction to the attention of that Member.

Instance wherein the House, on motion put and carried, corrected a Member's speech in the Congressional Record, so that it might be a faithful report of what he had actually said.

On December 13, 1897,[1] Mr. William P. Hepburn, of Iowa, stated to the House that in the remarks of Mr. James A. Norton, of Ohio, as published in the Record, the word "most" had been changed to "many" in the sentence which stood as follows in the reporter's notes:

By rules of law, by the regulations of your Pension Office, you have made most soldiers either stand upon the rejected roll or commit moral and legal perjury to reach the roll.

In the course of the debate the Speaker[2] said:

Will the gentleman permit the Chair to make a suggestion with regard to this matter? The whole difficulty seems to arise from the fact that a change is made in the stenographer's report, for, with that change made, the rest of the debate seem to be absolutely out of order and irrelevant. If the word "most" is not printed as having been used originally, then, of course, all the rest of the debate falls to the ground. If it is printed as having been used, then the subsequent debate explains it fully and completely. What we want and ought to have is a record of what took place. Of course there are a great many difficulties about revising the debates for the Record. Every Member does revise when he sees occasion and when some other Member is not concerned, but the best practice would seem to be that where a debate has taken place and another Member is concerned, if a speaker desires to change a word the change should be made with the knowledge of the other gentleman who participated in the debate. Unless that rule is observed, we ought to have the reporters' record unchanged. The Chair submits this as, perhaps, a solution of the difficulty. In this case even if the word "most" is printed as it appears in the stenographer's report, the debate goes right on and explains it, but if the word "many" is substituted for "most," then the subsequent debate seem to be irrelevant.

That is one of the difficulties arising from not printing the debate as it occurred, whenever there is any dispute. * * * It has always seemed to the Chair that when the Record was to be corrected and when there was a controversy upon a particular point, either the correction should be made with the consent of the other Member or Members participating, or should not be made at all. In the latter case, the Member who feels aggrieved and desires to change the Record has always the right to come to the House and have it changed; but where he changes the stenographer's minutes and prints something else different from what was said, then the subsequent debate will seem to have taken place under an entire misapprehension; which is unfair to the other persons participating in the debate. * * * We all know how frequently a wrong word comes to our tongues when we are in the midst of extemporaneous speech, and as long as the changing of any such expression does not affect anybody else the

[1] Second session Fifty-fifth Congress, Record, pp. 120, 129.

[2] Thomas B. Reed, of Maine, Speaker.

right to correct it ought to be reserved. The only reason for withholding the privilege of making any such correction is when there may arise some such question as the present. The Chair thinks, however, the whole debate in this case explains itself.

The House, by a vote of 137 yeas to 121 nays, adopted a resolution correcting the printed copy of Mr. Norton's remarks, so that the word "most" should be retained instead of "many."

6973. A Member having so revised his remarks as to affect the import of words uttered by another Member, the House corrected the Record.— On June 29, 1906,[1] Mr. John Dalzell, of Pennsylvania, called attention to the fact that Mr. Henry A. Cooper, of Wisconsin, had so revised his remarks in the Record as to modify the effect of certain words in reply uttered by himself; and thereupon moved to strike out the remarks of Mr. Cooper as printed in the Record and insert the words of the reporter's notes.

After debate, this motion was agreed to by the House.

6974. The House may not strike from the Record the remarks of a Member made in order.—On February 1, 1878,[2] Mr. John H. Baker, of Indian made certain charges against the Doorkeeper of the House, presenting certain affidavits reflecting on his character, which were made a part of the speech.

After action on the charges, Mr. Charles C. Ellsworth, of Michigan, moved that the affidavits, which were ex parte, be stricken from the record of debates. This motion was agreed to, but was subsequently reconsidered.

Thereupon Mr. Baker protested that the affidavits were a part of his speech, made on the floor in support of his motion, and that a majority on the floor had no right to expurgate the Record, thus saying by resolution what sentiments a Member should utter on the floor of the House.

The Speaker[3] said:

> The Chair thinks that the position taken by the gentleman from Indiana * * * is the correct one, that the House can not eliminate from the remarks of a Member what has been permitted to be made part of his remarks in order.

No appeal was taken from this decision, but Mr. James A. Garfield, of Ohio, said that the decision seemed just to all concerned, and that in all his service on the Committee on Rules he remembered but two instances where the House had struck from the Record what had been said, and in each case it was done because the words were spoken against order.

6975. Words spoken by a Member after he has been called to order may be excluded from the Congressional Record by direction of the Speaker.—On June 29, 1864,[4] the House was considering a bill relating to representation from the rebellious States. Mr. Jacob B. Blair, of West Virginia, had the floor, when the point was made that he was not proceeding in order.

The Speaker[5] said:

> The Chair will say to the gentleman from West Virginia and to the House that if gentlemen insist upon speaking after they have been decided to be out of order he will be compelled at this stage of the session to exercise the power which has been vested in him to enforce order.

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[1] First session Fifty-ninth Congress, Record, pp. 9687–9690.

[2] Second session Forty-fifth Congress, Journal, p. 339; Record, pp. 708, 715–717.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Thirty-eighth Congress, Globe, p. 3390.

[5] Schuyler Colfax, of Indiana, Speaker.

Mr. Robert Mallory, of Kentucky, expressed the hope that the Chair would direct reporters of the Globe not to take down anything a Member might utter while speaking in defiance of the ruling of the Chair.

The Speaker said that that was the rule [1] adopted in the last Congress, but it had not been before suggested in this Congress.

Mr. William H. Wadsworth, of Kentucky, made the point that the rules permitted the Chair to decide questions as they arose. He objected to the Chair telling the House how he was going to decide questions in the future that had not arisen.

The Speaker said he would respond to the gentleman frankly that he had the right to state his construction of the rules, and to notify gentlemen in advance that no one could complain of partiality.

6976. On August 15, 1876, [2] Mr. Horace F. Page, of California, saying that he arose to a question of privilege, stated that in the appointment of the committee just announced by the Chair to visit California and make inquiry in regard to Chinese immigration the wishes of neither the gentleman from Nevada [Mr. William Woodburn] nor himself had been consulted, and that——

The Speaker pro tempore [3] said that this was not a question of privilege, and that the gentleman was out of order.

Mr. Page, amid the vigorous rapping of the gavel and loud cries of "Order," continued his remarks for some moments.

The Speaker pro tempore said:

> The remarks of the gentleman from California [Mr. Page] are entirely out of order. This is no question of privilege. The Chair directs that no language which has been spoken out of order and so ruled by the Chair be taken down by the reporters [4] for insertion in the official proceedings.[5]

6977. On May 27, 1896,[6] Mr. Omer M. Kem, of Nebraska, rising to a parliamentary inquiry, asked if remarks made by gentlemen on the floor out of order were entitled to go into the Record when objection was made.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the Record was not before the House, and that the gentleman was not charged with any duty regarding it until the next morning.

The Speaker [7] said:

> The Chair is obliged to say that the question of what goes into the Record is somewhat of a disputed point. Whatever is presented as a question of privilege and as a part of the proceedings of the House ought to go into the Record, but what is said after the question has been ruled upon by the Chair the Chair thinks ought not to go into the Record.

6978. Mr. Speaker Colfax held, on June 11, 1866,[8] that the Globe reporters were to report the remarks made by Members out of order. He said that the pre-

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[1] The Journals of the Thirty-seventh Congress do not show the adoption of such a rule as is referred to, and the reference seems to be to the practice of the House in such cases during that Congress.

[2] First session Forty-fourth Congress, Record, p. 5697.

[3] Milton Sayler, of Ohio, Speaker pro tempore.

[4] On May 31, 1882 (first session Forty-seventh Congress, Record, p. 4397), Mr. Speaker Keifer held in a similar case: "The remarks made out of order will not appear in the Record."

[5] A question relating to the correctness of the Record involves a question of privilege.

[6] First session Fifty-fourth Congress, Record, p. 5802.

[7] Thomas B. Reed, of Maine, Speaker.

[8] First session Thirty-ninth Congress, Globe, p. 3089.

vious Congress had adopted a resolution that they should not do so, but no such resolution had been adopted in the present one, so the remarks would be reported.

6979. A Member having uttered disorderly words on the floor without objection, the House was not thereby precluded from action when, after being withheld for revision, the words were printed in the Record—In the Congressional Record of September 14, 1890, Mr. Robert P. Kennedy, of Ohio, published a speech which he had made on the floor of the House on September 3, and which contained certain unparliamentary references to the United States Senate.

6980. On September 15,[1] Mr. Benjamin A. Enloe, of Tennessee, claiming the floor for a question of privilege, proposed the following resolution:

Resolved, That the Clerk of the House of Representatives be, and he is hereby, directed to communicate to the Senate the fact that the House reprobates and condemns the unparliamentary language of Hon. Robert P. Kennedy, a Representative from the State of Ohio, published in the Congressional Record of September 14, 1890, purporting to be a speech delivered on the floor of the House September 3, 1890, in which revised and amended speech he repeats his impeachment of honesty of Senators individually and of the Senate as a body.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that this resolution did not come in here as a matter of privilege under the circumstances which surrounded it.

Whenever the gentleman from Ohio [Mr.Kennedy] had proceeded without interruption to the close of his speech and the House had adjourned, that was the end of any point of order against the character of the utterances contained in that speech. He could not be called in question afterwards; for the language of the rule of the House is that, unless the language is taken down and objection is made at the time, the Member shall not thereafter be called to account for his utterances.

Mr. Grosvenor referred to the rules of the House which provide in section 5 of Rule XVI:

5. If a Member is called to order for words spoken in debate, the Member calling him to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the House: but he shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened.[2]

Mr. Enloe replied that Mr. Kennedy might not be censured for his utterances on the floor; but he had by his publication of the speech in the Record repeated the offense.

In the debate, which continued on September 16,[3] it was assumed that a certain revision had been made by Mr. Kennedy in his remarks as actually uttered; but that this revision was in the nature of lessening the severity of the language.

Mr. Thomas M. Bayne, of Pennsylvania, suggested an amendment providing for striking out the speech from the permanent Record.

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[1] First session Fifty-first Congress, Record, pp. 10068, 10072.

[2] Jefferson's Manual, in Chapter XVII, also refers to English precedents which, however, refer to a time before legislative proceedings were reported: When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. (2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.)

[3] Record, pp. 10100–10109.

The Speaker[1] entertained the resolution as a question of privilege.

The Chair would not be understood as deciding that a question of this character had precedence over an election case except under the peculiar circumstances in which this has been brought up. The Chair states that simply as a matter of preliminary consideration.

There can be no doubt that legislative proceedings dependent upon two branches—two coordinate branches—would be very much impeded if personal and improper reflections were allowed in the one body on the Members of the other. This fact is so plain, so well established and understood, that it seems unnecessary to say a word in regard to it. It is founded upon that principle which causes the Members of the House of Representatives to speak of each other and to address each other in debate by a phrase rather than by name. It is intended as far as possible to keep personal feeling out of public legislation, and the Chair is very glad, not only for the advantage of the relations existing between the House and Senate, but for the advantage of the relations of the Members themselves to each other and to the Chair, that this question should be passed upon in such manner as will make an impression upon us all.

The Speaker held the said resolution to be before the House for present consideration and the pending question to be on its adoption.

The House, by a vote of yeas 124, nays 53, referred the whole subject to the Committee on the Judiciary.

On September 24, 1890,[2] Mr. John W. Stewart, of Vermont, reported from that committee resolutions expressing disapproval of the language as unparliamentary, and directing that the speech be excluded from the permanent Record, it being impracticable to separate the unparliamentary language.

The House agreed to the resolutions, yeas 151, nays 36.

6981. A Member having printed his speech after withholding it for revision, the House struck from it unparliamentary portions, although no question had been raised when they were uttered on the floor.

Denunciation of the spirit in which a Member had spoken was held out of order as a personality in debate.

On April 13, 1906,[3] Mr. Augustus P. Gardner, of Massachusetts, claiming the floor for a question of privilege, offered the following resolution:

Whereas on the 10th day of April, 1906, in a speech printed this morning in the Record, the gentleman from Kentucky [Mr. Hopkins] contrary to the law of the House, has embodied the following sentences: "A few days ago Mr. Bennet of New York." "The effort of my friend, though covertly designed, is the first show of their influence in this body. Again, on last Wednesday he showed his interest in the steamship companies by offering and securing the passage through this House of a joint resolution authorizing the admission of Fannie Diner, a pronounced idiot." "The strange feature about this case is that the gentleman from New York studiously concealed these facts from this House or this resolution would never have passed." "The gentleman has a perfect right to standby the ship companies, but he has no right to abuse the confidence of this House by suppressing the truth in his effort to serve them. So completely was this House deceived that my friend Mr. Goldfogle wanted to extend the resolution to cover all such cases and let in all idiots." "Again, on last Friday my friend, feeling that he had scored a point in the interest of the ship companies in relieving them of the embarrassing situation the Fannie Diner case had placed them, took the floor of this House in open opposition to restricting immigration, and in an argument evidently in the interests of the steamship companies, made to delude this House, finds himself in the midst of a mass of contradictions too patent to deceive anyone." "Turning to my friend's first speech, who, while trying to play both sides of this question;"

Resolved, That the above sentences be stricken from the Record.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Record, p. 10381.

[3] First session Fifty-ninth Congress, Record, pp. 5220–5231.

In the course of the debate Mr. Henry M. Goldfogle, of New York, said:[1]

Mr. Speaker, the gentleman from Kentucky on two occasions during the session of this Congress undertook to deliver speeches upon the immigration question, and while he attempted to so frame his remarks that it might be understood that he was opposed only to the admission of undesirable aliens, yet one reading his speeches could readily observe that through it there ran the spirit of a bigot and a know-nothing. I believe the sentiment of this House is opposed to that spirit, which on an occasion heretofore I pronounced un-American. I regret that such a spirit found its way——

At this point Mr. Ollie M. James, of Kentucky, called Mr. Goldfogle to order. The Speaker[2] said:

The Chair sustains the point of order. The gentleman from New York will not indulge in personalities and will proceed in order.

The debate having proceeded, Mr. John S. Williams, of Mississippi, said that—

the question before this House now upon ultimate analysis was this: Whether or not the gentleman from New York [Mr. Bennet] did or did not deceive the House in getting unanimous consent for the passage of this resolution?

Mr. Gardner, of Massachusetts, raised a question of order—

that the gentleman is not speaking to the resolution, which objects to language because it is unparliamentary.

The Speaker said:

The Chair will say in reply to the point of order that the remarks to which the gentleman objected, made by the gentleman from Mississippi, are not of themselves, from a parliamentary standpoint, objectionable. As to what may be the opinion of the gentleman from Mississippi as to what is involved in the controversy the Chair can not rule as to its wisdom or unwisdom.

The debate having proceeded again, Mr. Hopkins, of Kentucky, said:

As to my friend, Mr. Bennet, I can not say so much, for, sir, after two hours of debate here I am only more convinced that the statements I made were the reasonable and natural deductions of his conduct, and that I was right in making them.

Mr. Sereno E. Payne, of New York, said:

Mr. Speaker, I make the point of order——

The Speaker said:

It is the duty of the Chair to say to the gentleman, in the opinion of the Chair, his remarks are not in order under the rules of the House, and the gentleman will please proceed in order.

Mr. Payne insisted that Mr. Hopkins should not proceed.

The Speaker said:

The gentleman will please take his seat and await the pleasure of the House.

Mr. David H. Smith, of Kentucky, moved that Mr. Hopkins be permitted to proceed in order.

This motion was agreed to.

After further debate the resolution offered by Mr. Gardner was agreed to, yeas 165, nays 91.[3]

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[1] Record, p. 5223.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Mr. Hopkins's speech as expurgated by the House appears on page 5014 of the Record.

6982. It is improper for a Member to have published in the Record the individual votes of Members on a question of which the yeas and nays have not been entered on the Journal.—On March 13, 1894,[1] Mr. Charles H. Grosvenor, of Ohio, presented, as involving a question of privilege, that Mr. Morse had on the preceding day, by way of a proposed correction of the record of the proceedings of Saturday last, stated and caused to be published in the Congressional Record the names of certain Members who had voted affirmatively on a question which had been pending and upon which the yeas and nays had not been demanded by one-fifth of the Members.

Mr. Grosvenor made the point that to so indicate the names of Members voting was a violation of the privileges of Members.

The Speaker[2] expressed the opinion that such indication of the names of Members voting was improper.

6983. The Speaker has no authority over the Congressional Record, but the House may correct it in any manner it may please.—On June 27, 1884,[3] Mr. Edward K. Valentine, of Nebraska, claiming the floor on a question of privilege, stated that Mr. William McAdoo, of New Jersey, had printed in the Record, as part of a speech purporting to have been delivered on a subject relating to the Soldiers' Home, a statement that one of a number of alleged land monopolists was Senator John A. Logan, who was alleged to own 80,000 acres. Mr. Valentine proposed to correct the statement.

Messrs. William S. Holman, of Indiana, and Richard P. Bland, of Missouri, having raised points of order, the Speaker,[4] said:

The Chair does not think it a matter of privilege merely to correct an erroneous statement contained in the Record. If the gentleman has any resolution or proposition to submit to the House he can do so, and then the Chair will decide whether it is a question of privilege of not. * * * The Chair thinks that when a Member is granted leave to print he may print anything which he might have said in order on the floor of the House. The gentleman from Nebraska, Mr. Valentine, so far has not disclosed anything which would have been out of order if spoken by a Member on the floor. * * * The Chair does not understand the language to refer to the gentleman in his Senatorial capacity, but the name is simply mentioned with others in the discussion of a general subject. * * * The Chair itself has no more power over the Record than any other Member of the House. If a resolution were offered to expunge certain matter from the Record, then the House of course could act upon that; but the Chair can not decide whether any particular matter should or should not be in the Record.

Mr. Joseph G. Cannon, of Illinois, then presented as a question of privilege the following resolution:

Resolved, That the Record of June 25, 1884, be so amended that it may show that the speech purporting to have been delivered by Mr. McAdoo, of New Jersey, in which reference is made to Senator John A. Logan and others, was not actually delivered in the House, but was "printed" in the Record of the 27th of June instant.

Mr. William M. Springer, of Illinois, raised a question of order.

The Speaker said:

The House has the right to correct the Record in any manner it pleases. The Chair will therefore entertain the resolution.

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[1] Second session Fifty-third Congress, Journal, p. 244; Record, p. 2905.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Forty-eighth Congress, Journal, pp. 1578, 1581, 1582; Record, pp. 5702, 5703, 5742.

[4] John G. Carlisle, of Kentucky, Speaker.

On June 28 the resolution was laid on the table.[1]

6984. A question as to the authority of the Speaker over the Congressional Record.—On February 26, 1901,[2] the conference report on the naval appropriation bill had been disagreed to, and the House was considering motions relating to the Senate amendments to the bill, when Mr. John J. Lentz, claiming the floor on a question of privilege, alleged that the copy of a speech left by him with the Public Printer for publication in the Congressional Record had not been published, but had been delivered to the Speaker and by the latter delivered to Mr. Charles H. Grosvenor, of Ohio. Mr. Lentz thereupon raised a question as to the authority of the Speaker to do this.

The Speaker[3] said:

The attention of the Chair was yesterday called to the fact that a great abuse of the privilege of the House had been exercised by the gentleman from Ohio under the leave given him to print, and the Chair asked the young man who waits upon the Printing Office to hold the gentleman's remarks until the Chair could have an opportunity to glance over them; but amid the pressure of business of yesterday the Chair was unable to examine that and many other things left by Members upon his desk. Nor has he had time this morning; but not having the time the Chair only a short time ago, when the messenger came to him, told him to go ahead and print the gentleman's remarks, and if there was anything offensive or anything wrong it could be corrected by the House, which was the proper body to settle it. * * * The Chair will state to the gentleman that such matters have been repeatedly brought to the attention of the Chair, and by taking time and by getting the parties together who have been firing at each other in debate the matter has been fixed up. The Chair had an instance of that only last week, but the Chair had not in the closing hours time to attend to this thing.

This young man when he spoke to me about it, representing the Printing Office, was given the copy an hour or so ago. It was in the hands of the Government Printer when the matter was brought to the attention of the Chair. The Chair has not read a single word, but has given direction that it must take the usual course, and if there is anything in it that is censurable it is for the House to do that if it sees proper. * * * The Chair makes this ruling, that if anything further is to be done in this matter a distinctive proposition must be submitted to the House.

Mr. James D. Richardson, of Tennessee, thereupon offered this resolution:

Resolved, That the Speaker has no right to withhold from the Record the speech of a Member made on a general leave to print.

Mr. John F. Lacey, of Iowa, having raised the question of consideration, the House voted, yeas 118, nays 130, not to consider the resolution.

Mr. Richardson then offered the following:

Whereas the speech of Mr. Lentz, of Ohio, on the general deficiency bill, made in the House on Wednesday last, February 20, has been withheld from publication in the Congressional Record after the same was delivered to the Public Printer for publication by Mr. Lentz; and

Whereas said speech has been turned over to the Speaker of the House, who, it is alleged, has delivered same to a Member of the House for some purpose to the House unknown:

Resolved, That such action is hereby condemned by the House, and it is hereby ordered that said speech be delivered forthwith to the Public Printer for publication in the Record.

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[1] Journal, pp. 1581, 1582; Record, p. 5741.

[2] Second session Fifty-sixth Congress, Record, pp. 3092–3095.

[3] David B. Henderson, of Iowa, Speaker.

Mr. Lacey having again raised the question of consideration, the House refused, yeas 115, nays 128, to consider the resolution.[1]

6985. It is for the House and not the Chair to decide whether or not a copyrighted article shall be printed in the Congressional Record.—On March 27, 1900,[2] while the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. W. Jasper Talbert, of South Carolina, sent to the Clerk's desk to be read in his time a copyrighted article from a newspaper.

Mr. John F. Lacey, of Iowa, made the point of order that a copyrighted article might not be printed in the Congressional Record without the consent of the owner of the copyright.

After debate the Chairman[3] said:

The Chair can not pass upon the question whether or not a copyrighted article can be read here. He simply can act under the rules of the House, and if anybody makes objection to having the article read, he will ask the committee to decide whether or not they desire to have it read. * * * The Chair is perfectly clear on the subject. This is a question which the House must settle, and not the Chair. The Chair must therefore overrule the point of order. If the House prefers not to hear the article, not to have it published in the Record, that is for the House to determine, not for the Chair.

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[1] The Chair should undoubtedly be very reluctant to hold that he has any final supervision or control over the Record. While the subject is one where the limits of authority are not well defined, the trend of decisions indicates that whatever supervisory power exists has usually been exercised by the House rather than by the Speaker. In a few instances the Speaker has directed extraneous matters, not belonging properly to the record of debates, to be stricken out. (See section 6962 of this chapter.) He has also assumed the power to withhold from the Record words spoken by a Member after he had been called to order in debate. (See secs. 6975–6978 of this chapter.) In cases of alleged violations of leave to print the questions have been dealt with by the House itself (secs. 6979–6981 of this chapter), and Mr. Speaker Carlisle in one of these cases held that the Speaker did not have the determination of the matter. Mr. Speaker Keifer also disclaimed any control of the Record in a case where a member was alleged to have violated the privilege of extending his remarks.

Apparently there have been no decisions as to the right of the Speaker to examine speeches presented for the Record under a leave to print. That he would have no final power to pass upon them and accept or reject seems evident. But it is not so evident that he does not, as the first officer of the House, have a duty in cases where matter is presented involving a breach of the privileges of the House.

Take an instance. The rules of the House provide very carefully against any debate which reflects on anything said in the Senate, and the Speaker is especially enjoined by the rules to "interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder." (Jefferson's Manual, p. 158.) In a case where a Member on the floor devoted a speech to reflections on the Senate, the House, after the subject had been considered by the Judiciary Committee, expunged the speech from the Record.

Now, if a responsible officer or agent of the House or the Government Printer brings to the Speaker papers filed with the Printer and containing reflections on the other body, it would seem that the Speaker would be remiss in his duty if he should not bring those papers to the House for its judgment before allowing them to be printed. Can it be that the first officer of the House may know of a contemplated breach of the privileges of the House and be powerless to delay the act until the House can have the opportunity to pass judgment? The Chair may call from the floor a Member who to him appears to be transgressing the rules of privilege. Does the Member have any greater latitude because the House has extended to him the courtesy of printing in place of his right to be heard on the floor?

[2] First session Fifty-sixth Congress, Record, pp. 3367, 3368.

[3] James S. Sherman, of New York, Chairman.

6986. The Committee of the Whole, having no control over the Congressional Record, reported to the House an alleged breach of privilege involved in the reading of an anonymous letter in the committee, and the House struck the letter from the Record.—On February 11, 1901,[1] during general debate on the diplomatic and consular appropriation bill (H. R. 13850) in Committee of the Whole House on the state of the Union, Mr. William Sulzer, of New York, read as a part of his remarks an anonymous letter containing insinuations against the integrity of a former official of the Government.

At the conclusion of the reading of the letter, Mr. William S. Knox, of Massachusetts, claiming the floor on a question of privilege, moved to strike the letter from the Congressional Record.

Mr. James D. Richardson, of Tennessee, made the point of order that the committee might not strike out any portion of the Record.

The Chairman[2] sustained the point of order.

Later, on the same day,[3] the bill was concluded and Mr. Robert R. Hitt, of Illinois, had moved that the committee rise and report the bill to the House with a favorable recommendation, when, at the request of Mr. Knox, he withdrew the motion.

Thereupon Mr. Knox moved that when the committee should rise the Chairman should report to the House the alleged infringement of the privileges of the House by the gentleman from New York, by causing to be read a letter referring to Perry S. Heath, which letter was scandalous, and which was called to the attention of the committee by the gentleman from Massachusetts, with a motion that the letter be stricken from the Record.

Mr. James D. Richardson, of Tennessee, made a point of order against the proposed action, on the ground that the words objected to had not been taken down at the time, as required by the rule.

After debate the Chairman held:

> The Chair understands the situation to be this: The gentleman from Illinois had made a motion that the committee rise, and that motion was entitled to precedence. At the request of the gentleman from Massachusetts he withdrew it, and there being no other business before the committee, the motion which has been read was in substance made by the gentleman from Massachusetts. It is not the function of the Chair to decide upon the character of the letter, whether it was in order or out of order, because no ruling of the Chair was invoked at the time the letter was read. It is not the function of the Chair to decide what action the House may take upon the report, if any is made, by direction of the committee. There seems to be no precedent on the subject exactly in point, but, for the reasons so clearly stated by the gentleman from Pennsylvania, which the Chair will not repeat, it seems to the Chair that the motion is in order. It seems that there is no other way in which a fact may be reported to the House except through the chairman of the committee, under the direction of the committee itself. The Chair therefore overrules the point of order. * * * The Chair will say to the gentleman from Tennessee that if the Chair understood the gentleman from Tennessee aright, it was the understanding of the Chair that if this motion should be agreed to it would be the duty of the Chair to report exactly the occurrence—how and when the letter was read, and how and when it was objected to by the gentleman from Massachusetts.

The motion offered by Mr. Knox was then agreed to, 77 ayes and 50 noes, on a vote by tellers.

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[1] Second session Fifty-sixth Congress, Record, p. 2279.

[2] William H. Moody, of Massachusetts, Chairman.

[3] Record, p. 2285.

The committee having voted to rise and report the bill with a favorable recommendation, the Speaker resumed the chair, and the chairman of the Committee of the Whole reported as follows:

Mr. Speaker, the Committee of the Whole House on the state of the Union, having had under consideration House bill 13850, has directed me to report the same to the House with one amendment, with the recommendation that the amendment be agreed to and that the bill as so amended do pass. The Committee of the Whole House on the state of the Union has directed me to make further report to the House in accordance with a resolution which was adopted by that committee in the following words:

"That when the committee rise, the chairman report to the House the alleged infringement of the privilege of the House by the gentleman from New York by causing to be read a letter referring to Perry S. Heath, which letter was scandalous, and which was called to the attention of the committee by the gentleman from Massachusetts, with a motion that the letter be struck from the Record."

Mr. Speaker, in the course of the debate under the five-minute rule in the Committee of the Whole House on the state of the Union the gentleman from New York [Mr. Sulzer] was recognized, and there was read from the Clerk's desk in his time a certain letter, referred to in the motion which I have reported to the House. At the conclusion of the reading of the letter, the gentleman from New York, still being entitled to the floor, said, "Now, Mr. Chairman," at which point he was interrupted by the gentleman from Massachusetts [Mr. Knox], who said:

"Mr. Chairman, I rise to a question of the privilege of the House."

The gentleman from Massachusetts then, at the request of the Chair, stated the question of privilege which he desired to raise. It was that the letter which had been read affected the personal character of citizens of the United States. He closed his statement of the question of personal privilege by a motion to strike the letter from the Record. The gentleman from Tennessee [Mr. Richardson] made the point of order that the Committee of the Whole House on the state of the Union had no jurisdiction over the Record, which point of order was sustained by the Chair.

The Speaker, having stated to the House the report of the Chairman of the Committee of the Whole, said that the question would be first put on the bill which had been reported with a favorable recommendation. The bill was then acted on through its various stages, and finally passed.

A quorum having failed the House adjourned.

On February 12,[1] the report of the Committee of the Whole on the subject of the letter was called up as unfinished business, and Mr. Knox proposed to offer a resolution declaring the letter an infringement of the privileges of the House and a violation of the propriety of debate, and striking it from the Record.

The Speaker[2] said:

The Chair desires to call the attention of the gentleman from Massachusetts to this point. The Committee of the Whole House reported to the House a resolution containing a motion that the letter be struck from the Record. That is the matter, in the opinion of the Chair, which is before this House: and the Chair has very grave doubts about the propriety of offering this resolution or submitting it to the House, considering the fact that the Committee of the Whole has laid bef ore the House, through the report of its Chairman, the resolution which was adopted in Committee of the Whole. * * * The Chair thinks that that puts the matter before the House. * * * The question is upon the motion to strike the letter from the Record. That was the question before the House. The Chair is of opinion that the rule requiring a resolution to precede consideration where the dignity of the House is involved is satisfied when the Committee of the Whole lays a resolution before the House. If this were an individual matter, of course the gentleman could be heard, and debate would proceed unless cut off by the previous question, or until the House was ready to pass upon it. That question, in the judgment of the Chair, is not presented now.

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[1] Journal, p. 222; Record, pp. 2320, 2321.

[2] David B. Henderson, of Iowa, Speaker.

After debate the House agreed to the motion that the letter be stricken from the Record.

6987. While the Committee of the Whole does not control the Record, the Chairman, in the preservation of order, may direct the exclusion of disorderly words spoken by a Member after he has been called to order.

The Speaker can not rule in regard to what occurs in Committee of the Whole unless the point of order is reported to the House for decision.

The Speaker recognizes only reports from the Committee of the Whole, made by the Chairman thereof.

On May 26, 1906,[1] the diplomatic and consular appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William W. Rucker, of Missouri, was called to order for referring to the proceedings of the Committee on Election of President, Vice-President, and Representatives in Congress.

A motion was then made and agreed to that Mr. Rucker be permitted to proceed in order.

Soon thereafter Mr. Rucker again referred to proceedings in the committee.

Mr. Sereno E. Payne, of New York, made a point of order.

The Chairman[2] sustained the point of order, and directed the stenographers to strike from the Record the words spoken out of order.

Mr. Charles L. Bartlett, of Georgia, raised the question that while the Speaker might have control of the Record, the Chairman of the Committee of the Whole did not.

The Chairman said:

The Chair has jurisdiction over matters spoken in the Committee of the Whole.

Later Mr. Champ Clark, of Missouri, rising to a parliamentary inquiry, questioned the right of the Chairman to order stricken from the Record the remarks made by Mr. Rucker just before Mr. Olmsted rose to the question of order.

The Chairman said:

The rule gives the Chairman the right to enforce order in the Committee of the Whole, and such remarks as were made after the gentleman was called to order and after he was ruled out of order should be left out of the Record—that is, such remarks as were out of order after the gentleman was called to order. * * * The Speakers have always exercised it in the House, and the rule gives the Chairman of the Committee of the Whole the same right to enforce order in committee. * * * The Chair desires to call the gentleman's attention to Hinds's Parliamentary Precedents, page 884:

"Mr. Kem, of Nebraska, rising to a parliamentary inquiry, asked if the remarks made by the gentleman upon the floor, out of order, were entitled to go into the Record, when objection was made. Mr. Grosvenor, of Ohio, made the point of order that the Record was not before the House and that the gentleman was not charged with any duty regarding it until the next morning. The Speaker said:

"'The Chair is obliged to say that the question of what goes into the Record is somewhat of a disputed point. Whatever is presented as a question of privilege and as a part of the proceedings of the House ought to go into the Record, but what is said after the question has been ruled upon by the Chair the Chair thinks ought not to go into the Record.'"

* * * The gentleman from Missouri misunderstood the Chair, because the Chair distinctly said that what was said by the gentleman from Missouri after the point was made and sustained should not go into the Record.

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[1] First session Fifty-ninth Congress, Record, pp. 7469, 7472, 7473.

[2] Charles Curtis, of Kansas, Chairman.

Later, after the Committee of the Whole had risen and the Speaker had resumed the chair, Mr. Clark, claiming the floor for a question of privilege, stated what had occurred in Committee of the Whole.

The Speaker [1] said:

The Chair has no knowledge of what took place in the Committee of the Whole House on the state of the Union. The Committee of the Whole House on the state of the Union is a committee consisting of all the Members, and the Chair has no means of ascertaining what took place in that committee except upon a report by the Chairman of that committee to the House. The Chair knows nothing from that report. The Chair has a precedent that is in hand, which will be found on page 403 of the Manual. It is as follows:

"The Speaker can not rule in regard to what occurs in Committee of the Whole unless the point of order is reported to the House for decision."

Mr. Clark stated that he was making such a report.

The Speaker replied:

But some other Member might disagree with the gentleman. The gentleman from Missouri bears no mission from the Committee of the Whole House to report to the House what happened there.

Mr. Clark thereupon cited the following from the Manual:

The Committee of the Whole, having no control over the Congressional Record, reported to the House an alleged breach of privilege involved in the reading of an anonymous letter in the committee, and the House struck the letter from the Record.[2]

The Speaker replied:

Precisely, but the gentleman is hoist by his own—* * * What the gentleman has just read is exactly in point as sustaining the Chair. * * * There is no report touching this matter made from the committee to the House, and therefore there is nothing upon which to base action.

6988. It is for the House and not for the Chairman of the Committee of the Whole to determine the privileges of a Member under a general leave to print in the Record.—On February 24, 1899,[3] while the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Henry U. Johnson, of Indiana, having completed his remarks to the committee, addressed to the Chairman this parliamentary inquiry:

By virtue of the general leave given by the House to extend remarks in the Record in the debate, have I not the right to put the whole of the address that the President of the United States delivered before the Home Market Club at Boston, in the Record with my speech?

The Chairman [4] said:

The Chair desires to say to the gentleman from Indiana—and the Chair hopes the gentleman will give his attention—that the House and not the committee gave gentlemen who address the committee on this bill the privilege to extend their remarks in the Record. Each gentleman can exercise his judgment upon that, and it is a matter for the House to determine when those remarks are printed, and not for the chairman of the committee.

6989. The amendment of the Record is not in order pending the approval of the Journal.—On May 29, 1906,[5] a motion to amend the Journal

[1] Joseph G. Cannon, of Illinois, Speaker.

[2] This paragraph covered a case wherein a motion had been made to strike something from the Record, not to an action of a Chairman in enforcing order in debate. See section 6986 of this chapter.

[3] Third session Fifty-fifth Congress, Record, p. 2316.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Fifty-ninth Congress, Record, p. 7624.

made by Mr. Marlin E. Olmsted, of Pennsylvania, was pending, when Mr. Champ Clark, of Missouri, asked if the effect of the motion would be to amend the Congressional Record also.

The Speaker [1] replied that it would not.

Thereupon Mr. Olmsted proposed to include the amendment of the Record in his motion.

The Speaker held that such a proposition would not be in order.

6990. The practice of inserting in the Record remarks not actually delivered on the floor has grown up by consent of the House.—On May 23, 1860,[2] an attempt was made to provide that the reporters of the Globe should not print anything spoken by a Member who had not first been recognized by the Speaker, and that nothing said in the House and declared to be out of order should be reported, nor anything not actually said in debate. This proposition was defeated, yeas 75, nays 82.

6991. On July 20, 1867,[3] the House gave Members leave to print speeches that they had been unable to deliver as part of the debate in the Globe on the President's veto of the bill relating to the more efficient government of the rebel States.

6992. On May 20, 1852,[4] a complaint was made that a Member had inserted in the Globe a speech that he did not make on the floor of the House, and a demand that the speech should be distinguished in some way from speeches actually delivered. Nothing was done about it, however.

6993. On December 29, 1852,[5] complaint was made that a Member had printed as part of the proceedings of the House a speech which he had not delivered. It was stated at the time that the custom had been for Members to print undelivered speeches as part of the Appendix, but not as part of the proceedings. The result of the discussion was the adoption of a resolution forbidding the reporters to insert in the Globe as part of the proceedings of the House speeches not made in the House, unless by leave of the House. A proviso was also adopted that nothing in this arrangement should prevent any Member correcting or revising the reporters' notes.

6994. On December 23, 1884,[6] in the Senate, the abuses of the leave to print in the Congressional Record were the subject of an interesting debate.

6995. In 1870,[7] the Senate sent to the House a concurrent resolution to prohibit the printing of the Globe of speeches not actually delivered. The House referred it to the Committee on Rules.

6996. On January 22, 1874,[8] the House received from the Senate a concurrent resolution providing that it should be unlawful for the Printer to publish in the Record any speech or portion of speech not actually delivered in the Senate or House. The House referred the resolution to the Committee on Printing.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Thirty-sixth Congress, Journal, p. 908; Globe, p. 2284.

[3] First session Fortieth Congress, Globe, p. 757.

[4] First session Thirty-second Congress, Globe, p. 1419.

[5] Second session Thirty-second Congress, Journal, pp. 90, 91; Globe, pp. 169–173.

[6] Second session Forty-eighth Congress, Record, p. 422.

[7] Second session Forty-first Congress, Journal, p. 417; Globe, p. 1457.

[8] First session Forty-third Congress, Journal, pp. 288, 296.

6997. The House and not the Speaker determines what liberty shall be allowed to a Member who has leave to extend his remarks in the Record.— On February 27, 1899,[1] Mr. Henry U. Johnson, of Indiana, rising to a parliamentary inquiry, stated that leave had been granted to Members participating in the debate on the army appropriation bill "to extend their remarks in the Record," and he desired to know whether or not that leave would permit a Member who, during debate in Committee of the Whole, submitted some criticisms on the address of the President recently delivered at the Home Market Club in Boston to incorporate the address of the President into his remarks in the Record?

The Speaker[2] said:

> The Chair does not like to pass upon a question of this sort in answer to a parliamentary inquiry, for the reason that he would be usurping the functions of the House. The Chair thinks the difficulty may be solved by the gentleman from Indiana asking unanimous consent of the House. Gentlemen will at once perceive that the House might be entirely willing that certain documents should be printed which had been criticized; but if a general rule were undertaken to be established, then by a little criticism on a book the whole book might be printed, a thing which the House has hitherto desired to avoid, although it has not always been successful.

6998. The House and not the Speaker decides whether or not a Member has exceeded the leave given him to print in the Record.

References to the practice of permitting Members to print in the Congressional Record speeches which they have not delivered on the floor.

On April 14, 1892,[3] Mr. Julius C. Burrows, of Michigan, called attention to the fact that nearly all of the chapters of a printed book entitled Protection or Free Trade had been incorporated in the remarks of Mr. Stone, of Kentucky, and other Members of the House published in the Congressional Record under the general leave-to-print remarks on the bill H. R. 6007; and submitted to the Speaker the question of order whether it was in order by virtue of such leave to print for Members to embody in their respective speeches the several parts of a printed book the author of which was not a Member of the House.

The Speaker,[4] in response to the question, stated it had always been a question to be determined by the House itself whether or not any gentleman under a leave to print has violated the rules or the practice that had prevailed in that respect. The extent to which a Member should print was not a matter for the Chair to determine.

Mr. Burrows then moved that there be omitted from the permanent Record the printed matter he had just indicated.

Mr. George W. Fithian, of Illinois, moved to amend the motion by striking out from the Record, on pages 3453 and 3454, a letter published in a speech of Mr. J. P. Dolliver over the name of R. G. Hall.

Mr. Burrows then withdrew his motion.

6999. On February 8, 1896,[5] Mr. George D. Perkins, of Iowa, on behalf of the Committee on Printing, called attention to the fact that under a general leave to

[1] Third session Fifty-fifth Congress, Record, p. 2472.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-second Congress, Journal, p. 144; Record, pp. 3299–3306.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] First session Fifty-fourth Congress, Record, pp. 1531, 1532.

print, which had specified that speeches should be such "as might ordinarily be delivered in the House, with such extracts as are usually read and belong to a speech, and not chapters from books, etc.," one Member had inserted a speech delivered by a Senator, while a second Member had inserted a speech delivered out of the House, in a distant part of the country, by another Member.

In the course of the debate the Speaker [1] said:

> It rests largely upon the good faith of Members what shall be printed under a general leave to print, and it is very possible that the particular cases which are made the subject of question on this occasion might readily be disposed of with the consent of the gentlemen who have put the speeches in the Record, the presumption being that they did not intend to violate the rule.

By unanimous consent the speeches were allowed to remain in the Record.

7000. On May 11, 1896,[2] Mr. George D. Perkins, of Iowa, of the Joint Committee on Printing, offered this motion:

> Mr. Perkins moves to strike out of the permanent Record the matter inserted by Mr. Joseph Wheeler, of Alabama, on Friday last, aside from the matter, according to the reporter's notes, delivered by him in his five minutes' time, said matter being on pages 5472, 5473, 5474, and 5475.

After debate the motion was agreed to by the House.

7001. A Member having obtained leave to print certain matter in the Record, and having inserted other matter, the House directed it to be stricken out.—On March 26, 1898,[3] Mr. Joseph W. Bailey, of Texas, moved to strike from the Record a portion of certain matter which had been inserted in the Record by Mr. Richmond Pearson, of North Carolina, by permission of the House granted on the preceding day.

On that day Mr. Pearson, having risen to a question of privilege, had stated that he had been charged with violating the franking privilege, and asked leave to insert in the Record the evidence of the untruthfulness of that charge. This consent was given.

When the evidence appeared in the Record there was included with it a newspaper axticle on a subject relating to the politics of North Carolina.

After debate the motion of Mr. Bailey was agreed to, and the extraneous matter was stricken out.

7002. The House quite generally stipulates, in granting leave to print, that it shall be exercised without unreasonable freedom.—In 1892 the leave to print in the House was taken advantage of for the insertion in the Record of entire books that had already been published and copyrighted. A volume of Henry George was one of the volumes thus printed. This abuse was the subject of debate in the House and Senate, and on April 19, 1892,[4] the House, for the purpose of stopping the practice for the time, adopted a resolution reported from the Committee on Rules revoking all leaves to print. It was the purpose of the House by this action to prevent further abuse of the privilege under existing

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-fourth Congress, Record, pp. 5123–5125.

[3] Second session Fifty-fifth Congress, Record, pp. 3245–3248.

[4] First session Fifty-second Congress, Record, pp. 3299, 3415, 3437.

leaves to print and in future to cause a stipulation to be made with each leave that no such abuse should be allowed.[1]

7003. On February 27, 1901,[2] the House had agreed to the conference report on the Military Academy appropriation bill, when Mr. Theobold Otjen, of Wisconsin, asked unanimous consent for leave to print remarks on the bill just passed.

This request was granted, subject to a condition imposed by Mr. George W. Steele, of Indiana, that the remarks should be confined to subjects included in the bill.

7004. A Member having, under leave to print, made charges against another Member, the House ordered the speech stricken from the Record.

In debating a resolution to strike from the Record disorderly language, a Member may not read the said language.

On March 21, 1904,[3] Mr. William P. Hepburn, of Iowa, claiming the floor for a question of privilege, presented this resolution:

Whereas Hon. Robert Baker, of New York, on March 18, 1904, obtained leave in the Committee of the Whole House on the state of the Union to insert remarks in the Record; and

Whereas under the leave so given he has printed as his remarks charges against a Member of this House in his representative capacity; and

Whereas the said charges against the character of a Member were not in order and were an abuse of the privilege of the House: Therefore,

Resolved, That the said remarks, extending on pages 3603, 3604, and 3605 of the Record of the date of March 18, 1904, be, and are hereby, expunged from the Record, and are declared not to be a legitimate part of the official debates of the House.

Mr. John S. Williams, of Mississippi, while admitting that certain portions of the remarks should be stricken out, contended that the whole speech should not go out; and was proceeding to read certain paragraphs which, he contended, should be allowed to remain.

Mr. Sereno E. Payne raised the question of order that matter which it was proposed to strike out might not be included in the Record in this indirect way.

The Speaker[4] held that the point of order was well taken.

After debate, during which Mr. Baker did not get the floor, Mr. Hepburn moved the previous question, which was ordered, yeas 130, nays 97.

Thereupon the resolution was agreed to.

Mr. Baker intimated dissatisfaction at not having had an opportunity to explain.

7005. When a Member, under leave to print, places in the Record that which would not have been in order if uttered on the floor, the House may exclude the speech in whole or in part.

An abuse of the leave to print gives rise to a question of privilege.

On February 22, 1870,[5] Mr. Henry L. Dawes, of Massachusetts, rising to a question of privilege, commented upon the fact that the printing of speeches in the

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[1] Leaves to print may regularly be granted by resolution of the House reported by the Committee on Rules and agreed to by the House, or by unanimous consent of the House without reference to the committee.

[2] Second session Fifty-sixth Congress, Record, p. 3159.

[3] Second session Fifty-eighth Congress, Record, pp. 3470–3474; Journal, pp. 462, 463.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Second session Forty-first Congress, Journal, p. 363; Globe, pp. 1481, 3849.

Globe that had not been delivered in the House—a practice unknown when he entered the House—had grown to considerable proportions, and offered the following:

Whereas Hon. William Mungen, a Member of this House, did, on the 19th instant, obtain unanimous consent of the House in Committee of the Whole to print in the Globe, as if delivered in the House, a speech not otherwise delivered, and did cause a speech to be so printed in the Daily Globe of the 20th instant as if delivered in the House and under its rules, alleged to be of such a character as to be an abuse of the privilege so obtained and a violation of the rules of the House: Therefore,

Resolved, That the Committee on Rules be instructed to inquire and report whether the said William Mungen, in causing the said speech to be printed as aforesaid, has not abused the privilege thus obtained, violated the rules of the House, and deserved its censure; and that in the meantime the said speech be excluded from the Congressional Globe.

Mr. Charles A. Eldridge, of Wisconsin, made the point of order that the Member from Ohio could not be called to order for the words, as business had transpired since then.

The Speaker [1] said:

The Chair overrules the point of order, because, even if it were good in other respects, the indulgence of the House had put it beyond the power of any Member to insist on the rules of order. The rules of the House could not then be enforced.

After debate the resolution was agreed to.

On May 26, 1870, Mr. James A. Garfield, of Ohio, from the Committee on Rules, proposed to report the following resolution, but as Mr. Mungen was not present deferred doing so. It does not appear that the matter was again taken up.

Resolved, That the speech on "The recognition of Cuba," inserted in the Daily Globe of February 20, 1870, under leave to print granted to Hon. William Mungen, of Ohio, contains remarks of a personal character prohibited by the rules of the House, and not proper to be inserted in the Congressional Globe, and the publishers of the Globe are hereby directed to exclude it.

7006. On April 14, 1871,[2] Mr. George C. McKee, of Mississippi, called attention to a printed speech of Mr. A. E. Garrett, of Tennessee, wherein was incorporated an extract from a newspaper abusive of Adelbert Ames, a Member of the United States Senate from Mississippi.

Thereupon Mr. James A. Garfield, of Ohio, offered the following:

Whereas A. E. Garrett, a Member of this House from the Third district of Tennessee, did cause to be printed in the Daily Globe of April 14, 1871, as if delivered in the House on the 5th of April, and under its rules, by him, a speech in which was contained a reference to Hon. Adelbert Ames, a Senator of the United States from the State of Mississippi, in the words following [here follows the extract]: Therefore,

Be it resolved, That the said A. E. Garrett has thereby committed a gross breach of the privileges of this House, and that he be forthwith brought before the bar of this House and be there reprimanded by the House, and that the printer of the Congressional Globe be instructed not to insert the speech in which such words occur in the Congressional Globe.

Mr. Garrett having expressed regret to the House, Mr. Garfield modified his resolution, and it was agreed to in the following form:

Whereas A. E. Garrett, a Representative from the Third district of Tennessee, has this day, in open session, expressed to the House his regret that he caused to be printed in the Daily Globe of April 14, 1871, a speech containing a passage in gross violation of the rules and privileges of this House: Therefore,

Resolved, That the printers of the Globe shall be instructed not to print said speech in the Congressional Globe, and that no further action be taken in the premises.

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[1] James G. Blaine, of Maine, Speaker.

[2] First session Forty-second Congress, Journal, pp. 156, 196; Globe, pp. 671, 672.

Subsequently, on April 18, this resolution was reconsidered and so modified as to exclude only the offensive portions of the speech.

7007. On December 12, 1884,[1] Mr. A. J. Warner, of Ohio, as a question of privilege, submitted the following preamble and resolution:

Whereas Hon. Joseph D. Taylor, of Ohio, on the 5th day of July, 1884—the House being in session, and having under consideration the Mexican pension bill with Senate amendments—having obtained the floor, occupied the time of the House for six minutes in remarks upon said bill; and

Whereas on the 7th day of July said Joseph D. Taylor obtained leave to extend his remarks in the Record; and

Whereas, instead of extending his remarks under said leave, said Joseph D. Taylor did, after the adjournment of Congress, have printed in a copy of the Record, bearing date of issue August 1, 1884, a written speech or paper, not embracing his remarks in the House, but containing sentences and paragraphs reflecting upon Members of the House in their representative capacity, upon committees of the House, and upon the House itself, and referring to and reporting, or purporting to report, the action of and occurrences in one of the committees of the Senate—all in violation of the implied obligation in his leave to extend his remarks in the Record, and in violation of the privileges and rules of the House: Therefore

Be it resolved, That the parts of said speech reflecting upon Members of the House, or of any committee of the House, or on the House itself, or relating to what took place in any committee of the Senate are unparliamentary and an abuse of the privileges of the House, and of its leave to print, and are hereby declared not to be a legitimate part of the official debates of the House.

The extracts presented with the resolution charged committees of the House with not deigning to consider certain bills and intimated that certain bills in the interest of the soldiers had been suppressed by stealth and cowardice. Another sentence denounced the attitude of the House as an outrage on justice. Another passage explained certain changes in a Senate committee which had resulted in action by that committee.

After debate a motion to refer the preamble and resolution to the Committee on Rules was decided in the negative, yeas 94, nays 161. The preamble and resolution were then agreed to, yeas 164, nays 62.

7008. On March 18, 1892.[2] Mr. George Fred Williams, of Massachusetts, rising to a question of personal privilege, called the attention of the House to the fact that Mr. Joseph H. Walker, of Massachusetts, under a leave to print, had published in the Record words not spoken in the House, which reflected on certain of his Massachusetts colleagues, on the officers of the House, and on Members of the Senate. After debate the subject was referred to the Committee on Printing, with instructions to report whether or not the privileges of the House had been violated and whether any portions should be expunged from the Record.

On March 21[3] Mr. James D. Richardson, of Tennessee, reported from the committee the following resolutions:

Resolved, That the House, deeming it a high duty that the courtesy and decorum required by parliamentary law and practice should characterize debate and the conduct of Members at all times in their official relations, hereby expresses its disapproval of the unparliamentary language used by Hon. Joseph H. Walker, a Representative from the State of Massachusetts, in that portion of his speech printed in the Record on the 17th instant, but which was not delivered on the floor. And considering

[1] Second session Forty-eighth Congress, Journal, pp. 73–76; Record, pp. 205–217.

[2] First session Fifty-second Congress, Journal, p. 107; Record, p. 2193.

[3] Journal, pp. 110, 159; Record, pp. 2271, 3631; Appendix, p. 622.

it impracticable to separate the unparliamentary portions of said speech from such parts thereof as may be parliamentary: Therefore

Be it further resolved, That the Public Printer is directed to exclude, etc. [describing the portions to be excluded].

The committee in their report found that the speech contained personalities aimed at Members of the House; that it arraigned the motives of Members; that it mentioned Members by name instead of by descriptive phrase; that it referred to a Member of the Senate not only by name but "in a vulgar and common way;" that it charged a Member of the Senate with influencing the action of the Speaker, and charged the Speaker with certain motives in taking a certain course of action. The committee concluded that these expressions would not be permitted on the floor, and that it should not be permissible to print in the Record that which might not be uttered on the floor.

On April 25 the resolutions of the committee were considered, but the effort to agree to them was thwarted by obstructive tactics on the part of the minority. And they were never adopted, and the speech with the objectionable portions remained in the Record and appears in the Appendix.

7009. General leave to print may be granted only by the House, although in Committee of the Whole a Member, by unanimous consent, is sometimes given leave to extend his remarks.—On May 28, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12704) to increase the subsidiary silver coinage, when Mr. Charles F. Cochran, of Missouri, asked unanimous consent that all Members who should address the committee on the bill might extend their remarks in the Record.

The Chairman[2] said:

That request will have to be made in the House. * * * It can be done in individual cases by the committee, but general leave to print can not be granted by the Committee of the Whole House.

7010. On February 8, 1905,[3] while the railroad rate bill (H. R. 18588) was under consideration in Committee of the Whole House on the state of the Union, Mr. Robert Baker, of New York, asked unanimous consent for leave to extend his remarks in the Record.

Mr. Charles L. Bartlett, of Georgia, raised the question of order that the Committee of the Whole might not entertain such a request.

The Chairman[4] said:

The Chair will state to the gentleman that technically his point of order is correct, but it has been the practice in this committee to grant an individual request for leave to extend remarks in the Record.

7011. An abuse of the leave to print in the Congressional Record gives rise to a question of privilege.—A Member having printed in the Record under leave to print a copyrighted poem, a question of privilege was raised, and the matter was referred to the Committee on Rules.[5]

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[1] First session Fifty-seventh Congress, Record, p. 6052.

[2] James A. Tawney, of Minnesota, Chairman.

[3] Third session Fifty-eighth Congress, Record, p. 2137.

[4] Frank D. Currier, of New Hampshire, Chairman.

[5] Second session Forty-sixth Congress, Record, p. 2649. The committee permitted the poem to remain in the Record, and it appears on page 337 and succeeding pages of the Appendix of the Record of the second session Forty-sixth Congress.

7012. A resolution to expunge from the Record a speech alleged to be an abuse of the leave to print must be entertained as a matter of privilege.

An inquiry by the House as to an alleged abuse of the leave to print does not necessarily entitle the Member implicated to the floor on a question of personal privilege.

It is for the House and not the Speaker to pass on an alleged abuse of the leave to print in the Congressional Record.

On June 8, 1886,[1] Mr. William D. Kelley, of Pennsylvania, as a question of privilege, presented the following resolution:

Whereas it appears from the publication in the Congressional Record of June 6 of a speech of Hon. Joseph Wheeler, of Alabama, purporting to have been made on the evenings of May 28 and June 4, by unanimous consent of the House, the House then having under consideration the Private Calendar under the special order of January 15, 1886, that said Joseph Wheeler had been guilty of an abuse of the order of the House, inasmuch as no part of said speech had been made in support of, or opposition to, or with reference to any bill granting a pension reported from the Committee on Invalid Pensions or the Committee on Pensions, or to a bill reported from the Judiciary Committee to remove political disabilities, which three classes of bills constituted the sole objects that might be considered under the said order of January 15, in pursuance of which the said meetings of May 28 and June 4 had been held: Therefore,

Be it resolved, That as the delivery of said speech and its publication in the Record were without sanction of the House and in contravention of its special order, the said speech be expunged from the Record, and that the Public Printer be directed to omit it from the permanent Record, and be prohibited from issuing any copy or copies thereof in pamphlet or other form from the columns of the daily Record.

Mr. John H. Reagan, of Texas, made the point of order that the remarks, having been made at an evening session by the unanimous consent of the House, could not be an offense against the House, and that no question of privilege was presented or involved.

The Speaker[2] ruled:

It is not within the province of the Chair to decide whether the matter in question is or is not an abuse of the orders or rules of the House. It is alleged by the gentleman from Pennsylvania to be an abuse of the order of the House, and it is for the House itself to decide whether that allegation is true or not. All the Chair can do is to determine that the charge made and the motion made to expunge the speech from the Record, which contains the official proceedings of the House, presents a question which the Chair must entertain as a matter of privilege. It is for the House itself to say whether the charge made is true or not, and whether the speech in question should be expunged from the Record or not. The Chair can not decide that question.

Mr. Springer made the further point of order that, under clause 5 of Rule XIV,[3] the question presented by Mr. Kelley was not in order, business having intervened since the words excepted to were spoken.

The Speaker held that that was also a question for the House to decide, and not within the duty or province of the Chair to pass upon.

The speech of Mr. Wheeler, to which objection was made, had contained certain statements in regard to the late Secretary of War, Edwin M. Stanton, and in presenting the resolution Mr. Kelley denounced those statements as slanders.

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[1] First session Forty-ninth Congress, Record, pp. 5416, 5420; Journal, p. 1835.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] For this rule see section 5177 of this volume.

Mr. Wheeler thereupon claimed, as a matter of personal privilege, the right to reply to what he termed the charge of slander thus made.

The Speaker ruled:

Unless the gentleman from Alabama can point out some statement in the speech of the gentleman from Pennsylvania which imputes to him some improper or some corrupt motive, or some false statement knowingly made, or some attempt to deceive and impose on the House, it presents no question of personal privilege, and that the only matter before the House is simply the merits of the proposition of the gentleman from Pennsylvania to expunge from the Record a certain speech.

The Chair will also state, in his opinion, when a motion is under consideration which implies in any degree the censure of a Member of the House there must necessarily be allowed more latitude of expression in reference to that matter than in the ordinary discussion of a matter of legislation pending before the House. Otherwise a charge against a Member could never be properly prosecuted on the floor of the House. The discussion of such matters, when it is confined legitimately to the merits of the proposition actually before the House, can not present questions of privilege of which the Member whose conduct is assailed can avail himself. * * *

The gentleman from Pennsylvania did undoubtedly charge that the statements contained in the speech of the gentleman from Alabama were slanders upon the memory of Mr. Stanton, and he gave that as one of the reasons why the speech, under the circumstances, should be expunged from the Record. But the Chair thinks, as has just been stated, that when a charge is made against the conduct of a Member, or a motion to expunge some matter from the Record, the statement of the reasons why that should be done, if pertinent to the motion, does not present a question of privilege; otherwise there would be no end to the discussion of the proposition either on a motion to censure or to expel or to expunge matter from the Record; for every statement made, although absolutely necessary in order to inform the House what the charge really was, would involve a question of privilege, to which the Member could respond as a matter of right, and he could continue to exercise this right throughout the whole discussion any time the charge, or the reasons for it, should be repeated.

7013. A motion for the correction of the Congressional Record may be made properly after the reading and approval of the Journal.—On July 8, 1898,[1] Mr. Levin I. Handy, of Delaware, made this motion:

I move to correct the Record by striking out all on page 7578, all on page 7579, and on the following page, 7580, to wit, all beginning with the words "The Dingley bill has done remarkably well" down to and including the words "This is all any nation assumes to do."

I make this motion, Mr. Speaker, because the language which I propose to strike out and expunge from the Record was not spoken on the floor, and because it was not and is not within the privilege to print given to the gentleman from New York (Mr. Ray), in whose remarks it appears in the Record.

Mr. John Dalzell, of Pennsylvania, as a parliamentary inquiry, asked if the motion was in order at this time.

The Speaker[2] said:

The Chair thinks it is in order. It comes at the close of the reading of the Journal.[3] The gentleman made his point as soon as the House met.

7014. Since the reporters of debates have become officers of the House a correction of the Congressional Record has been held to be a question of privilege.—On February 17, 1854,[4] Mr. Speaker Boyd held that there was no privilege whatever connected with the Congressional Globe, and that a proposition to correct it had no standing as a question of privilege.

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[1] Second session Fifty-fifth Congress, Record, p. 6799.

[2] Thomas B. Reed, of Maine, Speaker.

[3] The Speaker omitted to add the approval of the Journal also, for obviously a motion to correct the Record might not be offered while the question on the approval of the Journal was pending.

[4] First session Thirty-third Congress, Globe, p. 443.

7015. On June 24, 1870,[1] Mr. Samuel J. Randall, of Pennsylvania, presented a letter from the publishers of the Globe in relation to changes made in the report of a remark made by Mr. Randall in controversy with Mr. Benjamin F. Butler, of Massachusetts. The change had been made by Mr. Butler. Mr. Speaker Blaine declined to hold that this involved a question of privilege.

7016. On January 23, 1877,[2] Mr. William Hartzell, of Illinois, sought the floor announcing that he wished to move a correction of the Record.

The Speaker[3] said:

Heretofore it has been ruled that the correction of the Record is not a privileged question; but since the reporters have become, in the fullest sense, officers of the House, the Chair is inclined to believe that the correction of the Record is, equally with the correction of the Journal, a privileged question. He therefore recognizes the gentleman to make such a correction.

7017. A question as to the accuracy or propriety of anything contained in the official records of debates may be submitted to the House as a matter of privilege.

As a general principle the Speaker has no control over the official record of debates.

A Member having abused a leave to print on the last day of a session, the House condemned the abuse and declared the matter not a legitimate part of the official debates.

The House condemned as unparliamentary a printed speech for its reflections on Members, committees of the House, and the House itself, and for its references to alleged occurrences in a committee of the Senate.

On December 12, 1884,[4] Mr. A. J. Warner, of Ohio, rising to a question of privilege, presented the following preamble and resolution:

Whereas Hon. Joseph D. Taylor, of Ohio, on the 5th day of July, 1884—the House being in session, and having under consideration the Mexican pension bill with Senate amendments—having obtained the floor, occupied the time of the House for six minutes in remarks upon said bill; and

Whereas on the 7th day of July said Joseph D. Taylor obtained leave to extend his remarks in the Record; and

Whereas instead of extending his remarks under said leave, said Joseph D. Taylor did, after the adjournment of Congress, have printed in a copy of the Record, bearing date of issue August 1, 1884, a written speech, or paper, not embracing his remarks in the House, but containing sentences and paragraphs reflecting upon Members of the House in their representative capacity, upon committees of the House, and upon the House itself, and referring to and reporting, or purporting to report, the action of and occurrences in one of the committees of the Senate—all in violation of the implied obligation in his leave to extend his remarks in the Record, and in violation of the privileges and rules of the House: Therefore,

Be it resolved, That the parts of said speech reflecting upon Members of the House, or of any committee of the House, or on the House itself, or relating to what took place in any committee of the Senate, are unparliamentary and an abuse of the privileges of the House and of his leave to print, and are hereby declared not to be a legitimate part of the official debates of the House.

Mr. Thomas M. Browne, of Indiana, made the point of order that no question of order was presented.

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[1] Second session Forty-first Congress, Journal, p. 1081; Globe, pp. 4797, 4798.

[2] Second session Forty-fourth Congress, Record, pp. 832, 833.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Forty-eighth Congress, Record, pp. 205, 217; Journal, pp. 73, 74.

The Speaker,[1] in ruling, said:

The gentleman from Ohio in this resolution asks for the judgment and action of the House itself as to whether or not this publication in the Record is a violation of the rules. The question the Chair has to decide is whether the gentleman has the right as a matter of privilege to ask the judgment of the House on a matter affecting the official record of its debates. * * *

The question, and the only question, for the Chair to determine is whether it is not sufficient when a Member rises in his place on the floor and suggests that certain things have been done in violation of the rules of the House and asks the judgment of the House upon the statement he makes—whether it is not the duty of the Chair to submit that question to the House for its determination. * * *

If the gentleman from Ohio, Mr. Taylor, for instance, whose remarks are complained of, was on the floor addressing the House, any gentleman, although he might be speaking in entire accordance with the rules of the House, would have the right to rise to a question of privilege, and make a point of order that his remarks were not in order under the rules of the House, and the gentleman would be required to suspend until the matter had been passed upon by the Chair.

The difference between the two cases is simply this, that now the matter to which reference is made has passed beyond the control of the Chair, because it has gone into the official record of the debates of the House over which the Chair has no control, but over which the House has itself complete control.

The Chair thinks that although the complaint made by the gentleman from Ohio might prove to be entirely without foundation, yet it is his privilege to present the matter to the House, his right to call the attention of the House to it as a matter of privilege; and the Chair must submit the question to the House for its action under all the practice and rulings heretofore.

After debate, in which Mr. Taylor participated, the House agreed to the resolution, yeas 164, nays 62.

7018. On January 7, 1892,[2] Mr. James D. Richardson, of Tennessee, as a question of privilege, offered the following resolution:

Resolved by the House of Representatives (the Senate concurring), That the joint Committee on Printing be, and is hereby, ordered to examine into the errors in the index to the Congressional Record of the present session of Congress, and, if possible to do so, to take such steps as will in future remedy the defects and correct the errors therein.

Mr. James B. McCreary, of Kentucky, having raised a question of order as to whether or not the resolution was privileged,

The Speaker pro tempore[3] said:

It is the custom of the House to keep a journal of its proceedings and also a record, setting forth the proceedings more fully than they are set forth in the Journal. The Chair thinks that whatever affects its integrity, if it has omissions, is a question of privilege. * * * The Chair thinks that under the usual practice of the House all questions affecting the integrity of the Record are privileged.

7019. A resolution to correct the Congressional Record is privileged, and such correction is not within control of the Speaker.—On March 8, 1902,[4] after the reading and approval of the Journal, Mr. John W. Gaines, of Tennessee, called the attention of the Chair and the House to an alleged error in the report of certain remarks made by himself on the preceding day.

The Speaker[5] said:

The correction of the Record is privileged, but if the gentlemen do not agree in respect to it, a resolution of the House will have to be submitted. * * * The gentleman from Tennessee must realize the fact that this is not a matter within the control of the Presiding Officer, and there is nothing before the House now unless he offers a resolution or makes a motion.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-second Congress, Record, p. 194.

[3] Benton McMillin, of Tennessee, Speaker pro tempore.

[4] First session Fifty-seventh Congress, Record, p. 2524.

[5] David B. Henderson, of Iowa, Speaker.

7020. A question of privilege as to an alleged error in the Record may not be raised until the Record has appeared.—On April 24, 1900,[1] during consideration of the joint resolution (S. 116) "to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of civil officers provided for in the act approved April 12, 1900, entitled," etc., extracts from the notes of the reporters of debates were read in a decision on a point of order.

Mr. Ebenezer J. Hill, of Connecticut, claiming the floor on a question of privilege, proposed to correct the Record just read.

The Speaker[2] held that it could not be done until the succeeding day.

7021. A resolution to omit from the manuscript copy of the Congressional Record certain remarks declared out of order does not present a question of privilege.—On January 27, 1885,[3] during debate on the subject of certain alleged alterations in the notes of the reporters of the House, Mr. John D. White, of Kentucky, was several times called to order for not confining himself to the subject under consideration.

At the conclusion of Mr. White's remarks, Mr. Samuel S. Cox, of New York, rising to a question of privilege, offered this resolution:

Resolved, That the remarks of Mr. White, of Kentucky, on the resolution which he submitted this morning were delivered out of order, and that the official reporters be directed to omit them from the Record.

The Speaker[4] said:

If anything hereafter should be printed in the Record which ought not to be there, or anything should be omitted which ought to be there, the Chair would consider that that presented a question of privilege. * * * But there has nothing appeared as yet in the Record which it is alleged is out of order. * * * The point of order is made against the motion of the gentleman from New York, Mr. Cox, that it is not privileged; and the Chair thinks it is not a privileged motion.

7022. A resolution relating to the distribution of the Congressional Record to persons other than Members was held not to present a question of privilege.—On February 6, 1897,[5] Mr. James D. Richardson, from the Committee on Printing, presented, as involving a question of privilege, this resolution:

Resolved, etc., That the Public Printer be, and is hereby, authorized and directed to supply to each newspaper correspondent whose name appears in the Congressional Directory, and who makes application therefor, one copy of the daily Congressional Record, the same to be sent to the office address of each member of the press, or elsewhere in the city of Washington, as he may direct.

The Speaker[6] decided that the resolution could not come up as a question of privilege.

7023. Offensive words having already been stricken from the Congressional Record, a question of privilege may not arise therefrom.—On July 28, 1892,[7] Mr. Joseph Wheeler, of Alabama, submitted as a question of privilege

[1] First session Fifty-sixth Congress, Record, p. 4616.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Forty-eighth Congress, Record, p. 1024; Journal, p. 356.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Second session Fifty-fourth Congress, Record, p. 1632.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Fifty-second Congress, Journal, p. 340; Record, p. 6896.

that on yesterday Mr. Thomas E. Watson, of Georgia, in the course of his remarks, had used this language:

On page 7367, the gentleman from Alabama (meaning Mr. Wheeler) says this:

"On passage of the bill (the reapportionment bill favorable to the Republicans) 113 Democrata voted against, and 114 rascally Republicans voted for, and 13 leprous Greenbackers voted with the Republicans."

He denied that he had used the language "rascally Republicans" and "leprous Greenbackers," and claimed the right to the floor to refute said charge.

Mr. Nelson Dingley, of Maine, made the point of order that no question of privilege was presented by Mr. Wheeler.

The Speaker,[1] sustaining the point of order, held that the matter presented did not present a question of privilege under the rule.

It appears from the record of debate that Mr. Watson had already corrected his remarks, saying that he had no intention of attributing the portions complained of to Mr. Wheeler, and did not in fact do so, although the Record made it appear that he did. This fact was stated by the Speaker in his ruling.

7024. The rules governing the publication of the Congressional Record prescribe the conditions under which Members may revise their remarks.

Rules governing the furnishing of copy under leave to print in the Congressional Record.

The insertion of maps or diagrams in the Congressional Record is within the control of the Joint Committee on Printing.

The arrangement, style, etc., of the Congressional Record is prescribed by the Joint Committee on Printing.

On May 5, 1888, the Joint Committee on Printing 2 adopted the following rules for the publication of the Congressional Record:

First. When copy is taken out for revision by Senators, Representatives, or Delegates, it should be returned to the Government Printing Office not later than 12 o'clock midnight, in order to insure its publication in the Record on the morning following; and if said copy is not furnished at the time specifled, the Public Printer is authorized to withhold it from the Record for one day, and in no case will a speech be printed in the Record on the day after its delivery if the copy be furnished later than 12 o'clock midnight.

Second. The copy of speeches containing large tabular statements to be published in the Record should be in the hands of the Public Printer not later than 6 o'clock p.m. on the day prior to their publication.

Third. Proofs of "leaves to print" and advance speeches will not be furnished on the night of the day on which the copy is received, but will be sent on the following day, should it be possible to do so without causing delay in the publication of the regular proceedings of Congress.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] The act of March 3, 1873 (17 Stat. L., p. 510) had provided that "until a contract for publishing the debates of Congress is made, such debates shall be printed by the Congressional Printer, under the direction of the Joint Committee on Public Printing on the part of the Senate." An act of February 8, 1881 (21 Stat. L., pp. 516, 517), placed the indexing of the Record under charge of the Joint Committee on Printing. And finally, the act of January 12, 1895 (28 Stat. L., p. 603), provides that the Joint Committee on Printing "shall have control of the arrangement and style of the Congressional Record, and while providing that it shall be substantially a verbatiin report of the proceedings, shall take all needed action for the reduction of unnecessary bulk, and shall provide for the publication of an index of the Congressional Record semimonthly during the sessions of Congress and at the close thereof."

Fourth. Corrections in speeches for the bound edition of the Record should be sent to the Public Printer within four days after the delivery of the speech to be corrected, as it is then stereotyped.

Fifth. If copy or proofs have not been returned within the time above mentioned, the Public Printer will insert the words "Mr. ——— withholds his remark for revision, and they will appear hereafter," and proceed with the printing of the Record.

Sixth. The Public Printer is not authorized to insert any maps or diagrams in the Record without the approval of the Joint Committee on Printing. All requests for such approval should be referred to

the Joint Committee on Printing, and may be submitted to the chairman of the Committee on Printing on the part of the Senate or of the House, in whichever the speech illustrated may have been delivered, and no maps or diagram shall be inserted that exceed in size a page of the Record.

Seventh. The Public Printer will arrange the contents of the Record as follows: First, the Senate proceedings; second, the House proceedings; third, the speeches withheld for revision: *Provided,* That should the copy of the regular proceedings, either in the Senate or in the House, be delayed, the Public Printer is authorized to at once begin the make-up, on the first page, with either Senate or House proceedings or with such speeches as are on file, giving precedence to those first received, in their order.

Chapter CXLV.

AMENDMENTS TO THE CONSTITUTION.

1. **Constitutional provision. Sections 7025, 7026.**
2. **Construction of the requirement of a two-thirds vote. Sections 7027–7036.**
3. **Differences as to, committed to conference. Section 7037.**
4. **Yeas and nays not essential on passage. Sections 7038, 7039.**
5. **Not presented to President for approval. Section 7040.**
6. **General precedents. Sections 7041–7044.**

7025. The Constitution provides the methods by which amendments to it may be proposed and adopted.

No amendment to the Constitution may deprive any State, without its consent, of its equal suffrage in the Senate.

Article V of the Constitution provides:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of tbree-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided,* That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

7026. Instance of the receipt and reference of the application of a State legislature for the calling of a convention to amend the Constitution of the United States.—On February 15, 1907,[1] under the head of executive communications, the following appears in the Journal and Record, as having been referred under section 2 of Rule XIV:[2]

Application of the legislature of Kansas for the calling of a constitutional convention to consider amendments to the Constitution of the United States—to the Committee on Election of President, Vice-President, and Representatives in Congress.

7027. The vote required on a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership.—On May 11, 1898,[3] Mr. John B. Corliss, of Michigan, called up the joint resolution (H. Res. 5) proposing

[1] Second session Fifty-ninth Congress, Record, p. 3072.

[2] See section 3089 of Volume IV of this work.

[3] Second session Fifty-fifth Congress, Record, p. 4826.

an amendment to the Constitution providing for the election of Senators of the United States.

The question being taken on the passage of the resolution, there were yeas 184, nays 11, and the Speaker announced that the joint resolution was passed, two-thirds having voted in favor thereof.

Mr. Ebenezer J. Hill, of Connecticut, called attention to this clause of the Constitution:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments.

and made the point of order that the vote required was two-thirds of the entire membership, not two-thirds of a quorum.

The Speaker [1] said:

> The question is one that has been so often decided that it seems hardly necessary to dwell upon it. The provision of the Constitution says "two-thirds of both Houses." What constitutes a House? A quorum of the membership, a majority, one-half and one more. That is all that is necessary to constitute a House to do all the business that comes before the House. Among the business that comes before the House is the reconsideration of a bill which has been vetoed by the President; another is a proposed amendment to the Constitution; and the practice is uniform in both cases that if a quorum of the House is present the House is constituted and two-thirds of those voting are sufficient in order to accomplish the object. It has nothing to do with the question of what States are present and represented, or what States are present and vote for it. It is the House of Representatives in this instance that votes and performs its part of the function. If the Senate does the same thing, then the matter is submitted to the States directly, and they pass upon it.
>
> The first Congress, I think, had about 65 members, and the first amendment that was proposed to the Constitution was voted for by 37 members, obviously not two-thirds of the entire House.[2] So the question seems to have been met right on the very threshold of our Government and disposed of in that way.[3]

The result of the vote was then announced as above recorded.

7028. On February 26, 1869,[4] the Senate agreed by a vote of yeas 39, nays 13, to the report of the committee of conference on the resolution (S. No. 8) proposing an amendment to the Constitution of the United States (suffrage amendment).

Mr. Garrett Davis, of Kentucky, made the point of order that, as the Senate consisted of 74 Members, a vote of 50 was necessary to constitute the two-thirds vote.

During the debate Mr. Lyman Trumbull, of Illinois, recalled that the same question was raised before the war, in the last years of Mr. Buchanan's administration, when Mr. Breckinridge was presiding officer of the Senate, and after debate, the Senate decided by a large vote that the two-thirds required was two-thirds of the Senators present, if a quorum.

A decision having been asked, the President pro tempore [5] sustained the view enunciated by Mr. Trumbull, as in accordance with the precedents.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session First Congress, Journal, p. 121 (Gales & Seaton ed.).

[3] On September 21, 1789 (first session First Congress, Journal, pp. 115, 116), on a question of agreeing to Senate amendments on articles of amendment to the Constitution proposed by the House, the House agreed to certain amendments and disagreed to others, "two-thirds of the Members present concurring on each vote."

[4] Third session Fortieth Congress, Globe, pp. 1641, 1642.

[5] Benjamin F. Wade, of Ohio, President pro tempore.

7029. The requirement of a two-thirds vote for proposing constitutional amendments has been construed, in the later practice, to apply only to the vote on the final passage.—On February 4, 1811,[1] the following was under consideration in Committee of the Whole:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring,[2] That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"No Senator or Representative shall be appointed to any civil office, place, or employment, under the authority of the United States, until the expiration of the Presidential term in which such person shall have served as a Senator or Representative."

This resolution was agreed to in Committee of the Whole, ayes 63, noes 31.

In the House the question was taken on concurring with the Committee of the Whole House in their agreement to the resolution, and there appeared yeas 71, nays 40.

A question at once arose as to whether or not a two-thirds vote was necessary on the intermediate stages as well as on the final passage.[3]

After debate and on February 5, the Speaker[4] decided that the question taken yesterday being a question directly on the merits of the proposed amendment, and less than two-thirds of the House voting in favor of it, he considered the resolution as negatived.

Mr. John Randolph, of Virginia, having appealed, the House sustained the decision, 61 yeas to 59 nays.

7030. On December 5, 1820,[5] the House was considering a joint resolution proposing an amendment to the Constitution in relation to the election of electors of President and Vice-President of the United States and Members of the House of Representatives.

The question being taken on ordering the resolution to be engrossed and read a third time, there were yeas 103, nays 59.

A question arose as to whether or not a two-thirds vote was required.

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[1] Third session Eleventh Congress, Journal, pp. 529, 531 (Gales & Seaton ed.); Annals, pp. 897, 899, 904.

[2] This is the form of resolving clause used in 1789, when the first ten amendments to the Constitution were proposed, except that then the words "two-thirds of both Houses, deeming it necessary" were used. (First session First Congress, Journal, p. 89, Gales & Seaton ed.). In 1794, when the eleventh amendment was submitted, the word "concurring" was used, the clause being identical with that above. (First session Third Congress, Journal, p. 79, Gales & Seaton ed.). The same form appears in the resolution submitting the fifteenth amendment, except that the phrase relating to two-thirds concurring appears in parentheses. (15 Stat. L., p 346.)

[3] Although concurrent resolutions and not requiring the approval of the President, these resolutions have their several readings, and are enrolled and signed by Speaker and President of the Senate like bills and joint resolutions. In fact, they are classed as joint resolutions. (See Journals, first session First Congress, p. 89; first session Third Congress, pp. 79, 80, 87 (Gales & Seaton ed.); third session Fortieth Congress, p. 469.)

[4] Joseph B. Varnum, of Massachusetts, Speaker.

[5] Second session Sixteenth Congress, Annals, p. 504.

The Speaker[1] decided that the rules and practice of the House recognized the principle that two-thirds of the votes were required on the final passage[2] of a resolution proposing to amend the Constitution; but that any intermediate question might be carried by a majority of the House.

7031. Proposed amendments to the Constitution may be amended by a majority vote.—On April 13, 1900,[3] the House was considering the joint resolution (H. Res. 28) proposing an amendment to the Constitution providing for the election of Senators of the United States.

To this resolution Mr. W. W. Rucker, of Missouri, on behalf of the minority of the committee reporting the bill, offered an amendment in the nature of a substitute.

The question being upon agreeing to this substitute, Mr. John B. Corliss, of Michigan, made the point of order that, as the original resolution would require a two-thirds vote for its passage, the amendment also should be agreed to by a two-thirds vote.

The Speaker[4] said:

> The Chair holds that in voting upon an amendment it is not necessary for a two-thirds vote, although the original proposition requires it. When the House considers any amendment, it can be voted upon in the usual way; and this proposition of the gentleman from Missouri is but an amendment. When it comes, however, to the passage of the bill, then the point can be made. The Chair overrules the point made by the gentleman from Michigan at this time.

7032. On February 9, 1872,[5] the Senate, while considering the bill (H. R. 380) for the removal of legal and political disabilities imposed by the third section of the fourteenth article of amendments to the Constitution of the United States, adopted as an amendment, on motion of Mr. Charles Sumner, of Massachusetts, the provisions of a bill known as the civil rights bill. This amendment was agreed to by 29 yeas to 28 nays, the Vice-President giving the casting vote. On the same day the bill as amended was rejected, yeas 33, nays 19, the required two-thirds not voting for the bill.

7033. In considering amendments to the Constitution a two-thirds vote was not required in Committee of the Whole, but was required when the House voted on concurring in Senate amendments.—On August 13, 1789,[6] the House was considering in Committee of the Whole House[7] certain proposed amendments to the Constitution of the United States.

Amendments being proposed to the amendment under consideration, Mr. Samuel Livermore, of New Hampshire, as a parliamentary inquiry, asked whether or not two-thirds should agree to carry a motion in Committee.

In the course of the debate Mr. Thomas Hartley, of Pennsylvania, recalled that in his State they had a council of censors who were authorized to call a con-

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[1] John W. Taylor, of New York, Speaker.

[2] So decided on February 5, 1811 (Eleventh Congress, Journal, pp. 217, 219).

[3] First session Fifty-sixth Congress, Record, p. 4128; Journal, pp. 467, 468.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Forty-second Congress, Globe, pp. 919, 928, 929.

[6] First session First Congress, Journal (Gales & Seaton ed.). p. 79; Annals, p. 744.

[7] The Committee of the Whole House had then functions different from those exercised at present.

vention to amend the Constitution, but two-thirds were required for that purpose. He had been a member of that body when they had examined the business in a committee of council; the majority made a report, which was lost for want of two-thirds to carry it through the council.

The Chairman[1] of the Committee of the Whole House decided that a majority of the Committee were sufficient to form a report.

Upon an appeal this decision was sustained.

On September 24, 1789, the House proceeded to consider the report of the committee of conference on the disagreeing votes of the two Houses on the proposed constitutional amendments, and on a question relating to concurring in a Senate amendment with an amendment the yeas were 37 and the nays were 14. This was a two-thirds vote, but no question was made as to whether a two-thirds vote was required.[2] But on September 21,[3] when the Senate amendments to the articles as agreed to by the House were under consideration in the House, it was

Resolved, That this House doth agree to the second, fourth, etc., amendments; and doth disagree to the first, third, etc., amendments proposed by the Senate to the said articles; two-thirds of the Members present concurring on each vote.

7034. A two-thirds vote is required to agree to a Senate amendment to a joint resolution proposing an amendment to the Constitution.—On June 13, 1866,[4] the House considered the Senate amendments to the joint resolution (H. Res. 127) proposing an amendment to the Constitution of the United States. It was assumed, and stated as a matter of course by the Speaker,[5] that a two-thirds vote would be required on the motion to agree to the several amendments.

7035. One House having by a two-thirds vote passed in amended form a proposed constitutional amendment from the other House, and then having by a majority vote receded from its amendment, the constitutional amendment was held not to be passed.—On February 9, 1869,[6] the Senate proceeded to the consideration of the resolution of the House (H. Res. 402) proposing an amendment to the Constitution of the United States (the suffrage amendment), and several amendments were proposed and voted on, most of them being decided in the negative. But one amendment received yeas 37, nays 19 (not a two-thirds vote) and was declared agreed to. Then the resolution as amended was passed by the Senate by a two-thirds vote, the President pro tempore[7] requiring the yeas and nays to be taken in order to be certain that the vote was two-thirds.

On February 15[8] the resolution, with the Senate amendment, came up for consideration in the House, and the question being put on the amendment, the Speaker[5] said:

The question will first be taken upon concurring in the amendment with regard to suffrage. A two-thirds vote is necessary to decide this question in the affirmative.

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[1] Elias Boudinot, of New Jersey, Chairman.

[2] Journal (Gales & Seaton ed.), p. 121; Annals, p. 948.

[3] Journal, pp. 115, 116; Annals, p. 939.

[4] First session Thirty-ninth Congress, Journal, p. 833; Globe, p. 3148.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] Third session Fortieth Congress, Journal, p. 312; Globe, pp. 1042–1044.

[7] Benjamin F. Wade, of Ohio, President pro tempore.

[8] Journal, pp. 353, 354; Globe, p. 1226.

The question being taken, there were yeas 37, nays 133. So, two-thirds not voting in favor thereof, the amendment was not concurred in.

The House then, having acted on other amendments, asked a conference with the Senate.

On February 17 [1] the resolution came back to the Senate with the amendment of the Senate disagreed to and a conference requested. A proposition to recede from the amendment having been made, Mr. Roscoe Conkling, of New York, raised a question as to the vote by which the motion to recede should be agreed to, whether by a majority or by a two-thirds vote.

The question was debated at length, and finally Mr. Thomas A. Hendricks, of Indiana, asked the Chair to decide that the motion to recede would require two-thirds.

The President pro tempore said:

> The Chair does not so understand it.

Thereupon the question arose whether, under this ruling, a vote to recede would pass the resolution, and the question being put to the Senate was decided in the negative, without division.

The question was taken on the motion to recede, and it was decided in the affirmative, yeas 33, nays 24.

Thereupon a question arose as to the further action of the Senate. As it had originally given its two-thirds vote, not to the resolution as it came from the House, but to the resolution as it stood with the amendment from which it had now receded by a majority vote, it was evident that the resolution of the House had not received the approval of the required two-thirds. The President pro tempore ruled that the resolution would not be amendable, and then, after debate, the question was taken on concurring in the resolution as it came from the House, and on the vote there appeared yeas 31, nays 27, not the required two-thirds, so the resolution of the House was rejected.

7036. A two-thirds vote is required to agree to a conference report on a joint resolution proposing an amendment to the Constitution.—On February 25, 1869,[2] the House was considering the joint resolution (S. No. 8) proposing an amendment to the Constitution of the United States (suffrage amendment), the question before the House being on the adoption of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the joint resolution.

Mr. William E. Niblack, of Indiana, rising to a parliamentary inquiry, asked if a two-thirds vote was required to agree to the conference report.

The Speaker [3] said:

> It is the opinion of the Chair that every part of the proceeding must be covered by a two-thirds vote in both branches.

In the Senate [4] a two-thirds vote was required on the same report.

7037. A difference between the two Houses as to an amendment to a proposed constitutional amendment may properly be committed to a con-

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[1] Globe, pp. 1291–1300; Journal, p. 374.

[2] Third session Fortieth Congress, Globe, p. 1563.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] Globe, pp. 1641, 1642.

ference.—On February 15, 1869,[1] the House had considered and disagreed to an amendment of the Senate to the resolution of the House (H. Res. 402) proposing an amendment to the Constitution of the United States (suffrage amendment) and a motion had been made that the House ask a conference.

Thereupon Mr. George W. Woodward, of Pennsylvania, raised the question of order that this was not a proper case to submit to a committee of conference, which was simply a legislative device, and did not tend to secure proper conformation with the Constitutional requirement that amendments should receive the assent of two-thirds of both Houses.

The Speaker[2] said:

> The gentleman makes the point of order that a proposed amendment to the Constitution is an extraordinary measure of legislation, and therefore the rules of the House do not apply to it. The Chair overrules that point of order, not by parliamentary law, not by the Digest, but by the language of the Constitution itself. Section 5 of article 1 provides:
>
> "Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."
>
> Under that provision of the Constitution the House has adopted certain rules; and on page 67 of the Digest it is provided that there may be committees of conference in all cases of difference of opinion between the two Houses. I will read the exact language:
>
> "It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them."
>
> It is further provided on page 68 as follows:
>
> "In the case of disagreeing votes between the two Houses, the House may either recede, insist, and ask a conference, or adhere, and motions for such purposes take precedence in that order."
>
> The Constitution declares that each House may determine the rules of its proceedings, etc., and under that the House has adopted a rule that in all cases of difference of opinion between the two Houses conferences may be asked. The Chair, therefore, overrules the point of order.

On February 17[3] the resolution was received in the Senate with the request of the House for a conference. Objection was at once made to putting so important a matter into the hands of a committee of conference, the precedent of the military reconstruction bill in a former case being cited as an instance, when the Senate decided to consider and settle the matter in open Senate, rather than intrust it to a committee of conference. After debate the proposition to agree to the conference asked by the House was abandoned, and the Senate proceeded to recede from their amendment, and then to disagree to the resolution of the House.

But in the case of another resolution (S. Res. 8), proposing the same amendment in a modified form, the differences of the House were submitted to a committee of conference, which reported February 25, 1869.[4]

7038. The yeas and nays are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution.—On February 13, 1902,[5] the House was considering, the joint resolution (H. J. Res. 41) proposing an amendment to the Constitution, providing for the election of Senators of the United States.

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[1] Third session Fortieth Congress, Globe, p. 1226.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Globe, p. 1284.

[4] Globe, p. 1563; Journal p. 449.

[5] First session Fifty-seventh Congress, Record, pp. 1721, 1722.

Mr. John B. Corliss, of Michigan, rising to a parliamentary inquiry, asked whether a roll call was necessary, or it would be sufficient if in the judgment of the Speaker a two-thirds vote was cast.

The Speaker[1] said:

If the House orders it, it must be had. In the early times, during the war period, when great amendments were pending, the Speaker ordered a roll call; but in the more recent times the practice has been to put it to vote, the presumption being that a quorum was present, and the Chair deciding, in his opinion, whether there was a two-thirds vote in favor of the measure. It is always within the power of the House to test the matter.

7039. On January 30, 1869,[2] the House was considering the joint resolution of the House (H. Res. 402) proposing an amendment to the Constitution of the United States (suffrage amendment), and the question was on the passage of the resolution.

Mr. Robert C. Schenck, of Ohio, rising to a parliamentary inquiry, asked if the Constitution did not require the vote to be taken by yeas and nays.

The Speaker[3] said:

It does not. The only imperative requirement of the yeas and nays under the Constitution is in regard to a veto, where a concurrent vote of two-thirds of each House by yeas, and nays is required. On all other question requiring a two-thirds vote, such as proposed amendments to the Constitution and relief from political disabilities, the Constitution does not command the vote to be taken by yeas and nays any more than on bills which only require a majority vote. On bills relieving from disability under the fourteenth amendment the Chair has ruled, with the assent of the House, that the Constitution does not require the yeas and nays, but that the result must be arrived at by a two-thirds vote, to be declared by the Chair. On constitutional amendments, however, on account of their gravity and the value of the record, the usage has been to take the vote by yeas and nays.

The yeas and nays were then demanded by one-fifth of those present.

7040. It has been conclusively settled that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval.—On February 25, 1869,[4] Mr. George S. Boutwell, of Massachusetts, presented the report of the committee of conference on the disagreeing votes of the House and Senate on the resolution (S. No. 8) proposing an amendment to the Constitution of the United States (suffrage amendment).

Mr. George W. Woodward, of Pennsylvania, made the point of order that the subject of the report of the committee would have to be sent to the President of the United States for his approval, under that clause of the Constitution which provides that—

Every order, resolution, or vote on which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, etc.

The Speaker[3] said:

The gentleman having stated the point of order, the Chair will decide it. It has been raised once before and decided by the Chair. He will repeat the substantial points of that decision, which he thinks will satisfy the gentleman that his point is not well taken, although based by him upon the

[1] David B. Henderson, of Iowa, Speaker.

[2] Third session Fortieth Congress, Globe, p. 745; Journal, p. 237.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] Third session Fortieth Congress, Globe, p. 1563.

Constitution of the United States. The question was raised distinctly in 1803 in the Senate of the United States, on a motion that the then proposed amendment to the Constitution should be submitted to the President:

"On motion that the Committee on Enrolled Bills be directed to present to the President of the United States for his approbation the resolution which has been passed by both Houses of Congress, proposing to the consideration of the State legislatures an amendment to the Constitution of the United States respecting the mode of electing President and Vice-President thereof, it was decided in the negative, yeas 7, nays 23."

On a distinct vote of 23 to 7 the Senate voted that the Committee on Enrolled Bills should not present the proposed amendment. This is a decision made by one of the early Congresses. But the Chair is not satisfied with having it rest on that; he is disposed to present higher authority in overruling the point of order.

In 1798 a case arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel, in argument before the court, insisted that the amendment was not valid, not having been approved by the President of the United States. The Attorney-General, Mr. Lee, in reply to this argument, said:

"Has not the same course been pursued relative to all other amendments that have been adopted? And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of investing the President with a qualified negative on the acts and resolutions of Congress."

That was the remark of the Attorney-General. But the Chair does not rest his decision upon that. He sustains it by the decision of the Supreme Court of the United States. The court, speaking through Chase, justice, in reply to the Attorney-General, observed:

"There can surely be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution."

As the Supreme Court of the United States has settled this question by a decision, the Chair does not need to read further authorities. But this question came before the Senate of the United States recently, since the recent exciting questions have been before the country, and the chairman of the Judiciary Committee of the Senate (Mr. Lyman Trumbull, of Illinois) offered the following resolution:

"Resolved, That the article of amendment proposed by Congress to be added to the Constitution of the United States respecting the extinction of slavery therein having been inadvertently presented to the President for his approval, it is hereby declared that such approval was unnecessary to give effect to the action of Congress in proposing said amendment, inconsistent with former practice in reference to all amendments to the Constitution heretofore adopted, and being inadvertently done, should not constitute a precedent for the future; and the Secretary is hereby instructed not to communicate the notice of the approval of said proposed amendment by the President to the House of Representatives."

Upon that resolution the Senator from Maryland, Mr. Reverdy Johnson, who had been formerly Attorney-General of the United States, made a speech which the Chair will not quote, corroborating, however, the opinion of the Chair, and the Senate adopted the resolution of Mr. Trumbull without a division and without the yeas and nays.

The Chair therefore thinks that the question is settled, not only by the practice of Congress but by a decision of the Supreme Court of the United States, and therefore overrules the point of order.

7041. The filing with the Secretary of State and the transmission to the States of joint resolutions proposing amendments to the Constitution.—On June 18, 1866,[1] Mr. Amasa Cobb, of Wisconsin, from the Committee on Enrolled Bills, reported that the committee did, on the 16th day of June, 1866, present to and file with the Secretary of State of the United States a joint resolution of the following title, viz:

H. Res. 127. Joint resolution proposing an amendment to the Constitution of the United States.

[1] First session Thirty-ninth Congress, Journal, pp. 859, 866, 889; Globe, pp. 3241, 3357.

On the same day the House considered under suspension of the rules and agreed to the following:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed June 13, 1866, respecting citizenship, the basis of representation, disqualification for office, and validity of the public debt of the United States, etc., to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

On June 19 the Speaker, by unanimous consent, laid before the House a letter from the Clerk of the House, stating that he did this day present to the President a certified copy of the concurrent resolution of the 18th instant, requesting, etc.

On June 22 a message was received from the President submitting a report of the Secretary of State relating to the submission of the amendment to the legislatures of the States calling attention to the fact that the amendment was not submitted to the President for his approval, that several States were still out of the Union, etc., and stating that the act of the administration in submitting the amendment should be regarded as purely ministerial, and not as an endorsement of it.

7042. On February 22, 1870,[1] occurred a learned and carefully considered debate in the Senate concerning the power of a State to recall its assent duly given to a constitutional amendment. This debate arose over the act of the legislature of New York in attempting to recall the assent of a previous legislature to the Fifteenth amendment.

7043. The two Houses requested the President to transmit to the States forthwith certain proposed amendments to the Constitution.—On March 2, 1869,[2] the Senate and House adopted a concurrent resolution requesting the President to transmit forthwith to the executives of the several States copies of the article of amendment proposed to the Constitution of the United States, and passed February 26, 1869, respecting the exercise of the elective franchise, in order that the States tight proceed to act on the amendment, and also to request the executive of each of the States that might ratify the amendment to transmit to the Secretary of State a certified copy of the ratification.

7044. The President may notify Congress by message of the promulgation of the ratification of a constitutional amendment.—On March 30, 1870,[3] President Grant by message notified Congress of the promulgation of the ratification of the fifteenth amendment to the Constitution, saying that he was aware that such a course was not usual, but in view of the importance of the subject he transmitted the notification, with the expressed hope that Congress would take all means within their powers to promote popular education in the country.

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[1] Second session Forty-first Congress, Globe, pp. 377, 1477.

[2] Third session Fortieth Congress, Journal, p. 502; Globe, p. 1816.

[3] Second session Forty-first Congress, Journal, p. 548.

Chapter CXLVI.

CEREMONIES.

1. Visit of House to Senate. Section 7045.
2. Thanks to the Speaker. Sections 7046–7051.[1]
3. Participation in celebrations, etc. Sections 7052–7064.
4. Presentation of portraits of former Speakers. Sections 7065–7069.
5. Observance of Washington's Birthday. Sections 7070–7075.
6. Reception of eminent soldiers, statesmen, etc. Sections 7076–7088.
7. Acceptance of statues for Statuary Hall. Sections 7089–7099.
8. Acceptance of gifts. Sections 7100–7106.
9. Observances at deaths of Members. Sections 7107–7138.
10. Observances at deaths of former Speakers. Sections 7139–7141.
11. Funerals of Members. Sections 7142–7155.
12. Eulogies of deceased Speakers and Members. Sections 7156–7170.
13. Deaths of officers of House. Sections 7171–7175.[2]
14. Observances as to Presidents who have died in office. Sections 7176–7180.
15. Announcements of deaths of former Presidents. Sections 7181–7188.
16. Decease of Vice-Presidents and other civil officers. Sections 7189–7200.
17. Decease of high officers of Army and Navy. Sections 7201–7212.
18. Decease of eminent citizens of this and other countries. Sections 7213–7223.
19. Instances of adjournments in recognition of calamities. Sections 7224–7226.

7045. Ceremonies attending a visit of the House to the Senate.

When the House attends in the Senate, the Sergeant-at-Arms does not bear the mace.

On April 23, 1898,[3] the House, in accordance with an order adopted on the previous day, attended the Senate in a body. When the hour arrived, the Speaker[4] announced:

> The hour having arrived, the House, in accordance with its order already made, will now in a body attend the funeral services of the late Senator Walthall.

Thereupon the House, preceded by the Speaker and the Sergeant-at-Arms, proceeded in a body to the Senate.

At 12.15 the Members, headed by the Speaker and Sergeant-at-Arms, returned to the Hall, and the House was called to order by the Speaker.

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[1] Thanks to a Speaker who had resigned. (Sec. 231 of Vol. I.)

[2] See also section 266 of Volume I.

[3] Second session Fifty-fifth Congress, Record, p. 4212.

[4] Thomas B. Reed, of Maine, Speaker.

The House in this case did not adjourn or take a recess, and the mace was not carried by the Sergeant-at-Arms, but was left standing in the place it usually occupies when the House is in session.

7046. Form of resolution thanking the Speaker at the adjournment of a Congress.

References to divisions on the resolution of thanks to the Speaker. (Footnote.)

On March 3, 1897 [1] (calendar day of March 4), after the committee appointed to wait on the President and inform him that Congress had completed its business had reported, the Speaker pro tempore called to the chair a member of the minority, Mr. Alexander M. Dockery, of Missouri.

Thereupon Mr. Benton McMillin, of Tennessee, also a member of the minority, offered this resolution:

Resolved, That the thanks of this House are presented to the Hon. Thomas B. Reed, Speaker of the House of Representatives, for the able, impartial, and dignified manner in which he has presided over its deliberations and performed the axduous and important duties of the Chair during the present term of Congress.[2]

The resolution having been agreed to unanimously, the Speaker resumed the chair and, having addressed the House, declared it adjourned without day.

7047. On the calendar day of March 4, 1901,[3] but the legislative day of March 1, the Speaker [4] called Mr. Charles F. Joy, of Missouri, to the chair, and presently Mr. Joy called Mr. Joseph W. Bailey, of Texas, a member of the minority.

Thereupon Mr. James D. Richardson, of Tennessee, first of the minority members of the Ways and Means Committee, offered the following resolution:

Resolved, That the thanks of this House are tendered to the Hon. David B. Henderson for the able, impartial, and dignified manner in which he has presided over its deliberations and performed the arduous and important duties of the Chair.

After remarks by Mr. Richardson, the resolution was agreed to unanimously, by a rising vote.

Thereupon the Speaker pro tempore appointed Mr. Richardson, Mr. Sereno E. Payne, of New York, and Mr. Joy a committee to wait on the Speaker and notify him of the action of the House.

The Speaker appearing, escorted by the committee, the Speaker pro tempore informed him of the resolution agreed to by the House, the same being read by the Clerk, and presented to him the gavel.

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[1] Second session Fifty-fourth Congress, Record, pp. 2981, 2986.

[2] Such resolutions are usually presented and adopted at the close of a Speaker's term, the form in this case being about the same as the resolutions thanking Mr. Speaker Crisp in the two preceding Congresses. In many instances there have been divisions or calls of the yeas and nays, and sometimes party lines have been drawn. Thus, in votes of thanks there have been divisions, of greater or less extent, in the following Congresses: Fifth, Speaker Dayton; Sixth, Speaker Sedgwick; Tenth, Speaker Varnum; Thirteenth, Speaker Clay; Twentieth, Speaker Stevenson; Twenty-fifth, Speaker Polk; Twenty-seventh, Speaker White; Thirtieth, Speaker Winthrop; Thirty-second and Thirty-third, Speaker Boyd; Thirty-fourth, Speaker Banks; Thirty-fifth, Speaker Orr; Thirty-sixth, Speaker Pennington; Forty-seventh, Speaker Keifer; Fifty-first, Speaker Reed.

[3] Second session Fifty-sixth Congress, Record, p. 3604.

[4] David B. Henderson, of Iowa, Speaker.

The Speaker, taking the gavel and the chair, addressed the House, and then declared the House adjourned without day.

7048. On April 28, 1904[1] (the legislative day of April 26), at the close of the long session of the Congress, Mr. James D. Richardson, of Tennessee, a member of the minority party, was called to the chair by the Speaker.

After a short time, Mr. John S. Williams, of Mississippi, proposed the following resolution:

Resolved, That the House of Representatives return its thanks to its Speaker, the Hon. J. G. Cannon of Illinois, for the fair, impartial, and able manner in which he has presided over its deliberations, and for the sturdy common sense and genial good humor which have been displayed by him and which have induced the Members of the House itself at this session, in a degree almost unprecedented, in imitation of him, to display the same sterling American characteristics in their deliberations and mutual dealings.

The vote was, by unanimous consent, taken by rising, and was unanimously agreed to.

The Speaker pro tempore then, on motion of Mr. Williams, appointed Messrs. Williams, Sereno E. Payne, of New York, and James A. Hemenway, of Indiana, a committee to escort the Speaker to the chair.

The Speaker having been escorted to the chair, and having been informed of the action of the House by Mr. Williams, addressed the House.

And at the close of his remarks he declared the session adjourned without day.

7049. A Speaker pro tempore is sometimes thanked for his services.— On February 6, 1888,[2] the House adopted a resolution thanking Hon. S. S. Cox, of New York, for acting as Speaker pro tempore during the temporary absence of the Speaker.

7050. The resolution of thanks to the Speaker at the end of his term of service is presented as privileged.—On March 3, 1829,[3] Mr. Samuel C. Allen, of Massachusetts, offered the following resolution:

Resolved, That the thanks of this House be presented to the Hon. Andrew Stevenson, for the able, prompt, and dignified manner in which he has presided over its deliberations, and performed the important and arduous duties of the Chair.

Mr. William L. Brent, of Louisiana, objected to the resolution as not in order under the rules.

The Speaker pro tempore[4] said that if the rules and orders were to be strictly enforced, the motion of the gentleman from Massachusetts would, of course, be out of order. But the universal practice of the House had decided that such a resolution might be received on the last day of the session, though not strictly in order, and therefore the resolution would be received.

Mr. Brent having appealed, after debate the decision of the Chair was sustained, yeas 95, nays 41.

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[1] Second session Fifty-eighth Congress, Journal, pp. 717, 718; Record, pp. 5849, 5850.

[2] First session Fiftieth Congress, Journal, p. 684.

[3] Second session Twentieth Congress, Journal, p. 501; Debates, pp. 388–390.

[4] Philip P. Barbour, of Virginia, Speaker pro tempore.

7051. On June 28, 1834,[1] Mr. Jesse Speight, of North Carolina, offered this resolution:

Resolved, That the thanks of this House be presented to the Hon. Andrew Stevenson, late Speaker,[2] for the firmness, dignity, skill, and impartiality with which he filled the office of Speaker during the present session.

The resolution being read, an inquiry was made of the Chair whether it could be received and entertained at this state of the business of the day without a suspension of the rules prescribing the order of business.

The Speaker[3] decided that, in an analogous case which occurred on the 3d of March, 1829, the House had decided that a resolution of similar import did not come within the rules prescribing the order of business, and that, in accordance with the decision then made, the present resolution would be received and entertained.

The yeas and nays being taken, the resolution was agreed to, yeas 97, nays 49.

7052. The Speaker sometimes, by unanimous consent, lays before the House invitations to it to participate in public ceremonies.—On November 24, 1903,[4] the Speaker,[5] by unanimous consent, laid before the House an invitation from the governor of Louisiana requesting the honor of the honorable the Speaker and Members of the House of Representatives' presence at the celebration of the one hundredth anniversary of the transfer of Louisiana by France to the United States, to be held December 18, 19, and 20, 1903, New Orleans.

Thereupon Mr. Adolph Meyer, of Louisiana, asked unanimous consent to offer the following resolution:

Resolved by the House of Representatives (the Senate concurring), That the invitation extended to the Congress of the United States by the Louisiana Historical Society and by the governor of the State of Louisiana to attend the ceremonies in commemoration of the one hundredth anniversary of the transfer of the territory of Louisiana and all sovereignty over said territory by France to the United States, to be held at New Orleans, December 18, 19, and 26, 1903 be, and it is is hereby, accepted.

That the President pro tempore of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized and directed to appoint a committee, consisting of three Senators and five Representatives, to attend the ceremonies and to represent the Congress of the United States on the occasion of the celebration of the centennial anniversary referred to.

Resolved further, That the expenses of the members of the said joint committee of the Senate and House of Representatives authorized to attend and attending and representing the Congress of the United States at the city of New Orleans on the occasion named, not exceeding in the aggregate $2,500, to be paid as follows: One-half thereof out of the contingent fund of the House and one-half thereof out of the contingent fund of the Senate.

This being objected to, it was referred.

7053. The House and Senate being invited to attend the Jamestown Exposition, appointed a joint committee to attend at a date after the expiration of the term of the Congress.—On February 27, 1907,[6] the Speaker laid before the House the following communication[7] which was read:

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[1] First session Twenty-third Congress, Journal, pp. 879 880.

[2] Mr. Stevenson had resigned on June 2, 1834, after seven years of service in the chair.

[3] John Bell, of Tennessee, Speaker.

[4] First session Fifty-eighth Congress, Journal, p. 89; Record, p. 469.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] Second session Fifty-ninth Congress, Record, p. 4133.

[7] Communications of this nature should regularly be referred under Rule XXIV (see sec. 3089 of Vol. IV of this work) without being laid before the House; and the Speaker presents them for reading only by unanimous consent.

JAMESTOWN EXPOSITION COMPANY (INCORPORATED),
Norfolk, Va., February 25, 1907.

To the Speaker and Members of the House of Representatives, Washington:

The honor of the presence of the Speaker and the House of Representatives of the United States is requested at the formal opening of the Jamestown Tercentennial Exposition at Norfolk, Va., on April 26, 1907. The acceptance of this invitation and the attendance of the Speaker and the House of Representatives upon the ceremony of the formal opening will be most gratifying to the president and the directors of the exposition and to all through whose agency the tercentennial has been made worthy the cause it represents.

H. ST. GEO. TUCKER, *President.*

Thereupon, by unanimous consent, Mr. Harry Maynard, of Virginia, offered this resolution, which was agreed to:

Resolved by the House of Representatives (the Senate concurring), That the invitation extended to the Congress of the United States by the Jamestown Tercentennial Exposition to attend the opening ceremonies of said exposition, to be held April 26, 1907, is hereby accepted.

That the Speaker of the House of Representatives and the President of the Senate be, and are hereby, authorized and directed to appoint a committee, to consist of ten Senators and fifteen Representatives of the Fifty-ninth Congress, to attend the formal opening of the ceremonies referred to and to represent the Congress of the United States on that occasion.

Subsequently the Senate agreed to the resolution, and the joint committee was appointed.[1]

7054. The House and Senate appointed a joint committee to attend the opening of the Louisiana Purchase Exposition.

Instance wherein a joint committee was authorized and appointed to attend a ceremony occurring after the final adjournment of a Congress.

On February 20, 1903,[2] the Speaker, by unanimous consent, laid before the House the following communication:

UNIVERSAL EXPOSITION COMMEMORATING THE
ACQUISITION OF THE LOUISIANA TERRITORY,
St. Louis, U. S. A., February 12, 1903.

To the Congress of the United States.

SIRS: The Louisiana Purchase Exposition Commission and the Louisiana Purchase Exposition Company hereby extend an invitation to the Congress of the United States to attend the dedicatory ceremonies of the Louisiana Purchase Exposition, to be held in St. Louis on April 30 and May 1 and 2, 1903.

These ceremonies are provided for in the act of Congress approved March 3, 1901, and will be in keeping with the dignity of the occasion and commensurate with the importance of the event they are designed to commemorate.

April 30, 1903, will be the one hundredth anniversary of the signing of the treaty by which the Louisiana territory was transferred from the jurisdiction of France to that of the American Republic.

LOUISIANA PURCHASE EXPOSITION COMMISSION,
THOS. H. CARTER.
LOUISIANA PURCHASE EXPOSITION COMPANY,
D. R. FRANCIS.

Thereupon Mr. James A. Tawney, of Minnesota, offered the following resolution, which was agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That the invitation extended to the Congress of the United States by the National Commission of the Louisiana Purchase Exposition

[1] This committee, of course, had no powers after the adjournment of Congress.

[2] Second session Fifty-seventh Congress, Journal, p. 266; Record, p. 2412.

and by the Louisiana Purchase Exposition Company to attend the dedicatory ceremonies of the Louisiana Purchase Exposition, to be held at St. Louis, Mo., April 30 and May 1 and 2, 1903, be, and is hereby, accepted.

That the President pro tempore of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized and directed to appoint a committee to consist of seven Senators and eleven Representatives elected to the Fifty-eighth Congress, to attend the dedicatory ceremonies referred to, and to represent the Congress of the United States on the occasion of the celebration of the one hundredth anniversary of the purchase of the territory of Louisiana at St. Louis, Mo., April 30 and May I and 2, 1903.

On February 24 [1] this resolution was returned from the Senate with an amendment making the number of the committee ten Senators and fifteen Representatives.

On February 25 [2] the House concurred in the amendment.

7055. The House sometimes appoints committees to represent it at public ceremonies.—On December 12, 1884,[3] the House and Senate, by concurrent resolution, authorized a committee of thirteen Senators with the President of the Senate, and the Speaker of the House with a committee composed of a Representative or Delegate from each State or Territory, to attend at the Executive Mansion on December 16, when the President of the United States should by telegraph open the World's Industrial and Cotton Centennial Exposition at New Orleans.

7056. On March 2, 1889,[4] the House passed a resolution that the Speaker appoint a committee of one member-elect to the Fifty-first Congress from each State and Territory to attend the centennial of the inauguration of the first President, to be held in New York April 30, 1889, after the expiration of the fiftieth and before the organization of the succeeding Congress.

7057. The House, accompanied by its officers, attended the exercises in celebration of the founding of the Capitol.—On August 25, 1893,[5] a joint committee was appointed on the part of the Senate and House in accordance with the joint resolution providing for the celebration of the centennial of the laying of the corner stone of the Capitol. This joint resolution provided for a joint committee of seven from each House to arrange for the ceremonies, and gave authority for the use of the Capitol grounds, under control of regulations to be prescribed by the President of the Senate and Speaker of the House.

On September 12 the House, in response to an invitation, agreed to the following resolution:

Resolved, That the House will attend the ceremonies of the one-hundredth anniversary of the laying of the corner stone of the Capitol, September 18, 1893, at 2 o'clock p. m.

That a recess be taken at 10 minutes before 2 o'clock of that day, and the House, accompanied by its officers, shall proceed to the place assigned, at the east front of the Capitol. That the Sergeant-at-Arms of the House is directed to make the necessary arrangements to carry out this order.

On the day arranged, the House as a body attended, and having returned to the Hall, adjourned.

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[1] House Journal, p. 282.

[2] Journal, p. 284.

[3] Second session Forty-eighth Congress, Journal, p. 72; Record, p. 204.

[4] Second session Fiftieth Congress, Journal, pp. 765, 766; Record, p. 2717.

[5] First session Fifty-third Congress, Record, pp. 244, 886, 1427, 1567.

7058. Ceremonies at a joint meeting of the two Houses in celebration of the centennial of the Capitol.—On December 12, 1900,[1] the one-hundredth anniversary of the establishment of the permanent seat of Government in the District of Columbia and of the first session of Congress held in the permanent Capitol was observed in accordance with the terms of a joint resolution, Which provided as follows:

That the two Houses of Congress shall assemble in the Hall of the House of Representatives on the 12th day of December, 1900, at the hour of half past 3 o'clock p. m., and that addresses on subjects bearing on the celebration shall be made by Senators and Representatives to be chosen by the joint committee mentioned in the preamble; that the President and ex-Presidents of the United States, the heads of the several Executive Departments, the Justices of the Supreme Court, representatives of foreign governments accredited to this Government, the governors of the several States and Territories, the Commissioners of the District of Columbia, the Lieutenant-General of the Army and the Admiral of the Navy, officers of the Army and Navy who have received the thanks of Congress, and all persons who have the privilege of the floor either of the Senate or the House, be, and are hereby, invited to be present on the occasion, and that the members of the committee from the country at large, the members of the said citizens' committee, and the chairman and vice-chairman of the committees of the national capital centennial, are hereby granted the privilege of the floor of the House during the exercises; that the said citizens' committees shall issue cards of admission to such portions of the public galleries of the Hall of the House as may be set apart by the Doorkeeper of the House for that purpose. That the Speaker of the House shall call the assembly to order and the President pro tempore of the Senate shall act as presiding officer during the exercises.

At 3.30 o'clock the following bodies appeared, and were announced, in the absence of the Doorkeeper by the Assistant Doorkeeper, in the following order and terms:

The President pro tempore and the Senate of the United States.
The Chief Justice and associate justices of the Supreme Court.
The ambassadors and ministers to the United States.
The governors of the several States and Territories.
The President of the United States and the members of his Cabinet.

Other invited guests entered unannounced.

The President pro tempore of the Senate, when he entered with the Senate, was escorted by the Sergeant-at-Arms of the House to a chair beside and at the right of the Speaker.

The members of the Senate, diplomatic corps, governors, and the unannounced guests took seats in the body of the Hall to the right of the Speaker's desk, the Members of the House occupying the portion of the Hall to the left of the Speaker's desk.

The President of the United States and his Cabinet occupied seats in the area before the Speaker's desk and on its left. The Supreme Court occupied chairs similarly placed on the other side of the area, to the right of the Speaker's desk.

The exercises being concluded, the bodies were ushered from the Hall in an order the reverse of that in which they entered.

7059. The completion of the Washington Monument was celebrated by exercises in the Hall of the House.—The completion of the Washington

[1] Second session Fifty-sixth Congress, Journal, pp. 45, 46; Record, p. 255.

Monument was celebrated by ceremonies, of which a part was an address delivered in the Hall of the House of Representatives on February 22, 1885,[1] by Hon. Robert C. Winthrop. The exercises were arranged in terms of a joint resolution, which also provided for a commission, consisting of five Senators, eight Representatives (to be appointed respectively by the presiding officers of their respective Houses), three members of the monument society, and the engineer in charge of the work. This commission was to arrange for the ceremonies.

7060. The centennial of the inauguration of George Washington was observed by exercises at a joint session of the two Houses.—On December 11, 1889,[2] the joint committee of the two Houses, appointed in pursuance of the act of March 2, 1889, reported to the House the order of arrangements for the ceremony of that day in commemoration of the inauguration of George Washington, first President of the United States. This programme provided the usual regulations for the admission to the Capitol, the occupation of the floor and galleries of the Hall of the House, where the exercises were to take place, for the seating of the President and ex-Presidents, the Supreme Court, the Cabinet, the Senators, the General of the Army and Admiral of the Navy, etc.

The Vice-President occupied the Speaker's chair and presided, the Speaker sitting at his left.

At the appointed hour the Senate and other bodies and individuals arrived, a message having been sent by the House to the Senate that the House was ready to receive the Senate. The orator of the occasion, Melville W. Fuller, Chief Justice, was escorted to the Clerk's desk by the chairman of the joint committee on the part of the House and Senate.

The opening invocation was by the Chaplain of the Senate, and the benediction by the Chaplain of the House.

At the close of the exercises the bodies and invited guests retired from the Hall in an order the inverse of that in which they entered.[3]

7061. The House sometimes accepts invitations to attend public exercises, but does not go as an organized body.—On May 7, 1884,[4] the House agreed to this resolution:

Resolved, That the House of Representatives will, at 1 o'clock p. m. on Saturday, May 10, attend as a body the ceremonies of unveiling the statue of John Marshall, late Chief Justice of the United States.

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[1] First session Forty-eighth Congress, Record, p. 3977.

[2] First session Fifty-first Congress, Journal, p. 18; Record, p. 146. The programme appears in full in the Record.

[3] On December 20, by concurrent resolution, the thanks of Congress were tendered to the orator for his oration. (Journal, p. 74.) By the act of March 2, 1889 (25 Stat. L., p. 980), a joint committee composed of five Senators and five Representatives, to be appointed by the presiding officers of their respective Houses, and to be Members of the Fifty-first Congress, was appointed to have charge of the centennial of the inauguration of the first President. This committee made a joint report (first session Fifty-first Congress, Record, pp. 146, 147) which prescribed the order of exercises. These exercises occurred in the Hall of the House, in the presence of the Senate, Supreme Court, diplomatic corps, President and Cabinet, and other invited guests.

[4] First session Forty-eighth Congress, Journal, p. 1200; Record, pp. 3949, 4056.

The House, however, on the 9th adjourned to the 12th, so it did not attend as a House organized. The Senate did assemble, proceeded to the unveiling, and on its return adjourned.

7062. On May 5, 1876,[1] concurrent resolution was announced as agreed to whereby the two Houses accepted an invitation to attend the opening of the Centennial Exhibition at Philadelphia.

7063. On June 28, 1850,[2] Mr. Speaker Cobb, by unanimous consent, laid before the House an invitation to the House to participate in the celebration of the anniversary of National Independence. The invitation was accepted.

7064. On July 23, 1856,[3] the Speaker laid before the House an invitation from Cornelius Vanderbilt inviting the House to inspect his steamship. On the following day an order was adopted accepting the invitation, although it was urged in opposition that the House should take no action, and that such a matter ought not to appear in the Journal.

7065. Ceremonies at the presentation of portraits of ex-Speakers.—On December 21, 1880,[4] Mr. Joseph R. Hawley, of Connecticut, by unanimous consent, was recognized to present in behalf of the State of Connecticut a portrait of Mr. Speaker Trumbull. The House thereupon adopted the following resolution:

Resolved, That the thanks of the House of Representatives be tendered to the general assembly of the State of Connecticut for the portrait of the distinguished statesman and citizen, Jonathan Trumbull, presented to the House today.

7066. On February 26, 1881,[5] Mr. Hiester Clymer, of Pennsylvania, presented to the House a portrait of Frederick A. Muhlenberg, first Speaker of the House. Mr. Clymer made the presentation in behalf of descendants of Mr. Muhlenberg, and the House adopted a resolution thanking them for the portrait.

7067. On June 27, 1882,[6] Mr. Leopold Morse, of Massachusetts, by unanimous consent, presented the letter of several Massachusetts gentlemen, presenting to the House a portrait of Mr. Speaker Winthrop. At the conclusion of remarks on the subject, Mr. J. Randolph Tucker, of Virginia, presented a resolution, directing the Speaker to inform the donors of the satisfaction with which the House had received the gift, and to assure them that it should be placed among the portraits of the other Speakers.

7068. January 20, 1888,[7] was by special order set apart for the presentation, on behalf of the State of Massachusetts, of portraits of ex-Speakers Sedgwick, Varnum, and Banks. The executive council of Massachusetts were, by permission of the House, given seats on the floor. Mr. John D. Long, of Massachusetts, a Member of the House, presented the portraits in behalf of the committee of the council. The House adopted a regolution accepting the portraits and declaring that they should be placed with the portraits of the other Speakers.

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[1] First session Forty-fourth Congress, Journal, p. 927.

[2] First session Thirty-first Congress, Journal, p. 1054; Globe, p. 1303.

[3] First session Thirty-fourth Congress, Journal, pp. 1262, 1283; Globe, pp. 1728, 1764.

[4] Third session Forty-sixth Congress, Journal, pp. 109, 110; Record, p. 293.

[5] Third session Forty-sixth Congress, Record, p. 2192.

[6] First session Forty-seventh Congress, Journal, p. 1546; Record, p. 5399.

[7] First session Fiftieth Congress, Journal, pp. 320, 472.

7069. January 21, 1892,[1] was set apart by special resolution for the presentation to the House of the portraits of ex-Speakers Grow and Randall on behalf of the Commonwealth of Pennsylvania. After remarks the House adopted the usual resolution accepting the portraits.

7070. Washington's farewell address was read at a joint session of the two Houses in 1862.—In 1862,[2] a joint session of the two Houses was held in the Hall of the House of Representatives, and Washington's farewell address was read by the Secretary of the Senate. The joint meeting was provided for by concurrent resolution, and the heads of Departments, judges of the Supreme Court, representatives of foreign governments, and officers of the Army and Navy were present. The President of the United States was absent on account of the recent death of a son.

7071. In early days the House did not allow special occasions, like holidays, to interfere with public business.—On February 22, 1796,[3] the House declined to adjourn in order to pay their compliments to the President on his birthday, the argument having been made that it was the business of the Members first to do their duty, and then attend to the paying of compliments.

7072. On February 21 and 22, 1826,[4] the House, after debate, declined to adjourn on Washington's birthday.

So, also, the House declined to adjourn February 22, 1906.[5]

7073. On February 21, 1846,[6] on motion of Mr. William L. Yancey, of Alabama, the rules were, by a vote of two-thirds, suspended, and the following resolution was offered and agreed to:

Resolved, That when this House adjourns, it stand adjourned until Tuesday next, in honor of the memory, and in respect to the anniversary of the birthday, of George Washington, the Father of his Country.

7074. On March 31, 1820,[7] the House decided in the negative the motion made by Mr. John Randolph, of Virginia, that the House adjourn out of respect to Good Friday.

7075. In honor of the centennial birthday of George Washington, the two Houses, by concurrent action, adjourned from February 21 to 23, 1832.

Form of report by a joint committee.

Correspondence, carried on by the Speaker by direction of the House, was entered in the Journal as a matter of course.

On February 3, 1832,[8] the House agreed to this resolution:

Resolved, That a joint committee of the two Houses be appointed for the purpose of making arrangements for the celebration of the centennial birthday of George Washington.

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[1] First session Fifty-second Congress, Journal, pp. 24,

[2] Second session Thirty-seventh Congress, Journal, pp. 310, 338–340; Globe, pp. 835, 913.

[3] First session Fourth Congress, Annals, p. 355.

[4] First session Nineteenth Congress, Debates, pp. 1419, 1428.

[5] First session Fifty-ninth Congress.

[6] First session Twenty-ninth Congress, Journal, p. 445; Globe, p. 413.

[7] First session Sixteenth Congress, Annals, p. 1701.

[8] First session Twenty-second Congress, Journal, p. 283; Debates, p. 1732.

A committee of twenty-four, one from each State, were appointed on the part of the House, and the resolution was transmitted to the Senate.

On February 7[1] a message from the Senate announced that they had concurred in the resolution and appointed a committee.

On February 13[2] this joint committee made a report in writing, signed by "H. Clay, Chairman of the Committee of the Senate," and "Philemon Thomas, Chairman of the Committee of the House of Representatives." This report begins as follows:

> The joint committee of the Senate and House of Representatives, appointed to make arrangements or the purpose of celebrating the centennial birthday of George Washington, have, according to order, had the subject under consideration, and now beg leave to report to the respective Houses.

The report then goes on to say that the committee had decided to recommend an adjournment of the two Houses by joint resolution from the 21st to the 23d of the present month; and, being unable to have an oration from the Chief Justice of the Supreme Court, had decided to request the Chaplains to perform divine service in the Capitol on the 22d instant; and finally the committee recommended action to carry into effect the resolution of 1799 by the removal of the remains of George Washington and their interment in the city of Washington in the Capitol.

The report having been read, joint resolutions were presented and agreed to, empowering the President of the Senate and Speaker of the House to make application to surviving relatives of George Washington, and Martha, his wife, for the removal of their bodies to the Capitol; also arranging for appropriate ceremonies. These resolutions were agreed to by the Senate.

On February 16[3] the Speaker announced to the House that the Vice-President and himself, in fulfillment of the joint resolutions of the two Houses, had sent joint letters to Messrs. John A. Washington and George Washington Parke Custis. These joint letters, signed by the Vice-President and Speaker, with the replies thereto, were laid before the House and entered in fall on the Journal. Their entry on the Journal being made a subject of inquiry, the Speaker[4] said that they would be entered as a matter of course.

On February 20[5] the two Houses agreed to the adjournment.[6]

The exercises of February 22 were not a part of the proceedings and do not appear in the Journal.

7076. Eminent American soldiers have been received informally by the House.—On February 11, 1865,[7] the House took a recess in order that the Members might have an opportunity of paying their respects to Lieut. Gen. Ulysses S. Grant, and at the expiration of the recess, on motion of Mr. Robert C. Schenck,

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[1] Journal, p. 302.

[2] Journal, pp. 339, 340, 348; Debates, pp. 1782–1809, 1811.

[3] Journal, pp. 366–368; Debates, pp. 1818–1820.

[4] Andrew Stevenson, of Virginia, Speaker. Debates, p. 1820.

[5] Journal, p. 392.

[6] They did this by resolutions concurrent in form and the same in phraseology, but not identical. The House, having acted on its own, did not deem it necessary to act on the Senate's when that was received.

[7] Second session Thirty-eighth Congress, Journal, p. 242; Globe, p. 756.

of Ohio, General Grant was escorted by the Speaker to the Speaker's chair, and formally introduced to the House of Representatives.

7077. On December 16, 1880,[1] the House took a recess to enable the Members to be presented to General Grant, who was present on the floor.

7078. On January 29, 1886,[2] the House took a recess to enable the Speaker to introduce to the House Maj. Gen. W. T. Sherman. On February 2[3] Gens. George G. Meade and George H. Thomas were introduced to the House.

7079. On February 5, 1867[4] Gen. Philip H. Sheridan was introduced to the House by the Speaker.

7080. A newly appointed Chief Justice of the United States Supreme Court was received informally by the House.—On February 20, 1874,[5] the House took a recess of ten minutes to enable Members to be introduced to the newly appointed Chief Justice, Morrison R. Waite.

7081. The House formally extended the privileges of the floor to the widow of President Madison.—On January 8, 1844,[6] it was unanimously resolved that a committee be appointed on the part of this House to wait on Mrs. Madison and to assure her that whenever it shall be her pleasure to visit the House she be requested to take a seat within the Hall.

The committee made a written report consisting principally of the letter of thanks from Mrs. Madison.[7]

7082. Ceremonies at the reception of General Lafayette by the House, in the presence of the Senate.—On December 6, 1824,[8] on motion of Mr. George E. Mitchell, of Maryland,

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to consider and report what respectful mode it may be proper for Congress to adopt to receive General Lafayette and to testify the very high gratification which he has afforded to it by his present visit to the United States, made in pursuance of the invitation given to him by Congress[9] during its last session.

The Senate having concurred in this resolution, on December 8 Mr. Mitchell, chairman of the committee on the part of the House, made the following report:

That the joint committee have agreed to recommend to their respective Houses that each House receive General Lafayette in such manner as it shall deem most suitable to the occasion; and recommend to the House the adoption of the following resolutions:

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[1] Third session Forty-sixth Congress, Journal, p. 84; Record, p. 205.

[2] First session Thirty-ninth Congress, Journal, p. 199.

[3] Journal, p. 220.

[4] Second session Thirty-ninth Congress, Globe, p. 1013.

[5] First session Forty-third Congress, Journal, p. 484; Record, p. 1688.

[6] First session Twenty-eighth Congress, Journal, p. 186; Globe, p. 120.

[7] House Report No. 5, first session Twenty-eighth Congress.

[8] Second session Eighteenth Congress, Journal, p. 8.

[9] This invitation was in the form of a joint resolution, presented in the House January 12, 1824, and signed by the President February 4. (First session Eighteenth Congress, Journal, pp. 140, 208; Annals, p. 1127.)

[10] Journal, p. 29.

Resolved, That the congratulations of this House be publicly given to General Lafayette on his arrival in the United States in compliance with the wishes of Congress; and that he be assured of the gratitude and deep respect which the House entertains for his signal and illustrious services in the Revolution; and the pleasure it feels in being able to welcome him, after an absence of so many years, to the theater of his early labor and early renown.

Resolved, That, for this purpose, General Lafayette be invited by a committee to attend the House on Friday next at 1 o'clock; that he be introduced by the committee and received by the Members, standing, uncovered, and addressed by the Speaker in behalf of the House in pursuance of the foregoing resolution.

The resolutions were agreed to unanimously, and the committee were appointed, Mr. Mitchell being chairman, and the number being 24.

On December 10 [1] a message was sent to the Senate inviting that body to attend at 1 o'clock, which they did, being assigned, with their President, to seats prepared for them.

General Lafayette was then conducted into the Hall by the committee appointed for that purpose, and, having arrived at the area in front of the Speaker's chair, was presented by Mr. Mitchell, of Maryland, the chairman of the committee, in the following words:

Mr. Speaker: We have the honor to introduce to you General Lafayette.

The Speaker rose and addressed him.

To which General Lafayette replied, addressing—

Mr. Speaker and gentlemen of the House of Representatives.

At the conclusion of his address the House adjourned.

On December 30,[2] by joint action of House and Senate, a joint committee was appointed to announce to General Lafayette the passage of the act "concerning" him, which had just been approved, and to "express to him the respectful request and confidence of the two Houses of Congress that he will add his acceptance of the testimony of public gratitude extended to him by this act, to the many and signal proofs which he has afforded of his esteem for the United States."

On January 3 [3] the committee reported to the House that they had performed the duty by addressing to General Lafayette a letter, of which they presented a copy, with General Lafayette's reply thereto.

These, on motion of Mr. Lewis Condict, of New Jersey, were entered at large on the Journal.[4]

7083. Ceremonies at the reception of Louis Kossuth by the House.— On December 15, 1851,[5] the House, in concurrence with the Senate, passed the following:

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[1] Journal, pp. 33–35; Debates, p. 3.

[2] Journal, pp. 92, 93; Debates, p. 99.

[3] Journal, pp. 97, 98; Debates, p. 113.

[4] On October 14, 1881 (special session Senate, Forty-seventh Congress, Record, p. 523), the Senate received on its floor the representatives of the Government and people of France and the descendants of General Lafayette and Baron Steuben, invited as guests of the United States at the Yorktown centennial celebration. When they had been introduced on the floor the Senate took a recess to enable the Senators to greet them.

[5] First session Thirty-second Congress, Journal, pp. 89, 168, 173, 184; Globe, pp. 96, 209, 225.

A joint resolution of welcome to Louis Kossuth.

Resolved, That Congress, in the name and behalf of the people of the United States, give to Louis Kossuth a cordial welcome to the capital and the country; and that a copy of this resolution be transmitted to him by the President of the United States.[1]

On January 5, 1852, Mr. David K. Cartter, of Ohio, offered, and the House agreed to, the following resolution:

Resolved, That a committee of five be appointed by the Speaker to wait upon Louis Kossuth, and introduce him to the House of Representatives.

Mr. Cartter was appointed chairman of the committee.

On January 6 he presented a report recommending ceremonies on the occasion of the introduction similar to those observed in the Senate in introducing Kossuth.[2]

On January 7, at 1 o'clock, the hour fixed for the ceremony, Mr. Louis Kossuth, escorted by the committee of reception, and followed by his suite, entered the Hall and advanced up the aisle in front of the Speaker—the Members of the House generally rising to receive him.

Mr. Cartter, chairman of the committee of reception, then addressed the Speaker as follows:

Mr. Speaker: We have the honor to present Governor Louis Kossuth to the House of Representatives.

The Speaker said:

As the organ of this body I have the honor to extend to Louis Kossuth a cordial welcome to the House of Representatives of the United States.

Mr. Kossuth, having responded briefly, thanking the House for the reception, was conducted by the committee to a chair that had been prepared for him. The House then adjourned to give Members an opportunity of greeting him.

The Journal has the following statement of the occurrence:

The hour of 1 o'clock having arrived,

Mr. Cartter, from the select committee appointed for that purpose, introduced Louis Kossuth to the House of Representatives.

The Speaker having extended to him a cordial welcome, to which he briefly responded, he was conducted to a seat provided for him within the bar of the House.

And then, on motion of Mr. Frederick P. Stanton, at 1 o'clock and 5 minutes p. m., the House adjourned until Friday next at 12 m.

7084. At a special session of the House Charles Stewart Parnell was introduced by the Speaker and addressed the House.—On January 19, 1880,[3] the Speaker laid before the House, by unanimous consent, a letter from a committee having in charge arrangements for the address of Charles Stewart Parnell, inviting the House to be present at the address.

Thereupon Mr. Samuel S. Cox, of New York, submitted the following resolution:

In response to the invitation just presented and accepted, requesting the House to agree to take part in the ceremonies to be observed in the reception of Mr. Charles Stewart Parnell, a representative

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[1] On December 18 the Committee on Enrolled Bills reported that the committee had presented the joint resolution to the President; but there is no record that he signed it. There is doubt about his signature being required.

[2] The Senate committee, composed of Messrs. James Shields, William H. Seward, and Lewis Cass, recommended the same proceedings as in case of General Lafayette. (Globe, p. 157.) The Senate adopted the report.

[3] Second session Forty-sixth Congress, Journal, pp. 261, 386; Record, pp. 393, 664.

of the Irish people, for the delivery of an address on Irish affairs, and because of the great interest which the people of the United States take in the condition of Ireland, with which this country is so closely allied by many historic and kindred ties: Therefore,

Be it resolved, That the Hall of this House be granted for the above purposes on the 2d day of February next, and that the House meet on that day and time to take part in said ceremonies.

The Speaker[1] held that the resolution came within the terms of the rule, and it was agreed to by the House.

On February 2 an evening session was held, and the Speaker introduced Mr. Parnell to the House and the latter delivered an address. This address appears in the Record as a portion of the proceedings of the House.

7085. The embassies of China and Japan were received by the House.— On March 1, 1872,[2] the House, by resolution, requested the Speaker to extend to the Japanese embassy an invitation to visit the House of Representatives. The embassy having accepted the invitation, a committee of five Members of the House was appointed to arrange the reception.

On March 5 the Doorkeeper announced the presence of the committee of the House with the members of the embassy. The Members of the House arose as the visitors entered and took their places in the area in front of the Speaker's desk. The chairman of the committee then presented them to the Speaker, who addressed them. To this address one of the embassy responded in his own tongue. A translation of the response was presented to the House by the chairman of the committee and ordered entered on the Journal.

Members of the House generally were then presented to the embassy, after which they retired from the Hall.

7086. On June 6, 1868,[3] by unanimous consent, and on motion of Mr. Fernando Wood, of New York,

Resolved, That the Speaker be requested to extend to the embassy now in this capital representing the Chinese Government a public reception in this Hall at such time as may be convenient to the embassy and the public business.

A committee was appointed to receive the embassy, and on June 9 the presence of the said committee, with the embassy, was announced by the Doorkeeper. At this announcement the Members of the House rose, and the committee and the embassy advanced to the area in front of the Speaker's desk. Then Mr. Robert C. Schenck, of Ohio, chairman of the committee, presented the embassy to the Speaker.

The Speaker[4] addressed the embassy, after which Anson Burlingame responded for the embassy. Then the committee introduced Members of the House to the embassy, an informal recess being taken for the ceremony.

7087. The House and Senate in joint session received the King of Hawaii.—On December 17, 1874,[5] the joint committee of the two Houses, appointed in accordance with a concurrent resolution of the Senate, reported the following:

The Senate and the House of Representatives will receive the King of the Hawaiian Islands in the Hall of the House to-morrow, at 15 minutes after 12 o'clock.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] Second session Forty-second Congress, Journal, pp. 439, 452, 455; Globe, pp. 1445, 1446.

[3] Second session Fortieth Congress, Journal, pp. 806, 823; Globe, pp. 2906, 2970.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Forty-third Congress, Journal, pp. 66, 81, 83; Record, pp. 67, 129, 144.

The Vice-President and the Speaker of the House will preside.

Senator Cameron, chairman of the joint committee, will present the King and the Speaker will welcome him.

The southeastern gallery will be reserved for the families of the President, Vice-President, members of the Cabinet, Senators, and Members of the House.

The diplomatic gallery will be reserved for members of the diplomatic corps exclusively.

The other galleries, except the reporters' gallery, will be open to the public.

The report was agreed to, and on the succeeding day the exercises took place in accordance with the arrangements.

7088. The Speaker having been ordered by the House to communicate a resolution to the last surviving signer of the Declaration of Independence, laid before the House a copy of the letter, and it was entered in the Journal.—The Speaker having, on May 22, 1828,[1] been ordered by the House to communicate to Charles Carroll, of Carrollton, Md., a joint resolution of the two Houses, granting the franking privilege to him as the last surviving signer of the Declaration of Independence, the Speaker on May 23 laid before the House a copy of the letter which he had addressed to Mr. Carroll, and it was entered in the Journal.

7089. Ceremonies in accepting statues for Statuary Hall.—On January 20, 1870,[2] Mr. Charles Sumner, of Massachusetts, in presenting in the Senate the joint resolution for the acceptance of the statue of Nathanael Greene, said that he had followed the precedents, and especially that made by John Quincy Adams, on a similar occasion.

The resolution, which was as follows, was agreed to:

Resolved, That the thanks of this Congress be presented to the governor, and through him to the people of the State of Rhode Island and Providence Plantations, for the statue of Major-General Greene, whose name is so honorably identified with our Revolutionary history; that this work of art is accepted in the name of the nation and assigned a place in the old Hall of the House of Representatives, already set aside by act of Congress for the statues of eminent citizens; and that a copy of this resolution, signed by the President of the Senate and the Speaker of the House of Representatives, be transmitted to the governor of the State of Rhode Island and Providence Plantations.

7090. On April 29, 1872,[3] the House concurred in the following:

Resolved by the Senate (the House of Representatives concurring), That the thanks of Congress are presented to the governor, and through him to the people, of the State of Connecticut, for the statues of Jonathan Trumbull and Roger Sherman, whose names are so honorably identified with our Revolutionary history.

Resolved, That these works of art are accepted in the name of the nation, and assigned a place in the old Hall of the House of Representatives, already set aside by act of Congress for statues of eminent citizens, and that a copy of this resolution, signed by the President of the Senate and Speaker of the House of Representatives, be transmitted to the governor of Connecticut.

7091. On December 19, 1876,[4] the House agreed to the following concurrent resolution from the Senate:

Resolved by the Senate (the House of Representatives concurring), 1. That the statues of John Winthrop and Samuel Adams are accepted in the name of the United States, and that the thanks of Congress

[1] First session Twentieth Congress, Journal, p. 830.

[2] Second session Forty-first Congress, Globe, p. 594.

[3] Second session Forty-second Congress, Journal, p. 774; Globe, p. 2899.

[4] Second session Forty-fourth Congress, Journal, p. 113; Record, pp. 300–306.

are given to the State of Massachusetts for these memorials of two of her eminent citizens whose names are indissolubly associated with the foundation of the Republic.

2. That a copy of these resolutions, engrossed upon parchment and duly authenticated, be transmitted to the governor of the State of Massachusetts.

7092. On January 19, 1886,[1] after addresses, the House agreed to the following:

Resolved by the. Senate (the House of Representatives concurring), That the thanks of Congress be presented to the governor, and through him to the people, of Ohio for the statue of James A. Garfield, whose name is so honorably identified with the history of that State and of the United States.

Resolved, That this work of art is accepted in the name of the nation and assigned a place in the old Hall of the House of Representatives, already set aside by act of Congress for statues of eminent citizens, and that a copy of this resolution, signed by the President of the Senate and Speaker of the House of Representatives, be transmitted to the governor of the State of Ohio.

7093. On December 6, 1893,[2] the House agreed to the concurrent resolution accepting from the State of Missouri, for the Statuary Hall, the statue of Gen. James Shields.

7094. On December 20, 1894,[3] the House received from the State of New Hampshire the statues of Webster and Stark, and adopted the usual concurrent resolution thanking the State, accepting the statues, and providing that they should be placed in Statuary Hall.

7095. On January 31, 1903,[4] Mr. George A. Pearre, of Maryland, presented the following resolutions:

Resolved by the House of Representatives (the Senate concurring), That the thanks of Congress be presented to the State of Maryland for providing the bronze statues of Charles Carroll of Carrollton and John Hanson, citizens of Maryland, illustrious for their historic renown and distinguished civic services.

Resolved, That the statues be accepted and placed in the national Statuary Hall, in the Capitol, and that a copy of these resolutions, duly authenticated, be transmitted to the governor of the State of Maryland.

After remarks these resolutions were agreed to by the House.

At the same time similar resolutions were agreed to by the Senate.

7096. On January 30, 1904,[5] Mr. Theobold Otjen, of Wisconsin, offered the following resolutions, which were agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That the thanks of Congress be given to the people of Wisconsin for the statue of James Marquette, the renowned missionary and explorer.

Resolved, That the statue be accepted, to remain in the national Statuary Hall, in the Capitol of the nation, and that a copy of these resolutions, signed by the presiding officers of the House of Representatives and Senate, be forwarded to his excellency the governor of the State of Wisconsin.

On February 1[6] the resolutions were agreed to by the Senate.

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[1] First session Forty-ninth Congress, Journal, p. 428; Record, p. 762.

[2] Second session Fifty-third Congress, Record, p. 78.

[3] Third session Fifty-third Congress, Record, p. 516.

[4] Second session Fifty-seventh Congress, Record, p. 1541.

[5] Second session Fifty-eighth Congress, Journal, p. 224; Record, p. 1421.

[6] Record, p. 1446.

7097. On February 25, 1905,[1] in accordance with the following order:[2]

Resolved, That the exercises appropriate to the reception and acceptance from the State of Texas of the statutes of Sam Houston and Stephen F. Austin, erected in Statuary Hall, in the Capitol, be made the special order for Saturday, the 25th day of February, at 3 o'clock p. m.

In the House considered, and agreed to the following resolutions:

Resolved by the House of Representatives (the Senate concurring), That the thanks of Congress be presented to the State of Texas for providing the statues of Sam Houston and Stephen F. Austin, illustrious for their historic renown and distinguished in civic services.

Resolved, That a copy of these resolutions, duly authenticated, be transmitted to the governor of the State of Texas.

7098. On January 21, 1905,[2] the following resolutions were agreed to by both Senate and House:

Resolved by the Senate (the House of Representatives concurring), That the statue of John J. Ingalls, presented by the State of Kansas to be placed in Statuary Hall, is accepted in the name of the United States, and that the thanks of Congress be tendered the State for the contribution of the statue of one of its most eminent citizens, illustrious for his distinguished civic services.

Resolved, That a copy of these resolutions, suitably engrossed and duly authenticated, be transmitted to the governor of the State of Kansas.

7099. On January 19, 1905,[3] the Speaker laid before the House the following:

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT,
Springfield, January 10, 1905.

DEAR SIR: Governor Deneen is in receipt of a letter from the chairman of the Illinois board of commissioners for the Frances E. Willard statue, informing him that the sculptor, Helen Farnsworth Mears, reports that the model will reach Washington, D.C., on February 11. The commissioners express the desire that Governor Deneen advise the Senate of the United States and House of Representatives of the completion of the statue in order that a date may be immediately fixed for its acceptance by Congress. I am directed by Governor Deneen to communicate this fact to you for your information and such action as Congress may see fit to take.

Yours, truly,

J. WHITTAKER, *Secretary.*

Hon. JOS. G. CANNON,
Speaker Howe of Representatives, Washington, D. C.

Thereupon Mr. George E. Foss, of Illinois, offered the following resolution, which was agreed to:

Resolved, That the exercises appropriate to the reception and acceptance from the State of Illinois of the statue of Frances E. Willard, erected in Statuary Hall, in the Capitol, be made the special order for Friday, February 17, at 4 o'clock.

On February 17[5] these resolutions were agreed to, after appropriate addresses:

Resolved by the House of Representatives (the Senate concurring), That the statue of Frances E. Willard, presented by the State of Illinois, to be placed in Statuary Hall, be accepted by the United States, and that the thanks of Congress be tendered the State for the statue of one of the most eminent women of the United States.

Resolved, That a copy of these resolutions, duly authenticated, be transmitted to the governor of the State of Illinois.

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[1] Third session Fifty-eighth Congress, Record, pp. 3429–3450.

[2] Agreed to on January 20. Record, p. 1156.

[3] Third session Fifty-eighth Congress, Record, pp. 1202–1214.

[4] Third session Fifty-eighth Congress, Record, p. 1078.

[5] Record, pp. 2801–2809.

7100. The sword of Washington and staff of Franklin were presented to Congress with addresses by Members.—On February 7, 1843,[1] Mr. George W. Summers, of Virginia, being recognized by the Speaker, addressed the House, presenting to Congress, and through Congress to the people, the service sword of George Washington, and a walking stick which Benjamin Franklin had bequeathed to George Washington. The presentation was made by Mr. Summers in behalf of his constituent, Samuel T. Washington.

At the conclusion of Mr. Summers's remarks the Sergeant-at-Arms received into custody the relics.

Mr. John Quincy Adams, of Massachusetts, was next recognized, and having addressed the House, presented the following resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the thanks of this Congress be presented to Samuel T. Washington, of Kanawha County, Va., for the present of the sword used by his illustrious relative, George Washington, in the military career of his early youth, in the Seven Years' war, and throughout the war of national independence, and of the staff bequeathed by the patriot, statesman, and sage, Benjamin Franklin, to the same leader of the armies of freedom in the Revolutionary war, George Washington; that these precious relics are hereby accepted in the name of the nation; that they be deposited for safe-keeping in the Department of State of the United States; and that a copy of this resolution, signed by the President of the Senate and the Speaker of the House of Representatives, be transmitted to the said Samuel T. Washington.

This resolution was presented and agreed to, and then the following order was presented and agreed to:

Ordered, That the addresses of Mr. Summers and Mr. Adams be entered on the Journal; that the resolution be taken to the Senate by the Clerk, accompanied by the sword and staff, with the request that the Senate will concur in the said resolution.

7101. Ceremonies at the presentation of various gifts to Congress.—On April 18, 1844,[2] Mr. John Quincy Adams, of Massachusetts, gave notice to the House that he had in his possession the camp chest of Gen. George Washington, which, by the last will and testament of the late William S. Winder, he had been requested to present to Congress, and he asked leave to present it to the House of Representatives at 3 o'clock this day. Leave was granted by unanimous consent, and at that hour Mr. Adams proceeded to make the presentation, reading certain papers relating to the authenticity of the gift.

Mr. Adams then offered two joint resolutions, one accepting the gift and ordering its deposit in the Department of State, and the other expressing to the Winder family the high sense of Congress of the value of the gift.

It was then ordered that the resolutions, accompanied by the chest, be taken to the Senate by the Clerk, and that the letters and papers read by Mr. Adams be entered on the Journal.

7102. On February 11, 1878,[3] Mr. Samuel S. Cox, of New York, from the Committee on Library, submitted the following report:

The Joint Committee on the Library, having been instructed by the joint resolution of Congress to make arrangements for the formal presentation of the painting tendered to Congress by Mrs. Elizabeth

[1] Third session Twenty-seventh Congress, Journal, pp. 329–333; Globe, pp. 254, 255.

[2] First session Twenty-eighth Congress, Journal, pp. 812, 817, 819; Globe, pp. 559, 561.

[3] Second session Forty-fifth Congress, Journal pp. 412, 425; Record, pp. 938, 968.

Thompson, on Tuesday, the 12th of February, have, in pursuance of the said resolution, ordered the painting to be placed in an appropriate and conspicuous place in the Capitol, and provided for such presentation the following programme:

The two Houses to meet in the Hall of the House at 2 o'clock p.m. on Tuesday, the 12th of February, when the ceremony shall take place. Hon. James A. Garfield, of Ohio, and Hon. A. H. Stephens, of Georgia, will make remarks appropriate to the occasion; the donor of the picture, Mrs. Elizabeth Thompson, with her escort, and the artist, Mr. F. B. Carpenter, to be privileged the floor of the House during the ceremony.

The House agreed to the report, and on February 12 the exercises took place as arranged.

7103. On August 10, 1852,[1] Mr. Joseph R. Chandler, of Pennsylvania, by unanimous consent, presented to the House a steel engraving of Washington, the gift of Mr. G. W. Childs, of Philadelphia.

7104. On April 22, 1880,[2] a message from the President announced that the heirs of the late Thomas Coolidge, jr., desired to present to the United States the desk on which the Declaration of Independence of the United States was written, and recommended that action be taken by Congress with reference to the gift.

Accordingly the House passed a resolution (H. Res. No. 290) thanking the donors in the name of Congress, accepting the relic in the name of the nation, and directing that it be deposited in the Department of State.

The resolution was passed by the Senate and signed by the President.

7105. The House, by resolution, accepted the gift of a flag made of American silk.—On December 13, 1830,[3] the Speaker laid before the House a letter from Peter S. Du Ponceau, of Philadelphia, presenting to the House a flag made entirely of American silk, woven in one piece 12½ feet long by 6 feet wide.

The communication being referred to the Committee on Agriculture, on December 21 that committee reported the following resolution, which was agreed to by the House:

Resolved, That the flag bearing the colors of the United States, presented to this House by Peter S. Du Ponceau, of Philadelphia, made of American silk, prepared and woven by John D'Homergue, silk manufacturer, in the city of Philadelphia, be accepted by this House, and that it be displayed, under the direction of the Speaker, in some conspicuous part of the hall of sittings of this House.

7106. A letter from a foreign artist, presenting to Congress a bust of Lafayette, was communicated to the House by message from the President, and with the message appears in the Journal.—On February 9, 1829,[4] the following was transmitted to the House by message from the Senate:

WASHINGTON, *January 29, 1829.*

To the President of the Senate of the United States:

SIR: I transmit herewith a letter which I have received from Mr. David, member of the Institute of France, professor of the School of Painting at Paris, and member of the Legion of Honor, the artist who presents to Congress the bust of General Lafayette, which has been received with it. And I have to request the favor that, after it has been communicated to the Senate, it may be transmitted to the Speaker of the House of Representatives, for similar communication to that body.

JOHN QUINCY ADAMS.

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[1] First session Thirty-second Congress, Journal, p. 1016; Globe, p. 2156.

[2] Second session Forty-sixth Congress, Journal pp. 1085, 1086; Record, pp. 2639, 2651.

[3] Second session Twenty-first Congress, Journal, pp. 50, 51, 84; Debates, pp. 355, 378.

[4] Second session Twentieth Congress, Journal, pp. 269, 270.

Both this message and the accompanying letter of Mr. David appear in the Journal of the House.

7107. Forms of resolutions offered at the death of a Member.—On March 7, 1900,[1] Mr. Henry H. Bingham, of Pennsylvania, announced to the House the death of his colleague, Hon. Alfred C. Harmer, and offered these resolutions:

Resolved, That the House has heard with deep regret and profound sorrow of the death of the Hon. Alfred C. Harmer, for twenty-seven years a Representative from the State of Pennsylvania, and the senior Member of this House in time of continuous service.[2]

Resolved, That a committee of fifteen Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral at Philadelphia, and that the necessary expenses attending the execution of this order be paid out of the contingent fund of the House.

Resolved, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for properly carrying out the pro-visions of this resolution.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

The resolutions having been agreed to, the Speaker announced the committee.

Then, as a further mark of respect, on motion of Mr. Bingham, the House adjourned.

7108. Early observances of the House at the decease of Members.—On June 1, 1790,[3] the House was informed that Theodorick Bland, one of the Members from the State of Virginia, died that morning. It was ordered that the Virginia Members be a committee to superintend the funeral, and that the House attend the same.

On June 2 it was ordered that the Members of the House go into mourning for one month, by the usual method of wearing crape around the left arm.

7109. On December 28, 1847,[4] the House and Senate voted to accompany the remains of John Fairfield, late a Senator from Maine, from his house to the depot, where they were to be delivered to Mr. Franklin Clark, a Representative from Maine, to be conveyed to Maine. The Chaplain of the Senate was requested by the Senate to deliver the funeral sermon at the Capitol on the next Sunday.

7110. In 1850,[5] a committee of the Senate accompanied the remains of John C. Calhoun to South Carolina.

7111. On August 9, 1852,[6] the remains of Robert Rantoul, jr., were accompanied to Massachusetts by a committee of the House.

7112. On January 10, 1854,[7] the House authorized the Speaker to appoint a committee of four to attend the remains of Henry A. Muhlenberg, a Member of the House, to his late residence in Pennsylvania.

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[1] First session Fifty-sixth Congress, Record, p. 2636.

[2] The clause relating to years of service was added because Mr. Harmer was "Father of the House." Usually the name is followed only by the words "a Representative from the State of ————."

[3] First session First Congress, Journal, pp. 232, 233 (Gales & Seaton ed.).

[4] First session Thirtieth Congress, Journal, pp. 162, 163; Globe, p. 73.

[5] First session Thirty-first Congress, Globe, p. 670.

[6] First session Thirty-first Congress, Journal, p. 1015.

[7] First session Thirty-third Congress, Journal, p. 179; Globe, p. 147.

7113. It has for a long time been a custom to appoint a joint committee to attend the remains of a deceased Senator or Member to his home, as in the instance of Senator Daniel S. Norton, of Minnesota, on July 14, 1870.[1]

7114. On December 5, 1827,[2] this resolution was agreed to:

Resolved, unanimously, That the Members, of this House will testify their respect for the memory of William S. Young, late a Member of Congress, and a Member-elect of this House from the State of Kentucky, by wearing crape on the left arm for one month.

7115. In the resolutions adopted on the occasion of the death of Senator and ex-President Andrew Johnson, of Tennessee, the House omitted to provide for wearing the symbol of mourning, crape on the left arm. The Senate resolutions provided for that for the Senators.[3]

7116. On January 31, 1880,[4] the House, on the occasion of the eulogies on the late Rush Clark, of Iowa, adopted a resolution providing for the wearing of the usual sign of mourning.

7117. On February 28, 1881,[5] the resolutions adopted on the occasion of the decease of Fernando Wood, of New York, omit the provision regulating the wearing of the usual sign of mourning. As this was within a few days of the end of the session the provision to wear the emblem thirty days would hardly have been operative.

7118. On February 8, 1882,[6] the House authorized the wearing of the badge of mourning for the death of Hon. Michael P. O'Connor, of South Carolina.

7119. On February 17, 1883,[7] the resolutions in memory of Mr. John W. Shackleford, of North Carolina, were adopted without the paragraph relating to wearing the usual badge of mourning.

7120. On April 12, 1884,[8] the House, on the occasion of the death of Hon. Thomas H. Herndon, of Alabama, ordered the wearing of the usual badge of mourning for thirty days.

7121. The decease of a Member in the Hall of the House has been the occasion of immediate adjournment.—On February 12, 1834,[9] during discussion as to the removal of the deposits from the Bank of the United States, Mr. Thomas T. Bouldin, of Virginia, having the floor, referred to a rebuke he had received during the discussion from his colleague, Mr. Henry A. Wise, of Virginia, for not announcing on the floor the death of his predecessor, Mr. John Randolph. The Journal has this entry of what then occurred:

And whilst the Hon. Thomas T. Bouldin, of Virginia, was addressing the House on the subject, and within a few minutes after having commenced his address, he fell suddenly on the floor, and immediately expired. The House immediately, upon the fall of Mr. Bouldin, adjourned.

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[1] Second session Forty-first Congress, Journal, p. 1255.

[2] First session Twentieth Congress, Journal, p. 24; Debates, p. 812.

[3] First session Forty-fourth Congress, Journal, p. 157; Record, p. 3,52.

[4] Second session Forty-sixth Congress, Journal, p. 364; Record, p. 637.

[5] Third session Forty-sixth Congress, Record, p. 2241.

[6] First session Forty-seventh Congress, Record, p. 529.

[7] Second session Forty-seventh Congress, Journal, p. 433.

[8] First session Forty-eighth Congress, Journal, pp. 1052, 1053.

[9] First session Twenty-third Congress, Journal, p. 320; Debates, p. 2705.

On February 12 the usual resolutions, to attend the funeral, wear the emblem of mourning, etc., were agreed to, and then the House adjourned.

7122. The Journal of February 21, 1848,[1] contains the following entry:

Mr. John Quincy Adams, becoming suddenly very seriously ill in his seat in the House, on motion of Mr. Cocke, the House, at 20 minutes past 1 o'clock p.m., adjourned until tomorrow, at 12 o'clock m.

And on February 22, the Journal is as follows:

The Speaker[2] I said it was deemed appropriate that he should state to the House from the Chair, that his venerable colleague, John Quincy Adams, was still lying in a state of unconsciousness, in the Speaker's room; and, in the opinion of his medical attendants, rapidly sinking under the stroke by which he was yesterday prostrated.

Whereupon, Mr. Burt moved that the House do now adjourn.

Mr. Giddings suggested that the Journal of yesterday should state the cause of the early adjournment of the House.

The Speaker, with the general consent of the House, directed the entry to be made accordingly.

And then the House, in pursuance of the motion of Mr. Burt, at 5 minutes past 12 o'clock, adjourned.

7123. The death of a Member who has died in recess of Congress is announced at the beginning of the next session.—On December 21, 1826,[3] the death of three Members, Messrs. Robert P. Henry and James Johnson, of Kentucky, and Henry Wilson, of Pennsylvania, all of whom had died during the recess, were announced, and in memory of each a resolution was presented and agreed to, providing that the Members should wear crape on the left arm for one mouth in memory of the deceased.

In presenting the resolution for Mr. Henry, Mr. Thomas Metcalfe, of Kentucky, said that he should have acted in the matter earlier in the session, but he had been under the impression that it was not the custom of the House to adopt the testimonial to Members who had died during a recess. On inquiry, however, he had found that it had been done in some instances, and therefore he would present his resolution.

7124. On January 20, 1826,[4] the death of Mr. Patrick Farrelly, of Pennsylvania, was announced. He was an old Member of the House, but had not taken his seat at this session. Some question was suggested from the fact that he had not died at the seat of government, but the precedent in the case of Mr. Lowndes, of South Carolina, was cited, and the House voted the customary observance, the wearing of crape on the left arm for thirty days.

7125. On December 3, 1832,[5] at the beginning of the second session of the Congress, Mr. Charles F. Mercer, of Virginia, announced that Mr. Philip Doddridge, of Virginia, had died during the recess. The House voted the usual observance of respect, the wearing of crape on the left arm for one month.

7126. On December 3, 1834,[6] at the opening of the second session of the Twenty-third Congress, the deaths of two Members who had died during the late

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[1] First session Thirtieth Congress, Journal, p. 443; Globe, pp. 381, 383.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Nineteenth Congress, Journal, p. 83; Debates, p. 549.

[4] First session Nineteenth Congress, Debates, p. 1057; Journal, p. 171. This resolution was offered at the close of the day's business.

[5] Second session Twenty-second Congress, Journal, p. 7; Debates, p. 818.

[5] Second session Twenty-third Congress, Journal, p. 32; Debates, p. 751.

recess were announced, and the customary resolutions were moved and agreed to for each.

7127. On March 28, 1850,[1] in the Senate, Mr. Henry Clay, of Kentucky, after some opposition, secured the adoption of a, resolution that funeral honors and ceremonies should be restricted to the deaths of Members of Congress during the session of Congress.

7128. On December 3, 1900,[2] when the House met in its second session, announcements were made of the deaths of two Representatives and two Senators who had died during the recess.

Mr. Henry H. Bingham, of Pennsylvania, presented this resolution, which was agreed to:

Resolved, That the House has heard with profound sorrow of the death of Hon. John H. Hoffecker, a Member of this House from the State of Delaware.

Mr. Allan L. McDermott, of New Jersey, presented a similar resolution for Hon. William D. Daly, deceased, which was agreed to.

Mr. William P. Hepburn, of Iowa, presented the following, which was agreed to.

Resolved, That the House has heard with profound sorrow of the death of Hon. John Henry Gear, a Senator of the 'United States from the State of Iowa.

A similar resolution in memory of Senator Cushman K. Davis, was presented by Mr. James A. Tawney, of Minnesota, and was agreed to, as were also the following:

Resolved, That as a further mark of respect to the memories of the late Representatives Hoffecker and Daly and the late Senators Gear and Davis, this House do now adjourn.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the families of the deceased Senators and Representatives herein named.

7129. Forms of action on death of a Senator and Member-elect who had died in the recess before the assembling of Congress.—On December 4, 1905,[3] at the opening of the first session of the Congress, a message was received from the Senate:

Resolved, That the Senate, with deep regret, has listened to the announcement of the death of the Hon. Orville Hitchcock Platt, for more than a quarter of a century a member of this body, a period marked by five consecutive elections, as a Senator from the State of Connecticut.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives.

Resolved, That, as a further mark of respect to the memory of the deceased, the Senate do now adjourn.

Later, Mr. George L. Lilley, of Connecticut, offered the following, which was agreed to:

Resolved, That the House has heard with profound sorrow of the death of Hon. Orville Hitchcock Platt, a Senator of the United States of the State of Connecticut.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased Senator.

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[1] First session Thirty-first Congress, Globe, p. 616. This resolution was observed for some time by the Senate, but the old practice revived after a time.

[2] Second session Fifty-sixth Congress, Journal, p. 18; Record, pp. 16, 17.

[3] First session Fifty-ninth Congress, Record, pp. 41, 45.

Then Mr. James McKinney, of Illinois, offered the following, which was agreed to:

Resolved, That the House has heard with profound sorrow of the death of Hon. Benjamin F. Marsh, late a Representative from the State of Illinois.

Resolved, That the Clerk of the House be directed to transmit this resolution to the Senate and a copy thereof to the family of the deceased.

Then Mr. McKinney said:

Mr. Speaker, as a further mark of the respect which we hold of the memory of the deceased Senator, Orville Hitchcock Platt, and the deceased Member, Benjamin F. Marsh, I move that the House do now adjourn.

Thereupon the House adjourned.

7130. Notice of the death of a Member is sometimes transmitted to the House by the executive of his State.—On January 12, 1901,[1] the Chair presented to the House the following letter, with the announcement that it would be entered on the Journal:

STATE OF NEW HAMPSHIRE, EXECUTIVE DEPARTMENT,
Concord, January 10, 1901.

SIR: It is my painful duty to inform you of the death of the Hon. Frank G. Clarke, Representative from the Second district of New Hampshire in the Fifty-fifth and Fifty-sixth Congresses of the United States, which occurred at his home in Peterboro on January 9.

Congressman Clarke was held in high esteem by the people of his district and of the State. His public career as speaker of the New Hampshire house of representatives, member of the State senate, and Representative in Congress has been alike creditable to him and to our State, and his private life has been such as to win for him universal respect. His death is mourned by all classes of our citizens.

Yours, very sincerely,

CHESTER B. JORDAN, *Governor.*

Hon. DAVID B. HENDERSON,
Speaker of the House of Representatives,
Washington, D. C.

7131. Form of procedure when the Senate informs the House of the death of a Senator.—On June 4, 1906,[2] a message from the Senate announced that the Senate had passed the following resolutions:

Resolved, That the Senate has heard with profound sorrow of the death of Hon. Arthur Pue Gorman, late a Senator from the State of Maryland.

Resolved, That a committee of seventeen Senators be appointed by the Vice-President to take order for superintending the funeral of Mr. Gorman, which will take place at his late residence Thursday, June 7, at 11 o'clock, and that the Senate will attend the same.

Resolved, That as a further mark of respect his remains be removed from his late home to the place of interment, in Oak Hill Cemetery, in charge of the Sergeant-at-Arms, attended by the committee, who shall have full power to carry these resolutions into effect; and that the necessary expenses in connection therewith be paid out of the contingent fund of the Senate.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives.

Resolved, That as a further mark of respect to the memory of the deceased, the Senate do now adjourn.

And that in compliance with the foregoing the Vice-President had appointed as said committee Mr. Rayner, Mr. Allison, Mr. Morgan, Mr. Hale, Mr. Aldrich, Mr. Teller, Mr. Gallinger, Mr. Elkins,

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[1] Second session Fifty-sixth Congress, Journal, p. 114; Record, p. 952.

[2] First session Fifty-ninth Congress, Record, p. 7819.

Mr. Martin, Mr. Tillman, Mr. Clay, Mr. Spooner, Mr. Kean, Mr. Bailey, Mr. Blackburn, Mr. Clark, of Montana, and Mr. Overman.

Thereupon Mr. J. Frederick C. Talbott, of Maryland, offered the following resolutions, which were agreed to:

Resolved, That the House has beard with profound sorrow of the death of the Hon. Arthur Pue Gorman, a Senator of the United States from the State of Maryland.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased Senator.

Resolved, That a committee of seventeen Members be appointed on the part of the House to join the committee appointed on the part of the Senate to attend the funeral.

Then, the Speaker having appointed the committee, Mr. Talbott offered this resolution, which was agreed to:

Resolved, That as a further mark of respect the House do now adjourn.

7132. On March 17, 1900,[1] Mr. E. J. Burkett, of Nebraska, offered the following resolutions:

Resolved, That it is with profound sorrow and regret that the House has heard of the death of Hon. Monroe L. Hayward, late Senator-elect from the State of Nebraska.

Resolved, That, as a mark of respect to the memory of the deceased, the business of the House be suspended to enable his friends to pay proper tribute of regard to his high character and distinguished worth.

Resolved, That the House communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased with the action of the House thereon.

Resolved, That, as an additional mark of respect, the House, at the conclusion of these ceremonies, do adjourn.

The resolution were agreed to.

7133. On January 6, 1902,[2] Mr. Henry C. Loudenslager, of New Jersey, announced the death of Hon. William J. Sewell, a Senator from New Jersey, and presented the following resolutions, which were agreed to:

Resolved, That the House has heard with profound sorrow of the death of Hon. William Joyce Sewell, a Senator of the United States from the State of New Jersey.

Resolved, That as a further mark of respect to the memory of the late Senator Sewell this House do now adjourn.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased Senator.

7134. The House takes notice of the death of a Member-elect as if he had been duly qualified.—On December 10, 1833,[3] Mr. Henry L. Pinckney, of South Carolina, announced to the House that Thomas D. Singleton, a Member-elect of this House from the State of South Carolina, died in Raleigh, N. C., while on his journey to Washington to take his seat as a Member.

Mr. Pinckney said that while the deceased had not appeared and qualified (it appears that Mr. Singleton had not before been a Member of the House) it was fitting, and according to the usages of the House, to pay to him the usual observances of respect.

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[1] First session Fifty-sixth Congress, Record, p. 3011.

[2] First session Fifty-seventh Congress, Journal, p. 171; Record, p. 455.

[3] First session Twenty-third Congress, Journal, p. 31; Debates, pp. 2166, 2167.

The usual resolutions were then moved and agreed to.

Then Mr. Pinckney moved an adjournment of the House, saying that he believed such to be the custom in these cases.

7135. On January 6, 1840,[1] the House adopted the usual resolutions of respect and ordered mourning for the usual period for C. Alvord, a Member-elect from Massachusetts, who died before the meeting of the Congress, and consequently had never taken a seat in the House.

7136. In a rare instance the House took action on the occasion of the decease of a former Member.—On March 3, 1883,[2] the House adopted a resolution of sorrow at the death of Alexander H. Stephens, governor of Georgia, long a Member of the House.

7137. April 9, 1858,[3] after the adjournment of the House, Mr. George W. Jones, of Tennessee, read to the Members a note handed to him by Thomas H. Benton, asking that in the event of his death no mention should be made in either House of Congress. Mr. Benton referred to the remarks of Mr. Randolph on the death of Mr. David Walker as expressing his views on the subject.[4] Mr. Benton was not at this time a Member of either House. On April 12 the Senate adjourned informally to enable individual Members to attend his funeral.

7138. On March 10, 1846,[5] the House laid on the table a resolution providing for adjournment at 3 o'clock to attend the funeral of Gen. John P. Van Ness, formerly a Member of the House, and since mayor of the city of Washington.

7139. The House has adjourned in honor of an ex-Speaker, whose death occurred after he had ceased to be a Member.—On December 8, 1902,[6] soon after the meeting of the House, Mr. James S. Sherman, of New York, announced the death of ex-Speaker Reed, and proposed the following, which was agreed to unanimously:

Resolved, That the following minute be spread upon the record of the House of Representatives:

Hon. Thomas Brackett Reed died in Washington, December 7, 1902. For twenty-two years he had been a Member of this House; for six years its Speaker. His service terminated with the Fifty-fifth Congress. Within this Chamber the scene of his life's great activities was laid. Here he rendered services to his country which placed him in the front rank of American statesmanship. Here he exhibited characteristics which compelled respect and won admiration. Forceful ability, intrinsic worth, strength of character brought him popular fame and Congressional leadership. In him depth and breadth of intellect, with a full and well-rounded development, had produced a giant who towered above his fellows and impressed them with his power and his wisdom. A distinguished statesman, a lofty patriot, a cultured scholar, an incisive writer, a unique orator, an unmatched debater, a master of logic, wit, satire, and most famous of the world's parliamentarians, the great and representative citizen of the American Republic has gone into history.

Resolved, That in honor of the distinguished dead the House do now adjourn.

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[1] First session Twenty-sixth Congress, Globe, p. 103.

[2] Second session Forty-seventh Congress, Journal, p. 649; Record, p. 3773.

[3] First session Thirty-fifth Congress, Globe, p. 1551.

[4] See section 7142 of this chapter.

[5] First session Twenty-ninth Congress, Journal, pp. 503, 504; Globe, pp. 473, 478.

[6] Second session Fifty-seventh Congress, Journal, p. 29; Record, p. 121.

7140. On February 26, 1906,[1] Mr. William P. Hepburn, of Iowa, being recognized, said:

Mr. Speaker, I have been directed by my colleagues from the State of Iowa to announce the death of David B. Henderson, late a Member and late a Speaker of this House. He died yesterday at his residence in the city of Dubuque, and I offer the following resolutions:

Resolved, That this House has learned with the deepest sorrow of the death of Hon. David B. Henderson, Speaker of the Fifty-sixth and Fifty-seventh Congresses, and for twenty years a useful, faithful, and distinguished Member from Iowa; and that this House herewith expresses its appreciation of the services of the deceased as a partriot and statesman.

Ordered, That this resolution be entered upon the Journal of the House and that a copy be transmitted to the relatives of the deceased.

Then, as a further mark of respect, Mr. Hepburn moved that the House adjourn.

This motion was agreed to, and at 4 o'clock and 18 minutes p. m. the House adjourned.

7141. On January 27, 1893,[2] Mr. Seth L. Milliken, of Maine, arose and announced the death of Hon. James G. Blaine, formerly Speaker of the House and more recently Secretary of State, but holding no official position at the time of his death.

Mr. William S. Holman, of Indiana, followed Mr. Milliken in eulogizing briefly the deceased, and then proposed a motion that the House adjourn in memory of the deceased. This motion was agreed to. No formal resolution was offered.

7142. Since the earliest days the expenses of the funerals of Members have been defrayed from the public funds.—On March 1, 1820,[3] the death of Mr. David Walker, of Kentucky, was announced and resolutions differing from those usually adopted were agreed to. Mr. Walker having before his death communicated to the Speaker his wish to be buried without pomp or parade, the House authorized the usual committee to "take order for superintending the funeral," but resolved that the House would not conform to the practice of adjourning to attend the funeral and would also depart from the usage of wearing crape for one month.

On this occasion Mr. John Randolph, of Virginia, recalled the Congressional funerals since the beginning of the House. At first the traveling allowance of the deceased was applied to the funeral expenses; but on the death of Delegate Hunter, of Mississippi Territory, at the beginning of Mr. Madison's Administration, the practice was first adopted of providing a funeral at public expense. The custom had since been observed and abused.

7143. On February 8 and March 23, 1848,[4] the subject of the payment of the funeral expenses of Members was discussed at some length. It appears from the discussion that up to that time it had not been usual to pay the funeral expenses of Members except when the funeral was held in Washington. In the latter case the House paid the expenses, amounting on an average to $1,500 in each case.

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[1] First session Fifty-ninth Congress, Record, p. 3028.

[2] Second session Fifty-second Congress, Record, p. 894; Journal, p. 62.

[3] First session Sixteenth Congress, Annals, pp. 1568–1572.

[4] First session Thirtieth Congress, Journal, pp. 371, 599–602; Globe, pp. 311, 527–529.

7144. Ceremonies at the funerals of Members in the Hall of the House in early days.—On February 27, 1838,[1] the funeral services of Jonathan Cilley, of Maine, a Member of the House, occurred in the Hall of the House, both House and Senate having voted to attend. The Journal has simply this entry:

> The House met pursuant to adjournment; and, after attending the funeral ceremonies of Jonathan Cilley, deceased, and being returned into the Hall, adjourned at 20 minutes before 3 o'clock until tomorrow, 12 o'clock meridian.

The Globe states that the committee of arrangements, pallbearers, and mourners attended at the late residence of the deceased at 11 o'clock a. m., at which time the remains were removed, in charge of the committee of arrangements, attended by the Sergeant-at-Arms of the House, to the Hall, where the funeral services were performed by the Rev. Mr. Slicer and the discourse preached by the Rev. Mr. Reese. The funeral procession then moved from the Hall of the House of Representatives to the place of interment in the following order:

> The Chaplains of both Houses (Messrs. Slicer of the Senate and Reese of the House).
> The committee of arrangements (seven Members of the House, Mr. Evans, of Maine, chairman).
> The pallbearers (six Members of the House, Mr. Thomas, of Maryland, chairman).
> The family and friends of the deceased.
> The Members of the House of Representatives and Senators from Maine as mourners.
> The Sergeant-at-Arms of the House of Representatives.
> The House of Representatives, preceded by their Speaker and Clerk.
> The Sergeant-at-Arms of the Senate.
> The Senate of the United States, preceded by the Vice-President and their Secretary.
> The President of the United States.
> The heads of Departments
> Judges of the Supreme Court and its officers.
> Foreign ministers.
> Citizens and strangers.

7145. On February 25, 1842,[2] Mr. Lewis Williams, of North Carolina, who had been a Member of the House since 1814, and had long been the "Father of the House," was buried from the Hall of the House, being honored with the ceremonies of a state funeral.

7146. On April 19, 1842,[3] Joseph Lawrence, of Pennsylvania, a Member of the House, was buried from the House with the ceremonies of a state funeral.

7147. On April 26, 1844,[4] a state funeral of Hon. Peter E. Bossier, late Member from Louisiana, was held in the House, the funeral ceremonies being conducted according to the rites of the Roman Catholic Church, of which the deceased was a member. As in other state funerals, the House was technically in session during the ceremonies.

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[1] Second session Twenty-fifth Congress, Journal, p. 501; Globe, p. 200.

[2] Second session Twenty-seventh Congress, Globe, p. 264.

[3] See Journal, second session Twenty-seventh Congress, p. 723.

[3] First session Twenty-eighth Congress, Journal, p. 852; Globe, p. 586.

7148. Later funeral ceremonies, including the elaborate observances at the burial of John Quincy Adams.—The Journal of February 26, 1848,[1] has this entry:

The House met at 12 o'clock meridian, pursuant to adjournment.

The funeral ceremonies of John Quincy Adams, a Representative from the State of Massachusetts, were performed; after which the corpse was conveyed to the Congressional burial ground in the following order of procession:

Military companies.
Band.
The Chaplains of both Houses.
Physicians who attended the deceased.
Committee of arrangements. (Names given.)
Pallbearers. (Names given.)
The family and friends of the deceased.
The Senators and Representatives from the State of Massachusetts as mourners.
The Sergeant-at-Arms of the House of Representatives.
The House of Representatives of the United States preceded by their Speaker and Clerk.
The other officers of the House of Representatives.
The Sergeant-at-Arms of the Senate.
The Senate, preceded by their President and Secretary.
The other officers of the Senate.
The President of the United States and his private secretary.
The heads of Departments.
The judges of the Supreme Court of the United States and its officers.
The judges of the circuit and district courts of the District of Columbia and their officers.
The diplomatic corps.
The Comptrollers, Auditors, and other heads of bureaus of the several Departments of the Government with their officers.
Officers of the Army and Navy at the seat of Government.
Members of State legislatures.
The corporation of Washington.
The Columbia Typographical Society.
Officers and students of Georgetown College.
Officers and students of Columbian College.
Literary institutions.
Fire companies of the District.
Masonic institutions.
Odd Fellows.
Citizens and strangers.

After depositing the corpse in the burial ground, the Speaker, Members, and officers returned into the Hall; and on motion of Mr. Nathan Evans, the House at 25 minutes before 4 o'clock, p. m. adjourned.

The Record of Debates has the following description of the proceedings in the Hall:

The Speaker having taken the chair, the Journal of Thursday was read. Soon after the Senate entered, preceded by their Presiding Officer. He took, his seat on the left of the Speaker. As the Senators passed up the center aisle and took, their seats the Speaker and the Members of the House rose, and continued standing until they had taken the seats assigned them. Soon after the President of the United States entered the Hall, and was received by all in like manner, while he took his seat on the right of the Speaker. The members of the Cabinet occupied seats in front of the Senators and opposite the foreign ministers. The judges of the Supreme Court, preceded by their officers, passed

[1] First session Thirtieth Congress, Journal, pp. 446–448; Globe, p. 389.

up to seats on the right of the Clerk's desk. The relatives of the deceased were next conducted to a position reserved for them on the extreme left. Next entered the members of the legislature of Maryland, preceded by the officers and chaplain of that body, the legislature, sitting at Annapolis, having passed resolutions to attend the funeral. Next entered the corporate authorities of Washington headed by their respective officers, who were conducted to places by the officers of the House. At length came the body, escorted by the committee of arrangements, and followed by the delegation of Massachusetts as mourners. The Speaker, the President of the Senate, the officers of both Houses, the members of the committee of arrangements, the pallbearers, and attendant physicians wore white scarfs. The whole assemblage being thus at length completed, the deep silence of expectation pervaded the Hall. Not a rude sound, and scarce a sound of any kind, was to be heard among the waiting thousands who crowded the galleries and lobbies in every spot where a human being could find room to stand.

The Chaplain of the House, the Rev. Mr. Gurley, then arose and read an appropriate portion of Holy Writ, and addressed the throne of Heavenly Grace in a meek and devout prayer.

He then read a hymn which had been selected for the occasion.

An address and benediction followed, when the procession was formed to take the body to its temporary resting place preparatory to its removal to Massachusetts.

On February 28 the committee to accompany the remains to Massachusetts was appointed, and the House adopted a resolution for printing in pamphlet form the addresses of the Speaker, Messrs. Hudson, Holmes, and Vinton, together with the addresses made in the Senate, and by the Chaplain at the funeral.[1]

7149. Senator Charles Sumner, of Massachusetts, was buried from the Senate Chamber on March 13, 1874.[2] The House attended the funeral and appointed a committee to attend the body to the place of burial in Massachusetts. The House also voted that its officers and Members wear the usual badge of mourning. The eulogies occurred in House and Senate on April 27.

7150. On February 16, 1875,[3] the funeral services of Hon. Samuel Hooper, of Massachusetts, were held in the Hall of the House.

7151. On January 30, 1884,[4] the funeral of Hon. E. W. M. Mackey, Member from South Carolina, was held in the Hall of the House in the presence of the two Houses.[5]

7152. Ceremonies at the funeral of William D. Kelley in 1890.—On January 11, 1890,[6] the funeral of Hon. William D. Kelley, of Pennsylvania, occurred in the Hall of the House. The Senate attended in a body, the Vice-President occupying a chair on the right of the Speaker. After the Senate had entered and taken the seats assigned to them, the casket was brought into the Hall, preceded by the Sergeant-at-Arms of the House, Rev. Doctor Cuthbert, of Washington, and Doctor Butler, Chaplain of the Senate, and the committee of arrangements, composed of Senators and Representatives. The family of the deceased took seats inside the area in front of the Speaker's chair.

Rev. Doctor Butler read appropriate Scripture selections as the casket was borne to the Hall of the House.

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[1] The publication of these addresses is now a regular procedure.

[2] First session Forty-third Congress, Journal, pp. 598, 867; Record, pp. 2142, 2143, 3399, 3409.

[3] Second session Forty-third Congress, Journal, p. 479; Record, p. 1322.

[4] First session Forty-eighth Congress, Journal, pp. 423, 424, 452; Record, p. 755.

[5] The House has rarely noticed the deaths of members of the families of Representatives; but on January 31, 1844, the House adjourned to enable the Members to attend the funeral of Mrs. Rebecca Russell Reding, wife of Mr. John R. Reding, a Member of the House from New Hampshire. (First session Twenty-eighth Congress, Journal, p. 324; Globe, p. 218.)

[6] First session Fifty-first Congress, Journal, pp. 107, 108; Record, p. 496.

Rev. Doctor Cuthbert, acting as Chaplain of the House, read the Ninetieth Psalm, and then offered prayer.

Doctor Butler, Chaplain of the Senate, then read selections of Scripture.

After benediction by Doctor Cuthbert, the remains were borne from the Hall.

Then the Senate retired, and the House resumed its session.

On the preceding day, the House, upon the announcement of the death of Mr. Kelley, had adopted the following:

Resolved, That the House has heard with deep regret and profound sorrow of the death of Hon. William D. Kelley, late a Representative from the State of Pennsylvania.

Resolved (in recognition of the long and distinguished term of service rendered in this body by Mr. Kelley, a term the longest in its history, and which had made him for many years the "Father of the House"), That appropriate services be held in the Hall of the House to-morrow, the 11th instant, at 12 o'clock m.

Resolved, That a committee of nine Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral at Philadelphia, Pa.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy of the same to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the House do now adjourn.

7153. The ceremonies at the state funeral of Nelson Dingley.—On January 14, 1899,[1] immediately after the reading of the Journal, Mr. Charles A. Boutelle, of Maine, being recognized, announced the death of his colleague, Mr. Nelson Dingley, of Maine, and then offered the following resolutions:

Resolved, That the House has heard with deep regret and profound sorrow of the death of Hon. Nelson Dingley, late a Representative from the State of Maine.

Resolved, That in recognition of the long and distinguished services rendered in this body by Mr. Dingley, appropriate services be held in the Hall of the House of Representatives on Monday, January 16, 1899, at 12 o'clock m.

Resolved, That a committee of eleven Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral at Lewiston, Me., and that the necessary expenses attending the execution of this order be paid out of the contingent fund of the House.

Resolved, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for properly carrying out the provisions of this resolution.

Resolved, That the Clerk communicate these resolutions to the Senate, and transmit a copy thereof to the family of the deceased.

The resolutions were agreed to; and the Speaker appointed as the committee on the part of the House, Mr. Boutelle, of Maine; Mr. Payne, Mr. Dolliver, Mr. Tawney, Mr. Hilborn, Mr. Evans, Mr. Clarke, of New Hampshire; Mr. Bailey, Mr. Dockery, Mr. Bell, and Mr. McClellan.

Mr. Boutelle then offered the following resolution, which was agreed to:

Resolved, That as a further mark of respect to the memory of the deceased the House do now adjourn.

The committee issued invitations and established the following order of services:

The House of Representatives will meet at 12 o'clock noon, January 16, 1899.

The body of the late Representative Dingley will be placed in the Hall of the House at 10 a. m., where it will lie in state.

The President of the United States and his Cabinet, the Chief Justice and Associate Justices of the Supreme Court, the Diplomatic Corps, the Major-General Commanding the Army, the senior Admiral of the Navy, and the Commissioners of the District of Columbia have been invited to attend the services.

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[1] Third session Fifty-fifth Congress, Record, p. 679.

The President and Cabinet will meet in the rooms of the House Committee on Naval Affairs.

The Supreme Court will meet in the Supreme Court room.

The Diplomatic Corps, the Major-General Commanding the Army, the senior Admiral of the Navy, and the Commissioners of the District of Columbia will meet in theWays and Means Committee room.

The pallbearers [1] and committee of arrangements will meet in the House lobby.

The Speaker's room will be reserved for the members of the family and the officiating clergy.

Seats will be reserved for those entitled to them upon the floor, to which they will be shown by the Doorkeeper.

The Senate will enter the Chamber in a body preceded by their officers.

The President, Cabinet, Supreme Court, General commanding the Army, senior Admiral of the Navy, Commissioners of the District of Columbia, and the family of the deceased will occupy seats on the floor of the House assigned them by the Doorkeeper.

The Diplomatic Corps will occupy seats on the right of the Speaker of the House and in front of the Senate and back of the President and his Cabinet.

The Senate will occupy seats on the right of the Speaker of the House, the House of Representatives on the left of the Speaker of the House.

Upon the announcement by the Speaker of the House the clergy will conduct the funeral ceremonies, and upon their conclusion the body will remain in the Hall of the House until escorted to the station.

On January 16,[2] the House met at 12 m. After prayer by the Chaplain and the reading of the Journal, a message from the Senate, by Mr. Platt, one of its clerks, announced that the Senate had passed the following resolutions:

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. Nelson Dingley, late a Representative from the State of Maine.

Resolved, That a committee of nine Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to take order for superintending the funeral of the deceased, and that the Senate will attend in the Hall of the House of Representatives on Monday, January 16, 1899, at 12 o'clock meridian.

Resolved, That the Secretary communicate these resolutions to the House of Representatives.

And that in compliance with the foregoing the Presiding Officer had appointed as said committee Mr. Frye, Mr. Aldrich, Aft. Burrows, Mr. Fairbanks, Mr. Pritchard, Mr. Berry, Mr. Faulkner, Mr. Rawlins, and Mr. McLaurin.

This message having been received, the ceremonies proceeded in accordance with the following forms:

Approach of the Senate: The Speaker taps with his gavel and the Members of the House rise to receive the Senate.[3] The Doorkeeper, without addressing the Speaker, announces "the Vice-President and the Senate of the United States."

The Doorkeeper next announces "the Chief Justice and the Associate Justices of the Supreme Court of the United States," the House again rising at the tap of the Speaker's gavel, if it has not remained standing.

In a similar manner "the Ambassadors amd the members of the Diplomatic Corps to the United States" are announced and received.

Next "the President and the members-of his Cabinet" are announced and received.

The General of the Amy, senior Admiral of the Navy, Commissioners of the District of Columbia, Canadian members of the Joint High Commission, committee of the Chamber of Commerce of New York; and the committee of the House and Senate and family and friends of the deceased, enter informally and unannounced.

[1] In this case there were no pallbearers.

[2] Third session Fifth-fifth Congress, Record, p. 681.

[3] It is the general custom ior the House to rise to receive visiting bodies. See Record, second session Forty-fourth Congress, page 1503, for visit of Senate during proceedings over electoral count.

All having assembled the Speaker indicates when the services are to proceed.

After music by the choir, reading of Scripture and remarks by the officiating clergyman, Rev. Dr. S. M. Newman, of Washington, prayer by Rev. Mr. Couden, Chaplain of the House; choir; benediction by Doctor Newman; the family and friends are conducted from the Hall by the Doorkeeper, and following them the committee of the House and Senate.

The President and Cabinet are next conducted forth, and after them the other official bodies in an order the reverse of that in which they entered.

Then, as a further mark of respect, on motion of Mr. Charles A. Boutelle, of Maine, the House adjourned.

7154. The House sometimes authorizes the funeral of a deceased Member in the Hall.—On May 3, 1902,[1] Mr. Sereno E. Payne, of New York, having announced the death of Mr. Amos J. Cummings, of New York, offered the following resolutions:

Resolved, That the House has heard with great and profound sorrow of the death of Hon. Amos J. Cummings, late a Representative from the State of New York.

Resolved (in recognition of the long and distinguished term of service rendered in this body by Mr. Cummings), That appropriate services be held in the Hall of the House on Sunday, May 4, 1902, at 3 o'clock p. m.

Resolved, That a committee of fourteen Members of the House, with such Members of the Senate as may be joined, be appointed to take orders concerning the funeral.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy of the same to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the House do now adjourn.

The House did not meet on Sunday, so did not attend the services as an organized body.

7155. Ceremonies at the state funeral of a deceased Senator.—On February 16, 1904,[2] a message from the Senate announced that it had agreed to these resolutions:

Resolved, That the Senate has heard with profound sorrow of the death of the Hon. Marcus A. Hanna, late a Senator from the State of Ohio.

Resolved, That a committee of twenty-five Senators, of whom the President pro tempore shall be one, be appointed by the presiding officer to take order for superintending the funeral of Mr. Hanna, which shall take place in the Senate Chamber at 12 o'clock m., on Wednesday, February 17, instant, and that the Senate will attend the same.

Resolved, That as a further mark of respect his remains be removed from Washington to Cleveland, Ohio, for burial in charge of the Sergeant-at-Arms, attended by the committee, who shall have full power to carry these resolutions into effect; and that the necessary expenses in connection therewith be paid out of the contingent fund of the Senate.

Resolved, That the Secretary communicate these proceedings to the House of Representatives and invite the House of Representatives to attend the funeral in the Senate Chamber, and to appoint a committee to act with the committee of the Senate.

Resolved, That invitations be extended to the President of the United States and the members of his Cabinet, the Chief Justice and As'sociate Justices of the Supreme Court of the United States, the diplomatic corps (through the Secretary of State), the Admiral of the Navy, and the Lieutenant-General of the Army to attend the funeral in the Senate Chamber.

The message also informed the House of the names of the committee appointed.

The message having been announced to the House, Mr. Charles H. Grosvenor, of Ohio, offered the following resolutions, which were agreed to:

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[1] First session Fifty-seventh Congress, Journal, p. 672; Record, p. 5014.

[2] Second session Fifty-eighth Congress, Record, p. 1998.

Resolved, That the House of Representatives has heard with profound sorrow of the death of the Hon. Marcus A. Hanna, a Senator of the United States from the State of Ohio.

Resolved, That the House of Representatives accepts the invitation of the Senate to attend the funeral services of the late Hon. Marcus A. Hanna, to be held in the Senate Chamber to-morrow, at 12 o'clock noon, and that the Speaker of the House appoint a committee of thirty Members to act in conjunction with a committee of the Senate to make the necessary arrangements and accompany the remains to the place of burial.

Resolved, That as a further mark of respect the House do now adjourn.

The Speaker having announced the committee, the House adjourned.

On February 17,[1] after the approval of the Journal and the transaction of some business, in accordance with the invitation of the Senate and the order adopted by the House on February 16, the Members and officers of the House proceeded in a body to the Senate Chamber to attend the funeral services of the late Hon. Marcus A. Hanna.

At the conclusion of the services the Members returned to the Hall of Representatives.

Thereupon, as a further mark of respect to the deceased Senator, the House adjourned.

The Record[2] records the proceedings in the Senate:

The casket containing the body of the dead Senator was brought into the Senate Chamber, accompanied by the committees of arrangements of the two Houses.

The President pro tempore called the Senate to order at 12 o'clock.

The Members of the House of Representatives, preceded by the Sergeant-at-Arms and the Clerk and by the Speaker, entered the Senate Chamber. The Speaker was escorted to a seat on the left of the President pro tempore, the Sergeant-at-Arms and Clerk were assigned to seats at the Secretary's desk, and the Members of the House were given the seats on the floor provided for them. They were soon followed by the ambassadors of and ministers from foreign countries, the Chief Justice and Associate Justices of the Supreme Court, and the Admiral of the Navy and the Lieutenant-General of the Army, who occupied the seats assigned them. The President of the United States and his Cabinet ministers and the iamily of the deceased Senator entered the Chamber and were shown to the seats reserved for them.

Thereupon the Chaplain of the House was introduced to offer prayer; after which the Chaplain of the Senate delivered an address, read passages of Scripture, and offered prayer.

The hymn "Nearer, My God, to Thee" was sung by the quartette of the Gridiron Club, composed of Mr. Herndon Morsell, Mr. J. Henry Kaiser, Mr. Alexander Mosher, and Mr. John H. Nolan.

The President pro tempore said: "We commit the body of our beloved Senator now to the two committees of the Houses of Congress and to the officers of the Senate, to be conveyed to his late home in Ohio and to his final resting place. May God sanctify his life and death to us, who loved him well."

The benediction was pronounced by the Chaplain of the Senate.

The invited guests having retired from the Senate Chamber, the Senate adjourned.

7156. Ceremonies in memory of a deceased Speaker.—On December 5, 1876,[3] on motion of Mr. Andrew H. Hamilton, of Indiana, the presentation of resolutions on the death of Hon. M. C. Kerr, Speaker of the House during the preceding session, was made a special order for December 16.

On that date, after remarks on the life and public services of the deceased, the following resolutions were offered and agreed to:

Resolved, That the sad announcement of the death of Michael C. Kerr, late Member from the State of Indiana, and Speaker of this House, is received by us in the deepest sorrow and profoundest regret,

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[1] Record, p. 2003.

[2] Record, pp. 2002, 2003.

[3] Second session Forty-fourth Congress, Journal, pp. 23, 92; Record, pp. 44, 245–257.

and that in his untimely decease the House of Representatives of the United States has lost an impartial, competent, and noble presiding officer, a faithful and patriotic Member.

Resolved, That in testimony of our respect for the memory of the deceased Speaker, his chair be draped in mourning during the unfinished term of the Forty-fourth Congress, and as a further evidence of our continuing esteem for the dead the officers and Members of this House will wear the usual badge of mouming for the space of thirty days.

Resolved, That the Senate be informed of the death of the late Speaker by forwarding to that body a copy of these resolutions, and that the Clerk transmit a copy of the same to the afflicted family of the illustrious dead.

Resolved, That, as a further tribute of respect to the departed officer, the House do now adjourn.

7157. Form of memorial resolutions for deceased Members.—On February 11, 1899,[1] on the day set apart by special order for exercises in memory of the late Nelson Dingley, of Maine, Mr. Charles A. Boutelle, of Maine, offered these resolutions, which were agreed to:

Resolved, That the business of the House be now suspended that opportunity may be given for tributes to the memory of Hon. Nelson Dingley, late a Member of the House of Representatives from the State of Maine.

Resolved, That as a particular mark of respect to the memory of the deceased, and in recognition of his eminent abilities as a distinguished public servant, the House, at the conclusion of these memorial proceedings, shall stand adjourned.

Resolved, That the Clerk communicate these resolutions to the Senate.

Resolved, That the Clerk be instructed to send a copy of these resolutions to the family of the deceased.

The eulogies having been pronounced, the Speaker declared the House adjourned in accordance with the terms of the resolutions.

7158. The eulogies of a deceased Member formerly occurred at the time of the announcement of his death and the adjournment of respect.— On January 15, 1839,[2] the death of Mr. T. L. Harris, of Illinois, was announced. At this time it had become the practice to announce the death of a Member and then and at the same time to have eulogies delivered by several Members, after which the resolutions of sym athy, providing for wearing crape on the arm and I P for adjournment were adopted.

7159. On March 4, 1844,[3] the House adjourned out of respect to the memory of a deceased Member, Mr. Henry C. Frick, of Penn ylvania, although the House had just reassembled after an adjournment taken on February 29 in respect of the memories of the Cabinet officers killed on the man of war Princeton. The adjournment for Mr. Frick was taken immediately before the transaction of business. The Member offering the resolution for adjournment and for the usual mark of respect, the wearing of crape, prefaced his action by a eulogy of the deceased. It was quite common for Members dying in Washington at that time to be buried in the city, and the Members of the House usually attended the funeral. Sometimes a state funeral was held in the House. But Mr. Frick was taken to Pennsylvania for burial, so the proceedings in his case were simply the adjournment and the wearing of crape.

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[1] Third session Fifty-fifth Congress, Record, p. 1760.

[2] Second session Thirty-fifth Congress, Globe, p. 408.

[3] First session Twenty-eighth Congress, Journal, p. 513; Globe, p. 347.

7160. On February 24, 1848,[1] the Speaker[2] announced to the House the death of his colleague, John Quincy Adams. The short address in which the Speaker made this announcement appears in full in the journal by order of the House. Eulogistic addresses were made by three Members on the floor—Messrs. Charles Hudson, of Massachusetts; Isaac E. Holmes, of South Carolina, and Samuel F. Vinton, of Ohio. No mention of their addresses is made in the journal.

Mr. Hudson offered the following resolutions, which were agreed to:

Resolved, That this House has heard, with the deepest sensibility, of the death in this Capitol of the death of John Quincy Adams, a Member of this House from the State of Massachusetts.

Resolved, That as a testimony of respect for the memory of this distinguished statesman the officers and Members of the House will wear the usual badge of mourning and attend the funeral in this Hall on Saturday next at 12 o'clock.

Resolved, That a committee of thirty be appointed to superintend the funeral solemnities.

Resolved, That the proceedings of this House in relation to the death of John Quincy Adams be communicated to the family of the deceased by the Clerk.

Resolved, That this House, as a further mark of respect for the memory of the deceased, do adjourn to Saturday next, the day appointed for the funeral.

The committee was then appointed, Mr. Hudson being chairman.

Mr. William A. Newall, of New Jersey, then offered this resolution, which was agreed to:

Resolved, That the seat in this Hall just vacated by the death of the late John Quincy Adams be unoccupied for thirty days, and that it, together with the Hall, remain clothed with the symbol of mourning during that time.

Mr. Frederick A. Tallmadge, of New York, offered the following additional resolution, which was also agreed to:

Resolved, That the Speaker appoint one Member of this House from each State and Territory as a committee to escort the remains of our venerable friend, John Quincy Adams, to the place designated by his friends for his interment.

On motion of Mr. Vinton,

Ordered, That the remarks of the Speaker announcing officially the death of John Quincy Adams be entered upon the journal.

7161. On March 28, 1864,[3] Mr. Ellhu B. Washburne, of Illinois, rose and announced the death of Hon. Owen Lovejoy, a Member of this House from the State of Illinois. After remarks by Mr. Washburne and other Members on the life and public service of the deceased, Mr. Washburne submitted the following resolutions, which were agreed to:

Resolved, That this House has heard with profound sorrow the announcement of the death of Hon. Owen Lovejoy, a Member of this House from the Fifth Congressional district of the State of Illinois.

Resolved, That this House tenders to the widow and relatives of the deceased the expression of its deep sympathy in this afflicting bereavement.

Resolved, That the Clerk of this House communicate to the widow of the deceased a copy of these resolutions.

Resolved, That the Speaker appoint a committee of three to escort the remains of the deceased to the place designated by his friends for his interment.

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[1] First session Thirtieth Congress, Journal, pp. 444–446; Globe, p. 384.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] First session Thirty-eighth Congress, Journal, p. 439; Globe, p. 1326.

Resolved, That as an additional mark of respect for the memory of the deceased the Members of this House will wear the usual badge of mourning on the left arm for thirty days.

Resolved, That a copy of these resolutions be communicated to the Senate, and as a further mark of respect this House do now adjourn.

7162. On August 9, 1852,[1] the announcement of the death of Robert Rantoul, jr., to the House was made the occasion of several eulogies.

7163. On June 29, 1852,[2] the announcement was made in the House that Henry Clay, of Kentucky, a Member of the Senate, had just expired at his lodgings in the city of Washington. The House immediately adjourned.

On June 30 a message was received from the Senate conveying the information of Mr. Clay's death and the proceedings of the Senate thereon. The House thereupon adopted the usual resolutions expressing sensibility at the intelligence, providing for wearing mourning by the officers and Members of the House, declaring that the House would attend the funeral, etc. These resolutions were made the occasion of eulogies by Members of the House. Also in the Senate there were eulogies. Usually on the announcement of the death of a Member of either House the Member making the announcement would speak briefly of the deceased; but in this case several Members spoke, some at considerable length.

Later in the session, on July 14, these eulogies were printed by order of the House as a document.

7164. In later years the eulogies of deceased Members of the House and Senate have occurred after the announcement of the death.—On March 29, 1866,[3] the death of Senator Solomon Foot, of Vermont, was announced in the Senate and his funeral was held in the Senate Chamber the same day. Mr. Poland explained at the time that the usual eulogies, then made at the time of the announcement, would, for lack of time, be postponed until a more suitable season. So they occurred on April 12, a resolution stating the fact and that the Senate had adjourned out of respect being ordered sent to the House on the latter date. When the message from the Senate was received, the House also proceeded to the memorial exercises.[4]

7165. On January 11, 1871,[5] the Speaker announced to the House the death of Hon. John Covode, of Pennsylvania, and a committee was appointed to attend his funeral. On February 9 the eulogies occurred with the customary resolution for wearing the emblem of mourning, etc.

7166. On February 20, 1875,[6] the House devoted a large portion of the day to the eulogies of four Members of the House who had died at different times during the session. Thus the convenience of the House dictated that the eulogies should not be pronounced at the time of the announcement of the death.

7167. In the case of Senator Matthew H. Carpenter, of Wisconsin, who died at the close of the Forty-sixth Congress, on February 24, before the adjournment

[1] First session Thirty-second Congress, Globe, p. 2141.

[2] First session Thirty-second Congress, Journal, pp. 852, 853, 900; Globe, pp. 1631–1645.

[3] First session Thirty-ninth Congress, Globe, pp. 1704, 1908.

[4] Globe, p. 1922.

[5] Third session Forty-first Congress, Journal, pp. 136, 310.

[6] Second session Forty-third Congress, Journal, p. 505; Record, pp. 1561–1567.

of March 4, the memorial exercises were held in the first session of the Forty-seventh Congress.[1]

7168. Sunday has been made a legislative day for eulogies of deceased Members.—On the legislative day of Sunday, February 1, 1903,[2] in the absence of the Speaker and Clerk, Mr. Henry C. Smith, of Michigan, took the chair, called the House to order, and had read the following:

HOUSE OF REPRESENTATIVES U. S.,
Washington, D. C., February 1, 1903.

I hereby designate Hon. Henry C. Smith, of Michigan, as Speaker pro tempore this day.

D. B. HENDERSON, *Speaker.*

Thereupon prayer was offered by the Chaplain, the journal was read, and then the House proceeded to the order of the day—eulogies on the late James McMillan, Member of the Senate.

7169. On Sunday, April 10, 1904,[3] the House met pursuant to order; the Journal was read and approved; and then the House proceeded to memorial services in memory of the late Henry Burk and the late Robert H. Foerderer, both of Pennsylvania.

7170. At the request of a deceased Member, the House did not appoint a committee or hold memorial exercises, and the Senate was not informed of his death.—On June 1, 1906,[4] Mr. Edward de V. Morrell, of Pennsylvania, announced the sudden death, that morning, of Robert Adams, jr., a Representative from the State of Pennsylvania.

Thereupon, by consent of the House, the Speaker[5] read the following letter:

WASHINGTON, D. C., *May 31, 1906.*

Hon. J. G. CANNON.

DEAR MR. SPEAKER: The fact that my personal obligations exceed my resources is my only excuse for abandoning the responsible position I occupy in the House. I am willing to be buried at its expense, but I ask that no committee be appointed or memorial services be held, as I have never been in sympathy with the latter custom.

With assurance of my high regard, sincerely, yours,

ROBERT ADAMS.

Thereupon, Mr. Morrell offered the following resolutions, which were agreed to:

Resolved, That the House has heard with profound sorrow of the death of Ron. Robert Adams, Jr., a Representative from the State of Pennsylvania.

Resolved, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for the funeral of the deceased, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Then, on motion of Mr. Morrell, as a further mark of respect, the House adjourned.[6]

No message was sent to the Senate, no concurrent action of that body being required.

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[1] First session Forty-seventh Congress, Record, p. 619.

[2] Second session Fifty-seventh Congress, Journal, p. 191; Record, p. 1549.

[3] Second session Fifty-eighth Congress, Record, p. 4594.

[4] First session Fifty-ninth Congress, Record, p. 7711.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] Mr. Adams had committed suicide.

7171. The death of the Clerk being announced, the House adopted appropriate resolutions.—On April 15, 1850,[1] after the reading of the Journal, the Speaker announced the death of Thomas J. Campbell, Clerk of the House.

Mr. Meredith P. Gentry, of Tennessee, after remarks on the life and public services of the deceased, and after remarking that there seemed to be no precedents to guide the House in a case of this kind, offered the following resolutions, which were unanimously adopted:

Resolved, That this House has heard with deep sensibility the announcement of the death of the Hon. Thomas Jefferson Campbell, late Clerk of this House.

Resolved, That, as a testimony of respect for the memory of the deceased, the Members and officers of this House will wear the usual badge of mourning for thirty days.

Resolved, That the proceedings of this House in relation to the death of the Hon. Thomas J. Campbell be communicated to the family of the deceased by the Speaker.

Resolved, That the House, as a further mark of respect for his memory, do now adjourn.

The House accordingly adjourned.

7172. The House appointed a committee to attend the funeral of its deceased Chaplain.—On October 26, 1893,[2] Mr. James D. Richardson, of Tennessee, offered the following resolutions, which were agreed to:

Resolved, That the House has heard with profound sorrow of the death of Rev. Samuel W. Haddaway, Chaplain of the House.

Resolved, That as a mark of respect to his memory the Speaker appoint a committee of seven to attend his funeral services.

Mr. Richardson was appointed a member of this committee, but not chairman. The chairman was Mr. Barnes Compton, of Maryland, the State of the deceased.[3]

7173. On the announcement of the death of the Doorkeeper, the House took appropriate action.—On March 12, 1902,[4] Mr. Sereno E. Payne, of New York, offered and the House unanimously agreed to the following resolutions:

Resolved, That the House has heard with profound sorrow of the death of Hon. William J. Glenn, Doorkeeper of the House.

Resolved, That as a mark of respect to his memory the Speaker appoint a committee of seven to attend the funeral services.

7174. Resolution relating to the decease of an official reporter of debates.—On January 5, 1884,[5] by unanimous consent, the Speaker presented to the House for inclusion in the Journal and Record a communication from the official reporters of debates transmitting resolutions of respect adopted by them in memory of their late associate, William Blair Lord.

7175. Form of announcement to the Senate of the death of its Chief Clerk.—On March 2, 1907,[6] the Vice-President laid before the Senate the following communication; which was read:

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[1] First session Thirty-first Congress, Journal, pp. 788, 789; Globe, p. 730.

[2] First session Fifty-third Congress, Journal, p. 155; Record, p. 2858.

[3] The House has rarely noticed the deaths of its employees, but an instance occurred on January 4, 1849; the House adjourned at 2 p. m. in order to enable the Members to attend "the funeral of the late Daniel Gold, for many years a faithful and useful assistant of the Clerk of this House." (Second session Thirtieth Congress, Journal, p. 196.)

[4] First session Fifty-seventh Congress, Journal, p. 458; Record, p. 2706.

[5] Second session Forty-eighth Congress, Journal, p. 159; Record, p. 446.

[6] Second session Fifty-ninth Congress, Record, p. 4454.

UNITED STATES SENATE,
OFFICE OF THE SECRETARY,
March 2, 1907.

To the President of the Senate:

It becomes my painful duty to advise you of the death of H. Bowyer McDonald, Chief Clerk of the Senate, and for upward of thirty-four years an employee of this body.

Respectfully,

CHARLES G. BENNETT, *Secretary.*

7176. Ceremonies in memory of President William Henry Harrison.— On June 1, 1841,[1] on motion of Mr. John Quincy Adams, of Massachusetts, the House agreed to the following resolution:

Resolved, That a committee of one Member from each State in the Union be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the Nation to the event of the decease of their late President, William Henry Harrison; and that so much of the message of the President as relates to that melancholy event be referred to the said committee.

Mr. Adams was appointed chairman of the committee.

On June 3 a message was received from the Senate informing the House that they had agreed to the resolution and had appointed a committee on their part. This Senate committee numbered five.

On June 8 a message from the Senate announced that they had agreed to resolutions reported by the joint committee, and immediately these resolutions were presented to the House and agreed to. They were as follows:

The melancholy event of the death of William Henry Harrison, the late President of the United States, having occurred during the recess of Congress, and the two Houses sharing in the general grief, and desiring to manifest their sensibility upon the occasion of that public bereavement: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the chairs of the President of the Senate and of the Speaker of the House of Representatives be shrouded in black during the residue of the session; and that the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Members and officers of both Houses wear the usual badge of mourning for thirty days.

Resolved, That the President of the United States be requested to transmit a copy of these resolutions to Mrs. Harrison, and to assure her of the profound respect of the two Houses of Congress for her person and character, and of their sincere condolence on the late afflicting dispensation of Providence.[2]

This joint resolution was signed by the President of the United States.[3]

7177. Ceremonies in honor of President Zachary Taylor, who died during a session of Congress.—On July 10, 1850,[4] a message was received from

[1] First session Twenty-seventh Congress, Journal, pp. 34 36, 61, 62, 128; Globe, pp. 10, 12.

[2] On June 22, 1841, President Tyler, in a message, submitted to the House correspondence concerning the removal of the remains of the late President Harrison from Washington, a ceremony that afterwards occurred under superintendence of a joint committee of the two Houses. This correspondence in fall, as well as the message, appears in the Journal of the House. (First session Twenty-seventh Congress, Journal, pp. 180–182.)

[3] Later the remains of President Harrison were removed from the Congressional Cemetery under superintendence of a joint committee of both Houses, President Tyler having communicated to Congress the request of citizens of Ohio that the remains be removed. (Journal, pp. 180, 190.)

[4] First session Thirty-first Congress, Journal, pp. 1121–1123; Globe, pp. 1366–1376.

President Millard Fillmore announcing the death of the late President, Zachary Taylor, and recommending the adoption of suitable measures for the obsequies.

The Speaker[1] stated that this was the first time in the history of the nation that a Chief Magistrate had been stricken down during a session of Congress. Therefore a new and solemn obligation devolved on the representatives of the people to adopt the most appropriate measures.

Mr. Charles M. Conrad, of Louisiana,[2] was then recognized, and after eulogizing the deceased, offered these resolutions:

Whereas it has pleased Divine Providence to remove from this life Zachary Taylor, late President of the United States, the House of Representatives, sharing in the general sorrow which this melancholy event must produce, is desirous of manifesting its sensibility on the occasion: Therefore,

Resolved, That a committee, consisting of thirteen Members, be appointed on the part of this House, to meet such committee as may be appointed on the part of the Senate, to consider and report what measures it may be deemed proper to adopt, in order to show the respect and affection. of Congress for the memory of the illustrious deceased, and to make the necessary arrangements for his funeral.

Resolved, That this resolution be communicated to the Senate.

Pending consideration of this resolution, a message was received from the Senate announcing that they had agreed to the following resolution, in which they asked the concurrence of the House:

Whereas it has pleased Divine Providence to remove from this life Zachary Taylor, late President of the United States, the Senate, sharing in the general sorrow which this melancholy event must produce, is desirous of manifesting its sensibility on the occasion: Therefore,

Resolved, That a committee, consisting of Mr. Webster, Mr. Cass, and Mr. King, be appointed on the part of the Senate, to meet such committee as may be appointed on the part of the House of Representatives, to consider and report what measures it may be proper to adopt to show the respect and affection of Congress for the memory of the illustrious deceased, and to make the necessary arrangements for his funeral.

The House proceeded with the consideration of the resolutions offered by Mr. Conrad, and after eulogies had been pronounced by several Members, the resolutions were unanimously agreed to.

Mr. Conrad was appointed chairman of the committee.

On July 11 the joint committee reported to the House as follows:

That the funeral take place from the President's house on Saturday next; the ceremonies to commence at 12 o'clock m., and the procession to move at 1 o'clock p.m. precisely. That the two Houses of Congress assemble in their respective chambers on Saturday next, at 11 o'clock a.m., and thence move in joint procession to the President's house; that the chambers of the two Houses be hung in black, and that the Members wear the usual badges of mourning.

The committee further report that a programme of all the ceremonies proposed on the occasion will be published at the earliest moment.

The military and naval arrangements for the day will be under the direction of Major-General Scott, commanding the Army of the United States, and of Commodore Warrington, the senior naval officer present, and will conform in all essential respects to those adopted on the occasion of the funeral of the late President Harrison.

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[1] Howell Cobb, of Georgia, Speaker.

[2] Mr. Conrad was a Whig, of the same party as the deceased President, but a member of the minority in the House.

The said report having been read, it was unanimously concurred in.[1]

The House then adjourned to meet on Saturday next.

On that day the House met, and the Speaker and Members went in procession to the President's house, in accordance with the arrangements.[2]

7178. Ceremonies in memory of President Abraham Lincoln.—On December 5, 1865,[3] Mr. Elihu B. Washburne, of Illinois, submitted the following resolution, saying that it was in accordance with the precedents in similar melancholy events:

Resolved, That a committee of one from each State represented in this House be appointed on the part of the House to join such committee as may be appointed on the part of the Senate, to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the nation to the event of the decease of their late President, Abraham Lincoln; and that so much of the message of the President as relates to that melancholy event be referred to the said committee.

This resolution was at once agreed to by the House, and on December 6 was considered by the Senate. At first it was proposed that the committee on the part of the Senate should consist of six, in accordance with the precedent on the last occasion of the decease of a President during the recess of Congress. But after debate it was decided to make the number thirteen, in order that it might be more representative of the different portions of the country.

Mr. Washburne, of Illinois, was made chairman of the committee on the part of the House, and Mr. Solomon Foot, of Vermont, of the Senate committee.

This committee reported first in the Senate, and on December 18 the House received a message from the Senate that they had concurred in the following:

Whereas the melancholy event of the violent and tragic death of Abraham Lincoln, late President of the United States, having occurred during the recess of Congress, and the two Houses sharing in the general grief and desiring to manifest their sensibility upon the occasion of the public bereavement: Therefore,

Be it resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress will assemble in the Hall of the House of Representatives on Monday, the 12th day of February next, that being his anniversary birthday, at the hour of twelve meridian; and that, in the presence of the two Houses then assembled, an address upon the life and character of Abraham Lincoln, late President of the United States, be pronounced by the Honorable Edwin 1A. Stanton, and that the President of the Senate pro tempore and the Speaker of the House of Representatives be requested to invite the President of the United States, the heads of the several Departments, the judges of the Supreme Court, the representatives of foreign governments near this Government, and such officers of the Army and Navy as have received the thanks of Congress who may then be at the seat of government to be present on the occasion.

And be it further resolved, That the President of the United States be requested to transmit a copy of these resolutions to Mrs. Lincoln, and to assure her of the profound sympathy of the two Houses of Congress for her deep personal affliction, and of their sincere condolence for the late national bereavement.

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[1] This report was simply in the form of a report, and not of a resolution. The House acted on it, concurring in the report. The report appears in the Journal in full, without especial order to that effect, as would seem proper, since it was the report that the House agreed to.

[2] A joint resolution (S. 24) expressing the condolences of Congress for Mrs. Margaret Taylor was also passed by the two Houses of Congress and signed by the President. (Journal, pp. 1128, 1161.)

[3] First session Thirty-ninth Congress, Journal, pp. 32, 36, 43, 47, 83; Globe, pp. 10, 12, 13, 67, 71.

The resolutions were agreed to by the House unanimously.

Mr. Stanton having declined, the committee selected Hon. George Bancroft, although it does not appear that a formal record was made of this action.

The Journal of February 12 [1] has the following entry:

After the Journal was read, the Speaker laid before the House the following letter, this day received by him from the Secretary of State, viz:

(Here follows in full a letter from William H. Seward expressing thanks for the invitation, and regretting his inability to attend.)

In pursuance of the concurrent resolution of the two Houses of the 18th of December last, the Senate of the United States, preceded by the President of the Senate pro tempore and its officers, the President of the United States, the heads of the several departments, the judges of the Supreme Court, the representatives of foreign governments near this Government, such officers of the Army and Navy as have received the thanks of Congress, and Mr. George Bancroft, entered the Hall and took the seats provided for them, respectively.

Mr. George Bancroft then rose and pronounced an address upon the life and character of Abraham Lincoln, late President of the United States; and having concluded the same, the Senate and invited guests of the two Houses withdrew.

Mr. Washburne then submitted the following concurrent resolutions, which were read, considered, and agreed to, viz:

Resolved (the Senate concurring), That the thanks of Congress be presented to the honorable George Bancroft for the appropriate memorial address delivered by him on the life and services of Abraham Lincoln, late President of the United States, in the Representatives' Hall, before both Houses of Congress and their invited guests, on the 12th day of February, 1866, and that he be requested to furnish a copy for publication.

Resolved, That the chairman of the joint committee appointed to make the necessary arrangements to carry into effect the resolution of this Congress in relation to the memorial exercises in honor of Abraham Lincoln be requested to communicate to Mr. Bancroft the foregoing resolution, receive his answer thereto, and present the same to both Houses of Congress.

The record of debates [2] has the details of the ceremony more fully. The Speaker's desk and the desk of the Clerk of the House were draped in mourning. The account is as follows:

At 12 o'clock and 10 minutes p. m. the Members of the Senate, following their President pro tempore and their Secretary, and preceded by their Sergeant-at-Arms, entered the Hall of the House of Representatives and occupied the seats reserved for them on the right and left of the main aisle.

The President pro tempore occupied the Speaker's chair, the Speaker of the House sitting at his left. The Chaplains of the Senate and the House were seated on the right and left of the Presiding Officers of their respective Houses.

Shortly afterward the President of the United States, with the members of his Cabinet, entered the Hall and occupied seats, the President in front of the Speaker's table, and his Cabinet immediately on his right.

Immediately after the entrance of the President, the Chief Justice and the Associate Justices of the Supreme Court of the United States entered the Hall and occupied seats next to the President, on the right of the Speaker's table.

The others present were seated as follows:

The heads of Departments, with the Diplomatic Corps, next to the President, on the left of the Speaker's table.

Officers of the Army and Navy, who, by name, have received the thanks of Congress, next to the Supreme Court, on the right of the Speaker's table.

Assistant heads of Departments, governors of States and Territories, and the mayors of Washington and Georgetown, directly in the rear of the heads of Departments.

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[1] Journal, pp. 261, 262.

[2] Globe, p. 798.

The Chief Justice and judges of the Court of Claims, and the Chief Justice and associate justices of the supreme court of the District of Columbia, directly in the rear of the Supreme Court.

The heads of bureaus in the Departments, directly in the rear of officers of the Army and Navy.

Representatives on either side of the Hall, in the rear of those invited, four rows of seats on either side of the rear aisle being reserved for Senators.

The orator of the day, Hon. George Bancroft, at the table of the Clerk of the House.

The chairman of the joint committee of arrangements, at the right and left of the orator, and next to them the Secretary of the Senate and the Clerk of the House.

The other officers of the Senate and House, on the floor at the right and left of the Speaker's platform.

When order was restored, at 12 o'clock and 20 minutes, the Marine Band, stationed in the vestibule, played appropriate dirges.

At 12 o'clock and 30 minutes the two Houses were called to order by the President pro tempore of the Senate.

Reverend Doctor Boynton, Chaplain of the House, offered the following prayer: * * *

The President of the Senate then introduced the orator of the day.

On February 16[1] Mr. Washburne, from the joint committee, reported that the committee had placed a certified copy of the concurrent resolution of thanks in the hands of the Hon. George Bancroft, and received his answer thereto, which correspondence was laid on the table and ordered to be printed.

7179. Ceremonies in memory of President James A. Garfield.—On December 6, 1881,[2] immediately after the reading of the message of the President, Mr. William McKinley, jr., of Ohio, offered the following:

Resolved, That a committee of one Member from each State represented in this House be appointed on the part of the House to join such committee as may be appointed on the part of the Senate to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the nation to the event of the decease of their late President, James Abram Garfield; and that so much of the message of the President as refers to that melancholy event be referred to said committee.

This resolution was considered by unanimous consent, and agreed to.

Mr. McKinley was appointed chairman of the committee on the part of the House.

The Senate concurred in the resolution, constituting the committee on their part of six Senators, Mr. John Sherman, of Ohio, being chairman.

On December 21 Mr. McKinley reported to the House the following:

Whereas the melancholy event of the violent and tragic death of James Abram Garfield, late President of the United States, having occurred during the recess of Congress, and the two Houses sharing in the general grief and desiring to manifest their sensibility upon the occasion of the public bereavement; therefore,

Be it resolved by the Howe of Representatives (the Senate concurring), That the two Houses of Congress will assemble in the Hall of the House of Representatives on a day and hour to be fixed and announced by the joint committee, and that in the presence of the two Houses there assembled an address upon the life and character of James Abram Garfield, late President of the United States, be pronounced by Hon. James G. Blaine, and that the President of the Senate pro tempore and the Speaker of the House of Representatives be requested to invite the President and ex-Presidents of the United States, the heads of the several Departments, the judges of the Supreme Court, the representatives of the foreign governments near this Government, the governors of the several States, the General of the Army, and the Admiral of the Navy, and such officers ot the Army and Navy as have received the thanks of Congress, who may then be at the seat of government, to be present on the occasion.

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[1] Journal, p. 280; Globe, p. 886.

[2] First session Forty-seventh Congress, Journal, pp. 43, 185; Record, pp. 44, 238.

And be itfurther resolved, That the President of the United States be requested to transmit a copy of these resolutions to Mrs. Lucretia R. Garfield, and to assure her of the profound sympathy of the two Houses of Congress for her deep personal affliction, and of their sincere condolence for the late national bereavement.

Later the two Houses, by concurrent resolution, fixed February 27, 1882,[1] as the date of the ceremonies, and the Journal of that date contains the following:

The Senate of the United States, preceded by the President of the Senate pro tempore and its officers, the President of the United States, the heads of the several Departments, the Chief Justice and Associate Justices of the Supreme Court of the United States, the chief justice and judges of the Court of Claims, and the chief justice and associate justices of the Supreme Court of the District of Columbia, the General of the Army, and Admiral of the Navy, with such officers of the Army and Navy as have received the thanks of Congress, the representatives of foreign governments near this Government, invited guests, and Mr. James G. Blaine, entered the Hall and took the seats provided for them, respectively.

The President pro tempore of the Senate called the two Houses to order.

Mr. Blaine then rose and pronounced an address upon the life, character, and public services of James Abram Garfield, late President of the United States; and having concluded the same,

The Senate and invited guests of the two Houses thereupon withdrew.

The Speaker having called the House to order, Mr. McKinley submitted the following concurrent resolutions, which were read, considered, and agreed to, viz:

"Resolved, (the Senate concurring), That the thanks of Congress be presented to Hon. James G. Blaine for the appropriate memorial address delivered by him on the life and services of James Abram Garfield, late President of the United States, in the Representatives' Hall, before both Houses of Congress and their invited guests, on the 27th day of February, 1882, and that he be requested to furnish a copy for publication.

"Resolved, That the chairman of the joint committee appointed to make the necessary arrangements to carry into effect the resolutions of this Congress in relation to the memorial exercises in honor of James Abram Garfield be requested to communicate to Mr. Blaine the foregoing resolution, receive his answer thereto, and present the same to both Houses of Congress.

"Ordered, That the Clerk request the concurrence of the Senate in the said resolutions."

Mr. McKinley also submitted the following resolution; which was read, considered, and agreed to, viz:

"Resolved, That, as a further testimonial of respect to the deceased President of the United States, the House do now adjourn."

The Record of this date contains the programme of arrangements in full:

The Hall of the House of Representatives will be opened for the admission of Representatives and to those who have invitations, who will be conducted to the seats assigned to them as follows:

The President and ex-Presidents of the United States and special guests will be seated in front of the Speaker.

The Chief Justice and associate justices of the Supreme Court will occupy seats next to the President and ex-Presidents and special guests, on the right of the Speaker.

The Cabinet officers, the General of the Army and Admiral of the Navy, and the officers of the Army and Navy who, by name, have received the thanks of Congress, will occupy seats on the left of the Speaker.

The chief justice and judges of the Court of Claims and the chief justice and associate justices of the supreme court of the District of Cloumbia will occupy seats directly in the rear of the Supreme Court.

The diplomatic corps will occupy the front row of seats.

Ex-Vice-Presidents, Senators, and ex-Senators will occupy seats in the second, third, fourth, and fifth rows on east side of main aisle.

Representatives will occupy seats on west side of main aisle and in rear of Senators on the cast side.

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[1] Journal, pp. 676, 687; Record, p. 1465.

Commissioners of the District, governors of States and Territories, assistant heads of departments, and invited guests will occupy seats in rear of Representatives.

Executive gallery will be reserved exclusively for the families of the Supreme Court and the families of the Cabinet and the invited guests of the President. Tickets thereto will be delivered to the private secretary of the President.

The diplomatic gallery will be reserved exclusively for the families of the members of the diplomatic corps. Tickets thereto will be delivered to the Secretary of State.

The reporters' gallery will be reserved exclusively for the use of the reporters for the press. Tickets thereto will be delivered to the press committee.

The official reporters of the Senate and the House will occupy the reporters' desk in front of the Clerk's table.

The House of Representatives will be called to order by the Speaker at 12 o'clock.

The Marine Band will be in attendance.

The Senate will assemble at 12 o'clock, and immediately after prayer will proceed to the Hall of the House of Representatives.

The diplomatic corps will meet at half past 11 o'clock in Representatives' lobby, and be conducted by the Sergeant-at-Arms of the House to the seats assigned them.

The President of the Senate will occupy the Speaker's chair.

The Speaker of the House will occupy a seat at the left of the President of the Senate.

The Chaplains of the Senate and of the House will occupy seats next to the presiding officers of their respective Houses.

The chairmen of the joint committee of arrangements will occupy seats at the right and left of the orator, and next to them will be seated the Secretary of the Senate and the Clerk of the House.

The other officers of the Senate and of the House will occupy seats on the floor at the right and left of the Speaker's platform.

Prayer will be offered by Rev. F. D. Power, Chaplain of the House of Representatives.

The presiding officer will then present the orator of the day.

The benediction will be pronounced by the Rev. J. J. Bullock, Chaplain of the Senate.

By reason of the limited capacity of the galleries the number of tickets is necessarily restricted, and will be distributed as follows:

To each Senator, Representative, and Delegate, three tickets.

The Capitol will be closed on the morning of the 27th to all except the Members and officers of Congress.

At 10 o'clock the east door leading to the Rotunda will be opened to those to whom invitations have been extended under the joint resolution of Congress by the presiding officers of the two Houses, and to those holding tickets of admission to the galleries.

No person will be admitted to the Capitol except on presentation of a ticket, which will be good only for the place indicated.

The Architect of the Capitol and the Sergeant-at-Arms of the Senate and Sergeant-at-Arms of the House are charged with the execution of these arrangements.

7180. Proceedings and exercises in memory of President McKinley.— On December 3, 1901,[1] the message of the President having been received and read, Mr. Sereno E. Payne, of New York, moved that all of it, except that portion relating to the death of the late President, William McKinley, be referred to the Committee of the Whole House on the state of the Union. This motion was agreed to.

Thereupon Mr. Charles H Grosvenor, of Ohio, offered the following:

Resolved, That a committee of one member from each State represented in this House be appointed on the part of the House, to join such committee as may be appointed on the part of the Senate, to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the nation to the tragic death of the late President,

[1] First session Fifty-seventh Congress, Record, p. 93; Journal, p. 50.

William McKinley, and that so much of the message of the President as relates to that deplorable event be referred to such committee.

This resolution being agreed to, the Speaker announced the committee, Mr. Grosvenor being chairman.

Then, on motion of Mr. Grosvenor, and as a further mark of respect to the memory of the late President, the House adjourned.

On January 15, 1902,[1] Mr. Charles H. Grosvenor, from the select committee, presented the following resolution, which was considered by unanimous consent and agreed to:

Whereas the melancholy event of the violent and tragic death of William McKinley, late President of the United States, having occurred during the recess of Congress, and the two Houses sharing in the general grief and desiring to manifest their sensibility upon the occasion of the public bereavement: Therefore,

Be it resolved by the House of Representatives (the Senate concurring), That the two Houses of Congress will assemble in the Hall of the House of Representatives on a day and hour fixed and announced by the joint committee, to wit, Thursday, February 27, 1902, and that, in the presence of the two Houses there assembled, an address on the life and character of William McKinley, late President of the United States, be pronounced by Hon. John Hay, and that the President of the Senate pro tempore and the Speaker of the House of Representatives be requested to invite the President and ex-President of the United States, ex-Vice-Presidents, the heads of the several Departments, the judges of the Supreme Court, the representatives of the foreign governments, the governors of the several States, the Lieutenant-General of the Army and the Admiral of the Navy, and such officers of the Army and Navy as have received the thanks of Congress who may then be at the seat of government to be present on the occasion, and such others as may be suggested by the executive committee.

And be it further resolved, That the President of the United States be requested to transmit a copy of these resolutions to Mrs. Ida S. McKinley, and to assure her of the profound sympathy of the two Houses of Congress for her deep personal affliction, and of their sincere condolence for the late national bereavement.

On February 27, 1902,[2] after prayer by the Chaplain, the Speaker laid before the House the concurrent resolutions providing for memorial exercises in honor of the memory of the late President, William McKinley, which were about to begin in accordance with the following programme:

The Capitol will be closed on the morning of the 27th day of February, 1902, to all except Members and officers of Congress.

At 10 o'clock the east door leading to the Rotunda will be opened to those to whom invitations have been extended under the joint resolution of Congress by the presiding officers of the two Houses, and to those holding tickets of admission to the galleries.

The Hall of the House of Representatives will be opened for the admission of Representatives and to those who have invitations, who will be conducted to the seats assigned to them, as follows:

The President and ex-President of the United States and special guests will be seated in front of the Speaker.

The Chief Sustice and associate justices of the Supreme Court will occupy seats next to the President and exPresident and special guests, on the right of the Speaker.

The Cabinet officers, the Lieutenant-General of the Army and the Admiral of the Navy, and the officers of the Army and Navy who, by name, have received the thanks of Congress, will occupy seats on the left of the Speaker.

The chief justice and judges of the Court of Claims and the chief justice and associate justices of the supreme court of the District of Columbia will occupy seats directly in the rear of the Supreme Court.

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[1] First session Fifty-seventh Congress, Journal, p. 223; Record, p. 693.

[2] First session Fifty-seventh Congress, Record, pp. 2197–2202; Journal, p. 394.

The diplomatic corps will occupy the front row of seats.

Ex-Vice-Presidents and Senators will occupy seats in the second, third, fourth, and fifth rows on east side of main aisle.

Representatives will occupy seats on west side of main aisle and in rear of the Senators on east side.

Commissioners of the District, governors of States and Territories, assistant heads of Departments, and invited guests will occupy seats in rear of Representatives.

The executive gallery will be reserved exclusively for the families of the Supreme Court and the families of the Cabinet and the invited guests of the President. Tickets thereto will be delivered to the Secretary to the President.

The diplomatic gallery will be reserved exclusively for the families of the members of the diplomatic corps. Tickets thereto will be delivered to the Secretary of State.

The reporters' gallery will be reserved exclusively for the use of the reporters for the press. Tickets thereto will be delivered to the press committee.

The official reporters of the Senate and of the House will occupy the reporters' desk in front of the Clerk's table.

The House of Representatives will be called to order by the Speaker at 12 o'clock.

The Marine Band will be in attendance.

The Senate will assemble at 12 o'clock, and immediately after prayer will proceed to the Hall of the House of Representatives.

The diplomatic corps will meet at half past 11 o'clock in Representatives' lobby, and be conducted by the Sergeant-at-Arms of the House to the seats assigned them.

The President of the Senate will occupy the Speaker's chair.

The Speaker of the House will occupy a seat at the left of the President of the Senate.

The Chaplains of the Senate and of the House will occupy seats next to the Presiding Officers of their respective Houses.

The chairmen of the joint committee of arrangements will occupy seats at the right and left of the orator, and next to them will be seated the Secretary of the Senate and the Clerk of the House.

The other officers of the Senate and of the House will occupy seats on the floor, at the right and the left of the Speaker's platform.

Prayer will be offered by the Rev. Henry N. Couden, D. D., Chaplain of the House of Representatives.

The Presiding Officer will then present the orator of the day.

The benediction will be pronounced by the Rev. W. H. Milburn, Chaplain of the Senate.

By reason of the limited capacity of the galleries the number of tickets is necessarily restricted, and will be distributed as follows:

To each Senator, Representative, and Delegate, two tickets.

No person will be admitted to the Capitol except on presentation of a ticket, which will be good only for the place indicated.

The Architect of the Capitol and the Sergeant-at-Arms of the Senate and the Doorkeeper of the House are charged with the execution of these arrangements.

J. B. FORAKER,
C. H. GROSVENOR,
Chairmen Joint Committee.

The concurrent resolutions having been read, the Doorkeeper, Mr. William J. Glenn, announced the President of the United States and his Cabinet, the President pro tempore and the Senate, the Chief Justice and associate justices of the Supreme Court, the Lieutenant-General of the Army, the diplomatic corps, His Royal Highness Prince Henry of Prussia, and other invited guests.

The Speaker gave the gavel to the President pro tempore of the Senate.

After prayer by the Chaplain of the House, the orator of the day, Hon. John Hay, Secretary of State, was introduced and pronounced the oration.

Then, after the benediction by the Chaplain of the Senate, the President pro tempore declared the assembly dissolved, and

Thereupon the President and his Cabinet, the Senate, the Chief Justice and associate justices of the Supreme Court, the diplomatic corps, and other invited guests retired.[1]

The Speaker called the House to order, and then, on motion of Mr. Sereno E. Payne, of New York, as a further mark of respect, the House adjourned.

The customary resolution thanking the orator was not presented at this time. Later, when offered, it was objected to, but on June 2, 1902,[2] was passed by the House under suspension of the rules. On June 3[3] it was passed by the Senate.

7181. Ceremonies upon the announcement of the death of George Washington.—On December 18, 1799,[4] Mr. John Marshall, of Virginia, announced to the House the death of George Washington, and in view of the effect which the afflicting nature of the news would have on the transaction of business, moved that the House adjourn. Accordingly the House adjourned.

On December 19 Mr. Marshall, having spoken at some length of the character and services of the deceased, proposed the following resolutions, which were unanimously agreed to by the House:

The House of Representatives of the United States, having received intelligence of the death of their highly valued fellow-citizen, George Washington, General of the Armies of the United States, and sharing the universal grief this distressing event must produce, unanimously resolve,

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[1] The order of the arrival and departure of invited bodies and guests was somewhat irregular. The most approved order seems to be for the Senate to come first, then the Supreme Court, the Diplomatic Corps, and last the President and Cabinet. These bodies are announced. (See proceedings at funeral of Hon. Nelson Dingley, of Maine.) Individuals are not as a rule announced. In this case, however, the Lieutenant-General of the Army and Prince Henry of Prussia were announced. In this case, also, the diplomatic corps were not announced. Some misunderstanding occurred in the arrangements for the diplomatic corps, which led to a correspondence between the diplomatic corps and the State Department. Sir Julian Pauncefote, ambassador of Great Britain, and dean of the diplomatic corps, wrote as follows to Secretary Hay:

"I write to you unofficially at the request of my colleagues as their dean, as well as in my own name, to invoke your good offices in bringing about a more satisfactory arrangement with respect to the placing of the corps diplomatique on the occasion of official ceremonies in the two chambers of Congress.

"This action on our part is prompted by the uncertainty which has hitherto prevailed in the allocation of our seats, giving rise occasionally to some friction in relation to questions of precedence.

"The usage in Europe, as you are aware, is to place the foreign representatives, in a body, to the right of the chief of the State or high presiding functionary, where they appear as spectators, taking no active part in the ceremony, and thus avoiding any question of precedence between them and the high officials of the State.

"This is a reasonable and convenient arrangement which we hope will commend itself for adoption by the committees of the two Houses which are charged with the distribution of seats on the occasions referred to. But if for any reason the above arrangement should be deemed impracticable, I beg to state in the name of the corps diplomatique, that they would much prefer to witness the ceremony from the diplomatic gallery to which there can be no objection, unless it be from its want of sufficient space.

"My colleagues hope that with your usual kindness and courtesy you will inform the proper authority of the above suggestion and endeavor to procure its acceptance."

This correspondence was transmitted to the Speaker, but the matter was not brought to the attention of the House.

[2] Record, pp. 6091–6094.

[3] Record, p. 6214.

[4] First session Sixth Congress, Journal, pp. 540, 541 (Gales & Seaton ed.); Annals, pp. 203–206.

1. That this House will wait on the President of the United States, in condolence of this national calamity.

2. That the Speaker's chair be shrouded in black, and that the Members and officers of the House wear mourning, during the session.

3. That a joint committee of both Houses be appointed to report measures suitable to the occasion, and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, first in war, first in peace, and first in the hearts of his countrymen.

4. That when this House adjourns, it will adjourn until Monday next.

A message announcing officially the death of General Washington was received from the President, a committee were appointed to wait on the President and learn when he would receive them, and a message was received from the Senate announcing that they had agreed to the resolution for the appointment of a joint committee.

The Speaker, attended by the House, then withdrew to the House of the President of the United States, when Mr. Speaker addressed the President as follows:

SIR: The House of Representatives, penetrated with a sense of the irreparable loss sustained by the nation in the death of that great and good man, the illustrious and beloved Washington, wait on you, sir, to express their condolence on this melancholy and distressing event.

To which the President replied as follows:

Gentlemen of the House of Representatives:

I receive, with great respect and affection, the condolence of the House of Representatives, on the melancholy and affecting event, in the death of the most illustrious and beloved personage which this country ever produced. I sympathize with you, with the nation, and with good men through the world in this irreparable loss sustained by us all.

And then the House adjourned.

On December 23[1] Mr. Marshall, from the joint committee, reported a concurrent resolution, which was on the same day agreed to by the House and Senate, providing for the erection of a marble monument in the Capitol City, for a funeral procession and oration on the 26th instant, for a recommendation that the people wear crape on the left arm for thirty days, and that the President of the United States be requested to transmit the resolutions to Mrs. Washington and issue a proclamation notifying the people of the recommendation of Congress that they wear the badge of mourning.

On December 24[2] the Speaker informed the House that, conformable to the terms of the resolution, the President of the Senate and Speaker of the House had invited Maj. Gen. Henry Lee, one of the Representatives from Virginia, to deliver a funeral oration before both Houses on the 26th.

On the appointed day for the funeral procession, the House proceeded to the German Lutheran Church, where they attended the oration. And having returned, the House adjourned.

On December 27[3] the House directed the Speaker to transmit to General Lee the thanks of the House for the oration.

On December 30[4] the House passed a concurrent resolution recommending to the American people to assemble on the 22d of next February to publicly testify

[1] Journal, p. 542.

[3] Journal, p. 545.

[2] Journal, p. 544.

[4] Journal, p. 547.

their grief by eulogies, discourses, or prayer, and requesting the President to issue a proclamation to carry this recommendation into effect. The Senate concurred in this resolution.

On January 8, 1800,[1] the President transmitted to Congress the reply of Mrs. Washington to the expressions of Congress, and the message and letter were referred to the joint committee.

7182. In rare instances the House has noticed the decease of a member of the family of a President or ex-President.—On May 17, 1852,[2] the House adjourned over to attend the funeral of Mrs. John Quincy Adams, relict of the late John Quincy Adams.

7183. On February 21, 1862,[3] the House agreed to the following:

Entertaining the deepest sentiments of sympathy and condolence with the President of the United States and his family in their present affliction by the death of his son;

Resolved, That the Commissioner of Public Buildings be requested to omit the illumination of the public buildings ordered for to-morrow night, and that the House do now adjourn.

7184. On December 14, 1897,[4] Mr. Charles H. Grosvenor, of Ohio, announced that the funeral of the mother of President McKinley was to occur at about this hour, and therefore, as a mark of respect to the President, moved that the House adjourn.

The motion was agreed to.

The Senate took similar action.

7185. The House has, by appropriate resolutions, expressed its respect for the memories of deceased ex-Presidents of the United States.—On June 30, 1836,[5] a message was received from the President of the United States announcing the death of James Madison, ex-President of the United States, who—

departed this life at half past 6 o'clock on the morning on the 28th instant, full of years and full of honors.

The message having been read, on motion of Mr. John M. Patton, of Virginia,

Resolved, unanimously, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the nation to the event of the decease of Mr. Madison, just announced by the President of the United States to this House.

A committee of twenty-four, one from each State, were then appointed.

A message from the Senate announced that they had appointed a committee for the same purpose, consisting of seven Senators.

On the same day Mr. Patton, from the joint committee, made the following report:

The President of the United States having communicated to the two Houses of Congress the melancholy intelligence of the death of their illustrious and beloved fellow-citizen, James Madison, of Virginia, late President of the United States, and the two Houses sharing in the general grief which this distressing event must produce,

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[1] Journal, p. 554.

[2] First session Thirty-second Congress, Journal, p. 710; Globe, p. 1377.

[3] Second session Thirty-seventh Congress, Journal, p. 338; Globe, p. 910.

[4] Second session Fifty-fifth Congress, Record, pp. 135, 143.

First session Twenty-fourth Congress, Journal, pp. 1153, 1154 1158, 1159; Debates, pp. 4563, 4577.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the chairs of the President of the Senate and of the Speaker of the House of Representatives be shrouded in black during the present session, and that the President of the Senate, the Speaker of the House of Representatives, and the Members and officers of both Houses wear the usual badge of mourning for thirty days.

Resolved, That it be recommended to the people of the United States to wear crape on the left arm, as mourning, for thirty days.

Resolved, That the President of the United States be requested to transmit a copy of these resolutions to Mrs. Madison, and to assure her of the profound respect of the two Houses of Congress for her person and character, and of their sincere condolence on the late afflicting dispensation of Providence.

The said report was read, and on the question being put thereon, was unanimously agreed to by the House.

7186. On June 3, 1868,[1] resolutions were offered taking cognizance of the death of ex-President James Buchanan, and providing for the appointment of a committee on the part of the House to attend the funeral. A debate arose as to a passage in the resolutions commending the public acts of the deceased, and they were laid on the table, yeas 74, nays 46.

But later, on the same day, the House agreed to the following, on motion of Mr. James G. Blaine, of Maine:

The House of Representatives having received intelligence of the death of James Buchanan, ex-President of the United States, at his country seat at Wheatland, on the 1st instant, does hereby

Resolve, That, as a mark of respect to one who has held such eminent public station, the Speaker of the House is requested to appoint a committee of seven members to attend the funeral of Mr. Buchanan, on behalf of the House, and to communicate a copy of this resolution to the relatives of the deceased.

7187. On March 9, 1874,[2] the House agreed to the following resolution and preamble:

The House having received, with profound sensibility and sorrow, intelligence of the death of Millard Fillmore, ex-President of the United States, at Buffalo, N. Y., on the 8th instant, it is hereby

Resolved, That the members of this House, of which he was a distinguished Member and leader, unite in honoring the purity of his private character, the ability, probity, and patriotic motives which illustrated his public career, and the grace and dignity which marked the retirement of the latter years of his life.

2. That as a token of honor to the many virtues, public and private, of the illustrious statesman whose death, in the ripeness of his age, has arrested the attention of the nation, the Speaker of this House is requested and authorized to appoint a committee of seven Members to attend the funeral of Mr. Fillmore, on behalf of this House, and to communicate a copy of these resolutions to the relatives of the deceased.

7188. On January 18, 1893,[3] Mr. William E. Haynes, of Ohio, announced the death of ex-President Rutherford B. Hayes, of Ohio. Mr. Haynes and others spoke in eulogy of the deceased, and then, on motion of Mr. Haynes, and without formal resolution, the House adjourned in honor of the deceased.

7189. Ceremonies in memory of deceased Vice-Presidents.—On April 20, 1812,[4] a message from the Senate announced the death of George Clinton, Vice-President of the United States, and announced that the Senate had agreed to a resolution in which the concurrence of the House was requested.

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[1] Second session Fortieth Congress, Journal, pp. 791, 792, 795; Globe, pp. 2810, 2817.

[2] First session Forty-third Congress, Journal, p. 586; Globe, p. 2082.

[3] Second session Fifty-second Congress, Journal, p. 50; Record, p. 666.

[4] First session Twelfth Congress, Journal, p. 296 (Gales and Seaton ed.); Annals, p. 1326.

Thereupon the House:

Resolved, unanimously, That this House doth concur in the resolution of the Senate for the appointment of a joint committee "to consider and report measures proper to manifest the public respect for the memory of the deceased, and expressive of the deep regret of the Congress of the United States on the loss of a citizen so highly respected and revered."

It was then resolved that the House meet on the succeeding day at 9 o'clock.

On April 21 the House:

Resolved, unanimously, That from an unfeigned respect for the late George Clinton, Vice-President of the United States and President of the Senate, the Speaker's chair be shrouded with black during the present session; and as a further testimony of respect for the memory of the deceased, the Members will go into mourning, and wear black crape on the left arm for thirty days.

Resolved, unanimously, That the Members of this House will attend the funeral of George Clinton, deceased, late Vice-President of the United States, to-day, at 4 o'clock.

7190. On November 23 and 24, 1814,[1] similar proceedings took place upon the announcement of the death of Vice-President Elbridge Gerry.

7191. On December 8, 1853,[2] a message was received from the Senate announcing that that body had passed a resolution of respect to the late William R. King, Vice-President of the United States.

Thereupon Mr. Sampson W. Harris, of Alabama offered the following resolutions, which were agreed to unanimously:

Resolved, That from an unfeigned respect for the late William R. King, Vice-President of the United States and President of the Senate, the Speaker's chair be shrouded in black during the present session of Congress; and, as a further testimony of respect for the memory of the deceased, the Members and officers of this House will go into mourning, and wear black crape on the left arm for thirty days.

Resolved, That, as a further mark of respect, this House do now adjourn.

7192. On December 4, 1885,[3] at the close of the organization of the House, Mr. William S. Holman, of Indiana, announced the death of Thomas A. Hendricks, late Vice-President of the United States, and moved that the House adjourn in respect to the memory of the deceased.

The House accordingly adjourned.

On February 2, 1886,[4] Mr. Holman submitted the following resolutions, which, after remarks on the life and public services of the deceased, were unanimously agreed to:

Resolved, That the House has received with profound sorrow the intelligence of the death of Thomas A. Hendricks, late Vice-President of the United States.

Resolved, That the business of the House be suspended in order that the eminent public services and the private virtues of the deceased may be appropriately commemorated.

Resolved, That the Clerk of the House be directed to communicate these resolutions to the Senate.

7193. On December 4, 1899,[5] after the organization of the House, Mr. John J. Gardiner, of New Jersey, announced the death of the Vice-President, Garret A. Hobart, of New Jersey, which occurred on November 21, 1899.

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[1] Third session Thirteenth Congress, Journal, pp. 542, 543 (Gales and Seaton ed.).

[2] First session Thirty-third Congress, Journal, p. 55.

[3] First session Forty-ninth Congress, Journal, p. 14; Record, p. 108.

[4] Journal, p. 537; Record, 1065.

[5] First session Fifty-sixth Congress, Record, pp. 9, 1229.

Then, on motion of Mr. Gardiner, and as a mark of respect, the House adjourned.

On January 26, 1900, a day fixed by order of the House, there were remarks on the life, character, and public services of the deceased in accordance with the following resolutions, adopted unanimously by the House:

Resolved, That the House has received with profound sorrow the intelligence of the death of Garret A. Hobart, late Vice-President of the United States.

Resolved, That the business of the House be suspended in order that the public services and private virtues of the deceased may be appropriately commemorated.

Resolved, That the Clerk of the House be directed to communicate these resolutions to the Senate.

At the conclusion of the exercises, as a further mark of respect, the House adjourned.

7194. Ceremonies on the occasions of the deaths of a Chief Justice and Associate Justices of the Supreme Court of the United States.—On February 26, 1841,[1] the House voted to adjourn to attend the funeral of Philip P. Barbour, a justice of the Supreme Court of the United States. Mr. Henry A. Wise, of Virginia, at first objected to this proceeding, on the ground that the House had not paid a similar honor to the great Chief Justice Marshall at the time of his death. But it was explained that neither Congress nor the Supreme Court were in session when Justice Marshall died.

7195. On March 23, 1888,[2] the Speaker laid before the House a communication from Justice Samuel F. Miller, of the Supreme Court of the United States, notifying the House, by direction of the Supreme Court, of the death of the Chief Justice of the United States.

The letter having been read to the House, Mr. E. B. Taylor, of Ohio, offered the following resolutions, which were agreed to:

Resolved, That the House of Representatives has heard of the death of Chief Justice Waite, of the Supreme Court of the United States, which occurred this morning at 6 o'clock, with feelings of deep and sincere sorrow.

Resolved, That while the nation mourns the loss of one of its most useful and illustrious sons, it is fitting that the House, representing the people, express its deepest sympathy with the family of the deceased in their affliction.

Resolved, That the House will attend as a body the funeral of the late Chief Justice, and the Speaker is requested to appoint a committee consisting of nine Members to act with the committee of the Senate in any necessary action relating to the funeral.

Resolved, That as an additional mark of respect to the memory of the deceased, the House do now adjourn.

The Speaker appointed as chairman of the House committee Mr. William D. Kelley, of Pennsylvania.

On March 26 the House agreed to a resolution providing that the funeral should be held in the Hall of the House at noon, on March 28, under the arrangement of the Supreme Court.

On March 27 a communication from the marshal of the court stated that the ceremonies would be held on the day and hour named, and inviting the House to be present.

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[1] Second session Twenty-sixth Congress, Journal, pp. 332, 333; Globe, p. 209.

[2] First session Fiftieth Congress, Journal, pp. 1298, 1306, 1318, 1332, 1351; Record, pp. 2369, 2371, 2408, 2465.

On March 28 the House assembled at 11.30 a. m., and as the Senate of the United States appeared, and, following them, the President and his Cabinet and other bodies and officials, the ceremonies occurred in accordance with the order of proceedings agreed upon by the joint committee.[1]

The ceremonies being concluded, the House adjourned.

7196. On January 25, 1892,[2] the death of Mr. Justice Bradley, of the Supreme Court, was notified to the Senate by a letter from the Chief Justice to the Vice-President, and the Senate adjourned in memory of the deceased. It does not appear that the House was notified, and there was no adjournment in honor of his memory.

7197. On January 24, 1893,[3] the Speaker laid before the House a communication from the Chief Justice of the United States, announcing the death of Mr. Justice Lamar, of the Supreme Court. The House, after brief remarks by Mr. John M. Allen, of Mississippi, adjourned in honor of the deceased.

7198. Ceremonies on the occasion of the deaths of members of the President's Cabinet.—On February 29, 1844,[4] a message from President Tyler announced the accident on board the United States ship of war, the *Princeton.* The message having been read, Mr. George W. Hopkins, of Virginia moved the following resolutions:

Resolved, That this House has heard with deep sorrow of the dreadful catastrophe which occurred yesterday on board the United States ship of war *Princeton,* where many valuable lives were lost, and by which, amongst others, the Hon. Abel P. Upshur, Secretary of State, and the Hon. Thomas W. Gilmer, Secretary of the Navy, met a sudden and awful death.

Resolved, That this House will manifest its respect for the memory of the late distinguished Secretaries of State and of the Navy, and its sympathy for their bereaved families, by attending their funeral in a body.

Resolved, That as a further mark of respect for the deceased, and to manifest our sense of this most melancholy and afflicting dispensation of Divine Providence, that this House will transact no legislative business until after the funeral obsequies of the deceased shall have been performed.

Resolved, That the Members of this House will wear the usual badge of mourning for thirty days.

Resolved, That a committee of five Members of this House be appointed to make arrangements, with such committee as may be appointed on the part of the Senate, for the attendance of the two Houses of Congress at the funeral of the late Abel P. Upshur and Thomas W. Gilmer.

Resolved, That when this House adjourn to-day, it will adjourn to meet on Monday next.

Resolved, That this House do now adjourn.

The resolutions were agreed to, and with them orders appointing the committee and directing the transmission of the resolutions to the Senate and to the families of the deceased.

7199. On December 15, 1852,[5] a message was received from the Senate communicating to the House a copy of the proceedings of the Senate upon the death of the late Secretary of State, Daniel Webster.

The message having been read, Mr. George T. Davis, of Massachusetts, offered a series of resolutions, and with other Members addressed the House on the life and public services of the deceased.

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[1] For this programme in full see Record, p. 2465.

[2] First session Fifty-second Congress, Record, p. 514; Journal, p. 45.

[3] Second session Fifty-second Congress, Record, p. 823.

[4] First session Twenty-eighth Congress, Journal, p. 512; Globe, p. 346.

[5] Second session Thirty-second Congress, Journal, pp. 47, 48; Globe, pp. 62–67.

The resolutions, which were agreed to unanimously, were:

Resolved, That this House concurs with the Senate in its expression of grief for the death of Daniel Webster, of respect for his memory, and of estimation of the services which he rendered to his country.

Resolved, That the Members of this House will wear crape on the left arm for the space of thirty days.

Resolved, That the Speaker be requested to make these resolves known to the surviving relatives of the deceased.

Resolved, That this House do now adjourn.

7200. On January 30, 1891,[1] Mr. William McKinley, of Ohio, submitted the following resolutions by unanimous consent, and the same were considered and agreed to:

Resolved, That the House of Representatives has heard with profound sorrow of the death of Hon. William Windom, Secretary of the Treasury, who for ten years was a member of this body, and for twelve years a member of the Senate.

Resolved, That a committee of nine Representatives be appointed by the Speaker, to join such committee as may be appointed by the Senate, to attend the funeral of the late Secretary on behalf of Congress, and to take such other action as may be proper in honor of the memory of the deceased, and as an appreciation of Congress for his public services.

The Speaker appointed Mr. McKinley chairman.

7201. Observances of the House on occasions of the deaths of high officers of the Army.—On February 25, 1828,[2] the House concurred in a resolution from the Senate providing that both Houses attend the funeral of Major-General Brown, late Commanding General of the Army. A joint committee was appointed to make arrangements.

7202. On June 28, 1841,[3] the House, on motion of Mr. John B. Dawson, of Georgia, agreed to the following:

Resolved, That the House of Representatives have learnt, with deep regret, the death of Major-General Alexander Macomb, Commanding General of the Army, and the distinguished leader in the glorious battle of Plattsburg in the late war.

Resolved, That the House of Representatives will, if the Senate concur herein, attend the funeral of Major-General Macomb this day at 10.30 o'clock.

Resolved, That a committee of three Members of this House be appointed, on the part of the House, to make arrangements with such committee as may be appointed on the part of the Senate, for the attendance of the Senate and House of Representatives at the funeral of the late General Macomb.

Later in the day a message from the Senate announced that that body concurred in the proposed action.

7203. On May 30, 1866,[4] the President of the United States sent to the House and Senate a message announcing the death of Lieut. Gen. Winfield Scott. The two Houses agreed to a resolution constituting the committees of Military Affairs and Militia in the Senate, and the Committee on Military Affairs of the House a joint committee to take into consideration the message and report what method should be adopted by Congress to manifest its appreciation of the high character, tried

[1] Second session Fifty-first Congress, Journal, p. 198.

[2] First session Twentieth Congress, Journal, p. 348; Debates, p. 1608.

[3] First session Twenty-seventh Congress, Journal, p. 193.

[4] First session Thirty-ninth Congress, Journal, pp. 777, 780; Globe, pp. 2911, 2926.

patriotism, and distinguished public services of Lieutenant-General Scott, and their deep sensibility upon the announcement of his death.

The House having concurred in the above resolution as sent from the Senate, it was, on motion of Mr. Robert C. Schenck, of Ohio,

Resolved, That from respect to the memory of the deceased this House do now adjourn.

On May 31 the following resolution was received from the Senate and agreed to by the House:

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress have received with profound sensibility intelligence of the death of Brevet Lieut. Gen. Winfield Scott.

Resolved, That the exalted virtues, both public and private, and the wisdom, patriotism, and valor of this illustrious man in defense of his country and the maintenance of her honor and glory for more than half a century against foreign and domestic enemies in war and in peace, claim the liveliest gratitude and the deepest veneration of the American people.

Resolved, That as a further mark of respect to the memory of the deceased, when the two Houses of Congress adjourn to-day, they shall adjourn to meet on Monday next, and that a joint committee, to consist of seven Members of the Senate and nine Members of the House of Representatives, be appointed, who, together with the presiding officers of both Houses, shall proceed to West Point to represent Congress at the funeral ceremonies which are to take place to-morrow; and that said committee be attended by the Sergeants-at-Arms of both Houses.

7204. On March 30, 1870,[1] the House, on motion of Mr. Samuel J. Randall, of Pennsylvania, passed a joint resolution (H. Res. 218) expressing the sensibilities of Congress at the death of Maj. Gen. George H. Thomas, and providing that the President of the Senate and Speaker of the House should be authorized to make such arrangements as would attest the sympathy of Congress. This resolution was passed by the Senate and signed by the President.

On April 4 the Speaker laid before the House the report of himself and the President of the Senate, which provided for a meeting in the Hall of the House on the evening of April 5, to be presided over by Gen. J. D. Cox, Secretary of the Interior, and to be under the superintendence of officers who served with General Thomas, Senators and Representatives to attend this meeting. Secondly, the report provided for the appointment of a joint committee of thirteen, six Senators and seven Representatives, to attend the funeral.

This report was concurred in by both House and Senate.

7205. On August 6, 1888,[2] a message from the President of the United States announced the death of Philip H. Sheridan, General of the Army.

Thereupon, by unanimous consent, Mr. Charles E. Hooker, of Mississippi, offered the following resolutions, which were agreed to, after brief eulogies:

Resolved, That this House has learned with profound grief of the death of Gen. Philip Henry Sheridan, General commanding the armies of the United States.

Resolved, That as a mark of respect to the memory of the deceased this House do now adjourn.

Resolved, That the Speaker of this House is directed to transmit to the widow of the deceased a copy of these resolutions and an assurance of the sympathy of the House in the loss which she has sustained in common with the people of the nation.

Resolved, That the Speaker of the House appoint a committee of seven Members to confer with a like committee of the Senate, and after consultation with the family of the deceased, to take such action as may seem appropriate in regard to the public obsequies of General Sheridan.

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[1] Second session Forty-first Congress, Journal, pp. 543, 575, 581; Globe, pp. 2290, 2405.

[2] First session Fiftieth Congress, Journal, pp. 2540, 2544, 2551, 2560; Record, pp. 7272, 7405.

The Speaker named Mr. Hooker as chairman of the committee.

On August 9 the House concurred in the following:

Resolved by the Senate (the House of Representatives concurring in the proposition), That both Houses attend the funeral of General Sheridan on Saturday next at 10 a.m.

Resolved, As a further mark of respect to the memory of the deceased, that when the Houses of Congress adjourn on Friday it be to meet on Monday next.

7206. On February 10, 1886,[1] Mr. Newton C. Blanchard, of Louisiana, offered by unanimous consent the following resolutions, which were unanimously agreed to:

Resolved, That this House has learned with profound sorrow of the great and irreparable loss which the country has sustained in the death of that great and good man, Major-General Winfield S. Hancock.

Resolved, That this House, in common with all his countrymen, mourn the death of him who was the stainless soldier for the Union in war, and the undaunted defender of the Constitution and of civil liberty in peace, and at all times the stainless man and uncorruptible patriot.

Resolved, That as a mark of respect and affection for the exalted virtues of this hero and patriot this House do now adjourn.

Resolved, That the Speaker of the House be directed to transmit to the widow of the honored dead a copy of these resolutions and the assurance of the heartfelt sympathy of the House in the sorrowful bereavement which is alike hers and the nation's.

7207. On February 16, 1891,[2] the Committee on Military Affairs, to whom had been referred the message of the President of the United States announcing the death of William Tecumseh Sherman, reported the following resolutions, which were agreed to by the House:

Resolved, That the House of Representatives has heard with profound sorrow of the death, at his home in New York City, on the 14th instant, of William Tecumseh Sherman, the last of the generals of the Army of the United States.

Resolved, That we mourn him as the greatest leader remaining to the Republic and the last of that illustrious trio of generals who commanded the armies of the United States—Grant, Sherman, and Sheridan—who shed imperishable glory on American arms and were the idolized leaders of the Union Army.

Resolved, That we hereby record the high appreciation in which the American people hold the character and services of General Sherman as one of the greatest leaders of his generation, as one of the grandest patriots that our country has produced, and as a noble man in the broadest and fullest meaning of the word.

We mingle our grief with that of the nation, mourning the departure of her great son and of the survivors of the battle-scarred veterans whom he led to victory and peace. We especially tender our sympathy and condolence to those who are bound to him by the ties of blood and strong personal affection.

Resolved, That the Speaker appoint a committee of nine members of the House to attend the funeral of the late General as representatives of this body.

Resolved, That a copy of these resolutions be forwarded by the Clerk of the House to the family of General Sherman.

After remarks on the life, character, and public services of the deemed the House, as a further mark of respect, adjourned.

On February 28 a letter from the family of the deceased, expressing appreciation of the action of the House, was laid before the House and inserted in the Journal.

7208. Resolutions in memory of the Admiral of the Navy.—On February 14, 1891,[3] the Committee on Naval Affairs, to whom on the preceding day had

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[1] First session Forty-ninth Congress, Journal, p. 608; Record, p. 1327.

[2] Second session Fifty-first Congress, Journal, pp. 252, 325.

[3] Second session Fifty-first Congress, Journal, pp. 248, 343.

been referred a message of the President announcing the death of the Admiral of the Navy, David Dixon Porter, reported the following resolutions, which were agreed to:

Resolved, That the House has learned with profound grief of the death of David Dixon Porter, the Admiral of the United States Navy, who, during more than sixty years of distinguished service to his country, has added to the honors of one of the most illustrious names in our naval history.

Resolved, That the Speaker of the House appoint a committee of seven members to confer with a like committee of the Senate, and, after consultation with the family of the deceased, to take such action as may be appropriate in regard to the public obsequies of Admiral Porter.

The Speaker having announced the committee, of which Mr. Charles A. Boutelle, of Maine, chairman of the Committee on Naval Affairs, was made chairman, the following resolution was agreed to:

Resolved, That as a mark of respect to the memory of the deceased this House do now adjourn.

On March 2 the Speaker laid before the House a letter of acknowledgement from the family of Admiral Porter, which was read and ordered printed in the Journal and Record.

7209. A proposition that the House attend the funeral of Commodore Decatur and pay to him the funeral honors usually paid to a Member was withdrawn because of opposition. Mr. John W. Taylor, of New York, felt it would be improper as the distinguished officer died in opposition to the laws of his country and God.[1]

7210. On May 8, 1902,[2] the House of Representatives, on motion of Mr. Alston G. Dayton, of West Virginia, agreed to the following:

Whereas the House of Representatives has heard with profound regret of the death of Rear-Admiral William T. Sampson, which occurred in this city on the 6th instant; and

Whereas the Senate of the United States has appointed a committee to join a committee of the House in attendance upon the funeral services:

Therefore, as a mark of respect for the deceased, and as a tribute of esteem for his distinguished services to the nation,

Be it resolved, That a committee of seven members be appointed to join the committee appointed on the part of the Senate to attend the funeral of the deceased.

7211. The House generally did not adjourn in tribute to the memories of high officers of the Revolution.—On January 22, 1818,[3] Mr. William Henry Harrison, of Ohio, offered this resolution:

Resolved, That this House, entertaining the highest respect for the memory of General Kosciuszko, his services, etc., the Members thereof will testify the same by wearing crape on the left arm for one month.

There was much opposition to this on the ground that, with the exception of General Washington, the House had been sparing of its recognition of departed worthies, native or foreign. General Kosciuszko had been an American officer;

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[1] First session Sixteenth Congress, Journal, pp. 334, 336 (Gales & Seaton ed.); Annals, pp. 1670, 1675. Commodore Decatur had died in a duel.

[2] First session Fifty-seventh Congress, Journal, pp. 686, 687; Record, pp. 5185, 5186.

[3] First session Fifteenth Congress, Annals, p. 800.

but as late as 1810 the House had refused a like tribute to the memory of Colonel William Washington.[1]

Mr. Harrison, because of the opposition, withdrew the resolution.

7212. The House appointed a committee to attend the transfer of the remains of General Rosecrans.—On April 4, 1902,[2] Mr. Charles H. Grosvenor, of Ohio, by unanimous consent, presented the following resolution, which was agreed to:

Resolved by the House of Representatives of the United States (the Senate concurring), That there be appointed a committee by the President pro tempore of the Senate and the Speaker of the House to attend the ceremonies incident to the transfer of the remains of Gen. William S. Rosecrans from California to the cemetery at Arlington, Va., said committee to be a joint committee of the two Houses.

The same day[3] the Senate agreed to the resolution.

7213. In rare instances the House has taken notice of the decease of eminent citizens not of its membership.—On April 22, 1790[4] the House being informed of the death of Benjamin Franklin, resolved to wear the usual badge of mourning for one month.

7214. On October 19, 1803,[5] Mr. John Randolph, of Virginia, offered the following:

Resolved unanimously, That this House is penetrated with a full sense of the eminent services rendered to his country, in the most arduous times, by the late Samuel Adams, deceased; and that the Members thereof wear crape on the left arm for one month in testimony of the national gratitude and reverence toward the memory of that undaunted and illustrious patriot.

The resolution was agreed to.

7215. On February 20, 1834,[6] Mr. John Y. Mason, of Virginia, announced the death of William Wirt, and in order that the Speaker and Members might have an opportunity of attending the funeral, moved that the House adjourn. This motion was agreed to.

On the next day Mr. John Quincy Adams, in moving to amend the Journal so it should show the reason for the adjournment, said:

The customs of this and of the other House of Congress warrant the suspension of their daily labors in the public service, for the attendance upon funeral rites, only in cases of the decease of their own Members. To extend the usage farther might be attended with inconvenience as a precedent; nor should I have felt myself warranted in asking it upon any common occasion. Mr.Wirt had never been a Member of either House of Congress. But if his form in marble, or his portrait upon canvas, were placed within these walls, a suitable inscription for it would be that of the statue of Moliere in the hall of the French Academy—"Nothing was wanting to his glory; he was wanting to ours." Mr. Wirt had

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[1] The resolution to wear crape in memory of Colonel Washington was objected to because such ceremonies had not been observed for Generals Greene, Wayne, or others, and on April 11, 1810, it was disagreed to. On April 13 the House agreed to a resolution explaining that their action of the 11th was taken wholly on public grounds and was not intended to detract from the fame of the deceased. (Second session Eleventh Congress, Journal, pp. 355, 361 (Gales & Seaton ed.); Annals, pp. 1770, 1794.)

[2] First session Fifty-seventh Congress, Journal, p. 564; Record, p. 3675.

[3] Record, p. 3674.

[4] Second session First Congress, Journal, p. 198 (Gales & Seaton ed.).

[5] First session Eighth Congress, Journal, p. 410 (Gales & Seaton ed.); Annals, pp. 378, 379.

[6] First session Twenty-third Congress, Journal, p. 349; Debates, p. 2758.

never been a Member of Congress; but for a period of twelve years, during two successive administrations of the National Government, he had been the official and confidential adviser upon all questions of law of the Presidents of the United States.

7216. On April 25, 1872,[1] the House and Senate concurred in a resolution expressive of the regret of Congress at the decease of Prof. S. F. B. Morse, inventor of the electric telegraph, and of appreciation of his services. The House of Representatives also appointed a committee to cooperate with a general committee in arranging a memorial service held in the Hall of the House on the evening of April 16.

7217. On December 2, 1872,[2] Mr. Henry L. Dawes, of Massachusetts, offered the following resolution, which was agreed to by the House, and also concurred in by the Senate:

Resolved by the House of Representatives (the Senate concurring), That in view of the recent death of Horace Greeley, for whom at the late election more than three million votes were cast for President, a record be made in the Journals of Congress of appreciation of the eminent services, personal purity, and worth of the deceased, and of the sad impression created by his death following keen family bereavement.

7218. On May 14, 1878,[3] the two Houses by concurrent resolution adjourned to permit Members to attend the funeral of the late Joseph Henry, secretary of the Smithsonian Institution.

7219. The House paid honor to the memory of Lafayette by elaborate ceremonies.—On June 21, 1834,[4] Mr. John Quincy Adams, of Massachusetts, moved the following resolution, which was agreed to unanimously:

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to consider and report by what token of respect and affection it may be proper for the Congress of the United States to express the deep sensibility of the nation to the event of the decease of General Lafayette.

Ordered, That the committee on the part of this House consist of one Member from each State.

Mr. Adams was appointed chairman of the committee.

In the Senate,[5] on the same day, the resolution of the House was concurred in, on motion of Mr. Daniel Webster, of Massachusetts, and then, on motion of Mr. John Forsyth, of Georgia, the number of the Senate committee was fixed at 13, the number of the original States.

The same day,[6] after the above action had been taken, a message was received from President Jackson announcing the death of General Lafayette, and transmitting a general order issued to the Army and Navy, requiring them to render the same honors as were observed at the death of Washington. This proclamation, as well as the message, appears in full in the Journal of the House.

On June 24[7] Mr. Adams presented a joint resolution expressive of the feelings of the two Houses at the receipt of the intelligence of the death of "General Lafayette, the friend of the United States, the friend of Washington, and the friend

[1] Second session Forty-second Congress, Journal, pp. 628, 640, 656, 696, 752; Globe, p. 2761.

[2] Third session Forty-second Congress, Journal, pp. 7, 29; Globe, pp. 3, 10.

[3] Second session Forty-fifth Congress, Journal, pp. 1078, 1079.

[4] First session Twenty-third Congress, Journal, p. 796; Debates, p. 4642.

[5] Debates, p. 2054.

[6] Journal, p. 806.

[7] Journal, p. 829; Debates, p. 4760.

of liberty;" requesting the President to address a letter to members of the Lafayette family assuring them of the condolence of the nation; providing that the Members of the two Houses of Congress should wear a badge of mourning for thirty days, and recommending a similar observance to the people of the United States; providing that the Halls of the two Houses be dressed in mourning for the residue of the session, and that John Quincy Adams be requested to deliver an oration on the life and character of Lafayette before the two Houses of Congress at the next session.

This resolution was passed by both House and Senate, and on June 27[1] the President announced that he had approved it.

On June 25, 1834,[2] a message from the Senate announced that the Senate had passed "unanimously" the resolution manifesting the sensibility of the two Houses of Congress and the nation on the occasion of the decease of General Lafayette.

On December 9, 1834,[3] the House agreed to a resolution providing for a committee of the House, to join such committee as might be appointed on the part of the Senate, to consider and report the arrangements necessary to be adopted in order to carry into effect the resolution adopted at the last session in regard to the death of General Lafayette. A committee of five were appointed on the part of the House. The Senate concurred in the action and appointed a committee of five on their part.

On December 23, Mr. Henry Hubbard, of New Hampshire, chairman of the joint committee on the part of the House, reported the following resolutions, which were agreed to by the House:

Resolved by the Senate and House of Representatives of the United States, That Wednesday, the 31st instant, be the time assigned for the delivery of the oration by John Quincy Adams before the two Houses of Congress on the life and character of General Lafayette.

That the two Houses shall be called to order by their respective presiding officers at the usual hour, and the Journal of the preceding day shall be read, but all legislative business shall be suspended on that day.

That the oration shall be delivered at half past twelve o'clock in the Hall of the House of Representatives.

That the President of the United States and the heads of the several Departments, the French minister, and members of the French legation, and all the other foreign ministers at the seat of Government, and the members of their respective legations, be invited to attend on that occasion by the chairmen of the joint committee

That the President of the United States, the heads of the several Departments, the French minister, and members of the French legation, the other foreign ministers at the seat of Government, and the members of their respective legations, and John Quincy Adams be requested to assemble at half past twelve o'clock p.m., in the Senate Chamber, and that they, with the Senate, shall be attended by the joint committee to the Hall of the House of Representatives.

That the galleries of the House, under the direction of its officers, shall be opened on that day for the accommodation of such citizens as may think proper to attend.

On December 31, at 40 minutes past 12 o'clock, the Senate of the United States, preceded by the Vice-President and its officers, the President of the United States, the heads of the several executive departments, the ministers of sundry foreign nations at the seat of Government, and the members of their respective legations,

[1] Journal, p. 858.

[2] First session Twenty-third Congress, Journal, p. 832.

[3] Second session Twenty-third Congress, Journal, pp. 54, 98, 123, 129, 153, 154, 156, 173.

and John Quincy Adams, entered the Hall of the House and took the seats prepared for them, respectively. Mr. John Quincy Adams was conducted to the Speaker's chair by the committee of arrangements, when the Speaker withdrew and took seat at the Clerk's table with the Vice-President.

The Journal then goes on to record that Mr. Adams rose and addressed the assemblage, after which the Senate and invited guests withdrew. The address appears in full in the appendix of the Journal.

On January 2, 1835, Mr. Hubbard moved a joint resolution giving to Mr. Adam the thanks of Congress for his oration, and this resolution having been agreed to by both House and Senate, on January 6 Mr. Hubbard reported to the House that the joint committee had, according to direction, presented the thanks of Congress to Mr. Adams; and he further presented to the House the correspondence passing between Mr. Adams and the joint committee, which was inserted in the journal.

7220. The House has, in a few cases, paid honor to the memories of champions of liberty in foreign lands.—In 1882,[1] Congress passed and the President approved the joint resolution (H. Res. 227) "expressive of the sympathy of the Government and people of the United States upon the death of General Garibaldi.

7221. On January 9, 1884,[2] Mr. Thomas P. Ochiltree, of Texas, by unanimous consent, presented the following resolution, which was agreed to:

Resolved, That this House has heard with deep regret of the death of the eminent German statesman, Edward Lasker.

That his loss is not alone to be mourned by the people of his native land, where his firm and constant exposition of and devotion to free and liberal ideas have materially advanced the social, political, and economic condition of those peoples, but by the lovers of liberty throughout the world.

That a copy of these resolutions be forwarded to the family of the deceased, as well as to the minister of the United States resident at the capital of the German Empire, to be by him communicated through the legitimate channel to the presiding officer of the legislative body of which he was a member.

On February 28[3] by unanimous consent (the Speaker, Mr. Carlisle, holding it not to be privileged), Mr. Peter V. Deuster, of Wisconsin, presented the acknowledgments of the executive committee of the Liberal Union of Germany, addressed to the House of Representatives, for its expression concerning the death of Doctor Lasker. This communication was referred to the Committee of Foreign Affairs.

The resolutions of the House had been transmitted by the Secretary of State to the American minister to Germany, with the request that a copy be transmitted by him through the foreign office to the legislative body of which Doctor Lasker was a member.

Later the German minister at Washington communicated to the Secretary of State[4] a dispatch from Von Bismarck, in which the latter said:

Every appreciation which the personal qualities of a German receive in a foreign country can not but be pleasing to our national feelings, especially when emanating from such an important body as the American House of Representatives.

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[1] First session Forty-seventh Congress, Journal, pp. 1438, 1463.

[2] First session Forty-eighth Congress, Journal, p. 264; Record, p. 329.

[3] Journal, p. 689; Record, pp. 1463, 1464.

[4] Executive Documents, first session Forty-eighth Congress, Vol. 26, No. 113.

I should, therefore, have gratefully received Mr. Sargent's communication, and should have asked His Majesty the Emperor to empower me to present it to the Reichstag if the resolution of the 9th of January did not at the same time contain an opinion in the direction and the effects of the political action of Representative Lasker which is opposed to my convictions.

Prince Bismarck then goes on to explain why the indorsement given by the resolution of the House did not meet his approval, saying:

I would not venture to oppose my judgment to that of an illustrious assembly like the House of Representatives of the United States if I had not gained, during an active participation in German internal politics of more than thirty years, an experience which encourages me to attach also to my opinion a certain competency within these limits.

He then concludes:

I can not make up my mind to ask His Majesty the Emperor for the necessary authorization to communicate the resolution of the House of Representatives of the United States to the German Reichstag, because I should therewith have to officially indorse myself and also to indorse with His Majesty the Emperor an opinion which I am unable to recognize as just.

The German minister, having communicated the dispatch, offered to return the engrossed copy of the resolution, an offer which the Secretary declined, saying:

The President can not be supposed to have any wish in respect to what the German Government may do in regard to the disposition of the copy of the resolution of the House of Representatives after it has been decided that it can not be transmitted to the body for which it was courteously intended.

On March 10[1] the correspondence of the State Department on the subject was transmitted to the House and at once referred to the Committee on Foreign Affairs, together with a resolution proposed by Mr. Frank Hiscock, of New York, expressing the surprise and regret of the House and reiterating the expressions of its original resolution.

On March 19[2] Mr. Andrew G. Curtin, of Pennsylvania, from the Committee on Foreign Affairs, made a report[3] recommending that the resolutions of the 10th instant lie on the table, and proposing for the action of the House the following:

Resolved, That the resolutions referring to the death of Dr. Edward Lasker, adopted by this House January 9 last, were intended as a tribute of respect to the memory of an eminent foreign statesman who had lived within the United States, and an expression of sympathy with the German people, of whom he has been an honored representative.

Resolved, That the House, having no official concern with the relations between the executive and legislative branches of the German Government, does not deem it requisite to its dignity to criticise the manner of the reception of the resolutions or the circumstances which prevented their reaching their destination after they had been communicated through the proper channel to the German Government.

After debate these resolutions were agreed to by the House.

7222. On March 23, 1894,[4] on motion of Mr. Amos J. Cummings, of New York, the House agreed to the following resolutions:

Resolved, That the House of Representatives of the United States has heard with profound regret of the death of Louis Kossuth, the eminent Hungarian patriot, once the guest of the American people.

Resolved, That the Speaker of the House be requested to communicate the respectful sympathy of the House to the family of the deceased.

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[1] Journal, p. 794; Record, p. 1766.

[2] Journal, p. 875; Record, pp. 2073–2083.

[3] Report No. 988.

[4] Second session Fifty-third Congress, Journal, p. 406; Record, pp. 3202, 5408.

On May 28 the Speaker stated to the House that he had addressed a communication to the Kossuth family in accordance with the resolution, and had received a response from the sons of Kossuth, which he presented to the House.

This letter was read and, without special order of the House, appears in the Journal.

7223. Adjournment in honor of memory of the deceased sovereign of a foreign nation.—On January 22, 1901,[1] the House, by unanimous consent, considered and agreed to this resolution, offered by Mr. Robert R. Hitt, of Illinois, Chairman of the Committee on Foreign Affairs:

Resolved, That the House of Representatives of the United States of America has learned with profound sorrow of the death of Her Majesty Queen Victoria, and sympathizes with her people in the loss of their beloved sovereign.

That the President be requested to communicate this expression of the sentiment of the House to the Government of Great Britain.

That as a further mark of respect to the memory of Queen Victoria the House do now adjourn.

On February 9, 1901, a letter from the Acting Secretary of State, transmitting the royal appreciation of the King of England of the act of the House in adjourning in honor of the memory of Queen Victoria, was laid before the House by the Speaker and by unanimous consent ordered to be inserted in the Journal.

7224. Instance wherein the House adjourned in sympathy for the people of a destroyed city.—On April 18, 1906,[2] Mr. John Gill, jr., of Maryland, offered the following resolution, which was agreed to by the House:

Resolved by the Home of Representatives, That the sympathy of the House is hereby extended to the people of the State of California in this the hour of their great disaster and suffering, caused by the extraordinary evolution of nature in that State, and that as an expression of our profound sympathy we do now adjourn.

The House thereupon adjourned.

7225. The House has extended its sympathies to the sufferers in a fire in a city of the United States.—On January 5, 1904,[3] Mr. Martin Emerich, of Illinois, by unanimous consent, offered the following resolution, which was agreed to by the House:

Be it resolved by the House of Representatives of the United States of America, That the sincere and tender sympathy of this body be extended to the grief-stricken citizens of the city of Chicago in their sad bereavement and desolation.

Be it resolved, That the shocking calamity[4] which has lately occurred in the city of Chicago has appalled the entire country, and this House, on behalf of the people of the United States, is deeply sensible of the sorrow and despair caused by this frightful disaster, and sincerely condoles with the maimed and stricken and those bereaved through the loss of loved ones.

Be it further resolved, That a copy of these resolutions, duly authenticated by the Speaker and Clerk of the House, be transmitted to the mayor of the city of Chicago.

7226. On December 30, 1811:[5]

Resolved, unanimously, That the Members of this House will wear crape on the left arm, for one mouth, in testimony of the national respect and sorrow for those unfortunate persons who perished in the fire in the city of Richmond, in Virginia, on the night of the 26th of the present month.

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[1] Second session Fifty-sixth Congress, Journal, p. 145; Record, p. 1317.

[2] First session Fifty-ninth Congress, Record, p. 5506.

[3] Second session Fifty-eighth Congress, Journal, p. 94; Record, p. 474.

[4] A theater had been burned with great loss of life.

[6] First session Twelfth Congress, Journal, p. 97 (Gales and Seaton ed.).

Chapter CXLVII.

SERVICE OF THE HOUSE.

1. No officer or employee to be agent for claims. Section 7227.
2. Compensation of employees. Sections 7228–7231.
3. Duties, etc., of employees. Sections 7232–7243.
4. The House restaurant. Section 7244.

7227. No officer or employee of the House shall be an agent for the prosecution of a claim against the Government.

Duty of the Committee on Accounts to examine as to observance of the rule forbidding officers and employees of the House from being interested in claims.

Present form and history of Rule XLIII.

Rule XLIII relates to the qualifications of officers and employees:

> No person shall be an officer of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government, or be interested in such claim otherwise than as an original claimant; and it shall be the duty of the Committee on Accounts to inquire into and report to the House any violation of this rule.

This rule dates from March 8, 1842,[1] and was not changed essentially in the revision of 1880.[2]

7228. The representatives of an employee deceased before the passage of an act granting a month's extra pay are not entitled to what would be paid to the employee were he alive.—On March 21, 1895, the Comptroller of the Treasury decided that an appropriation for one month's extra pay of the Senate and House employees borne on the rolls on February 1, 1895,[3] would not authorize payment to the representatives of such an employee who died after that date but prior to the passage of the act making the appropriation.[4]

7229. In case of a month's extra pay an employee having an annual salary is entitled to one-twelfth of the sum of that salary.—March 13, 1895, the Comptroller of the Treasury decided that under an appropriation for a month's extra pay to Senate and House employees and the Congressional Record clerk, the latter, being an employee of the Public Printer, should be paid a sum equal to one-

[1] Second session Twenty-seventh Congress, Globe, pp. 291, 295.
[2] Second session Forty-sixth Congress, Record, p. 207.
[3] 28 Stat. L., 864.
[4] Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 310.

twelfth of the annual salary which, according to the certificate of that officer, is paid to him.[1]

7230. Decision as to per diem employees in case of an appropriation for a longer time than their actual employment.—By the legislative, executive, and judicial appropriation act of July 31, 1894,[2] there was made appropriation sufficient for one hundred and twenty-one days at per diem or monthly rates for certain clerks and other employees of the House of Representatives employed during the session, with the proviso that wherever the words "during the session" occurred they should mean one hundred and twenty-one days, although the actual session covered but ninety-one days. The Comptroller of the Treasury decided that such persons should be paid for each day's service at the rate of one ninety-first of the amount appropriated for their services, respectively, for the session.[3]

7231. An ordinary appropriation for session employees is not available at an extra session.—By the act of March 3, 1893,[4] provision was made for the payment of certain employees of the House of Representatives "during the session." It was held by the First Comptroller, in a decision rendered July 20, 1893, that the session meant was the regular session beginning on the first Monday in December, 1893, and not the extraordinary session held in August, 1893. The appropriation in the act of March 3, 1893, was therefore not available for use during the extraordinary session. This decision was based upon the fact that at the time the law was passed the regular session must have been the only one in contemplation, and also upon the fact that the act qualified its expression "during the session" by a specification as to number of days which would apply manifestly to the regular session.[5]

7232. Employees under the Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall generally be assigned only to the duties for which they are appointed.

Employees of the House may not sublet their duties or divide their compensation with others.

The legislative, executive, and judicial act of 1901[6] provides:

> Hereafter employees of the House of Representatives under the Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall only be assigned to and engaged upon the duties of the positions to which they are appointed and for which compensation is provided, except that in cases of emergency or congestion of public business incident to the close of a session of Congress or other like cause an employee or employees may be assigned or required to aid in the discharge of the duties of any other employee or employees, and in the discretion of the Doorkeeper not more than one folder may, if necessary, be assigned to do clerical work under the direction of the foreman of the folding room, but all assignments made hereunder shall be without additional compensation and shall not constitute the basis of a claim therefor.
>
> It shall not be lawful to appoint or employ in any position under the House of Representatives more than one person at any one time, or to require or permit any such person to divide with another any portion of his salary or compensation while so employed.
>
> It shall not be lawful to require or permit any person in the employ of the House of Representatives to sublet to another the discharge of any portion of the duties of the position to which he is appointed.[7]

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[1] Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 297.

[2] 28 Stat. L., 166.

[3] Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 98.

[4] 27 Stat. L., 675.

[5] Decisions of the First Comptroller (Bowler), 1893, 1894, p. 45.

[6] 31 Stat. L., 968.

[7] See, also, 28 Stat. L., 771.

7233. No page, except chief pages and riding pages, shall be under twelve or more than eighteen years of age.

The officers of the House, except the Speaker, are required to make monthly certificates as to the presence of the employees on their pay rolls.

The Committee on Accounts are to inquire into the enforcement of the statutes relating to employees of the House, and are empowered to send for persons and papers.

The legislative, executive, and judicial act of 1901 [1] provides:

No person shall be appointed or employed as a page in the service of the House of Representatives who is under 12 years or more than 18 years of age; but this provision shall not apply to chief pages, riding pages, and telephone pages.

The Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall make certificate each month to their respective pay rolls, stating whether the persons named in such pay rolls and employed in their respective departments have been actually present at their respective places of duty and have actually performed the services for which compensation is provided in said pay rolls, and in each case where a person carried on such pay roll has been absent and has not performed the services in whole or in part for which payment is proposed, the reason for such absence and for such nonperformance of services shall be stated.

The violation of any of the foregoing provisions of law shall, upon ascertainment thereof, be deemed to be cause for removal from office.

It shall be the duty of the Committee on Accounts of the House of Representatives from time to time to inquire into the enforcement or violation of any of the foregoing provisions of law; [2] and for this purpose they are hereby authorized to send for persons and papers, and to administer oaths; and they shall report to the House at least once every session their compliance with the duty herein imposed.

7234. Decision of the Comptroller of the Treasury as to the employment of the index clerk.—On April 20, 1897, the Comptroller of the Treasury decided that the Clerk of the House of Representatives was authorized to pay the assistant index clerk employed by him for the first session of the Fifty-fifth Congress, beginning March 15, 1897, the per diem compensation fixed by the appropriation,[3] although the assistant index clerk employed during the last session of the Fifty-fourth Congress continued to serve under the terms of the appropriation for his payment [4] for eighty-nine days after the close of the session, on March 3, 1897. The provisions of the act of February 19, 1897, were so modified by the joint resolution of March 24, 1897, as to authorize the employment of both clerks.

7235. The Postmaster having died, it was held that contracts for carrying the mails must be made by the Clerk and not by the Assistant Postmaster.—On May 31, 1895, the Comptroller of the Treasury decided that upon the death of the Postmaster of the House of Representatives the Assistant Postmaster does not become the acting Postmaster so as to be authorized to make contracts under the act of March 3, 1891,[5] for conveying the mails. Such contracts must, during a vacancy in the office of Postmaster, be entered into by the Clerk of the House.[6]

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[1] Stat. L., p. 968.

[2] This refers also to the provisions in section 7032.

[3] 29 Stat. L., 541, act February 19, 1892.

[4] 29 Stat. L., 144, act May 28, 1896.

[5] 26 Stat., 914.

[6] See Decisions Comptroller of the Treasury (Bowler), Vol. I p. 496.

7236. Authority of the Committee on Accounts and the accounting officers of the Treasury over the expenditure of the contingent fund of the House.—July 16, 1895, the Comptroller of the Treasury decided that under the act of March 2, 1895,[1] making the approval of the temporary Committee on Accounts, House of Representatives, "conclusive upon all the departments and auditing officers of the Government," the Comptroller has no jurisdiction to render a decision upon any question involved in the payment of accounts which have been so approved.[2]

The approval by the Committee on Accounts of expense lawfully chargeable to the contingent fund[3] of the House is conclusive on all departments of the Government.[4]

The act of February 14, 1892 (32 Stat. L., p. 26) has since provided, however:

> That hereafter appropriations made for contingent expenses of the House of Representatives or the Senate shall not be used for the payment of personal services, except upon the express and specific authorization of the House or Senate in whose behalf such services are rendered. Nor shall such appropriations be used for any expenses not intimately and directly connected with the routine legislative business of either House of Congress, and the accounting officers of the Treasury shall apply the provisions of this paragraph in the settlement of the accounts of expenditures from said appropriations incurred for services or materials subsequent to the approval of this act.

7237. As to the allowances for clerk hire to the chairman of the temporary Committee on Accounts.—On April 19, 1895, the Comptroller of the Treasury decided that the chairman of the temporary Committee on Accounts of the House of Representatives, provided for by the act of March 2, 1895,[5] was chairman of a committee of the Fifty-fourth Congress, and was therefore not deprived of the allowance for clerk hire, after the adjournment of Congress, made to Members of the Fifty-third Congress.[6]

7238. Extra services of employees are properly compensated under authority of a resolution agreed to by the House.—On February 12, 1903,[7] the House, on recommendation of the Committee on Accounts, agreed to the following resolutions:

House resolution 416.

Resolved, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to Herman Gauss of the sum of $500 for extra and expert services to the Committee on Invalid Pensions as assistant clerk of said committee by detail.

House resolution 417.

Resolved, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to D. S. Porter of the sum of $500 for extra and expert services to the Committee on Pensions as assistant clerk of said committee by detail.

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[1] 28 Stat. L., p. 764.

[2] Decisions of Comptroller of the Treasury (Bowler), Vol. II, p. 24.

[3] The legislative, etc., appropriation bill makes annual appropriation for the contingent funds of the two Houses. The act of 1907 (34 Stat. L., p. 942) appropriated $158,100 for contingent expenses of the House, apportioning sums for paper, stationery, fuel, etc.

[4] Supplement of the Revised Statutes (1892–1895), p. 414, which also has provision as to the making of contracts involving the employment of horses.

[5] 28 Stat. L., p. 768.

[6] Decisions of the Comptroller of the Treasury (Bowler), Vol. I, p. 384.

[7] Second session Fifty-seventh Congress, Journal, p. 237; Record, pp. 2070, 2072.

7239. The House has at times laid down general principles to govern the selection of its employees.—On June 27, 1864,[1] on motion of Mr. William S. Holman, of Indiana, the House agreed to the following:

Resolved, That the officers of this House having authority to employ others in duties connected with this House ought to give the preference in making their appointments, other things being equal, to disabled soldiers, who have been permanently disabled while in the military service of the United States in the line of duty, and honorably discharged.

Resolved, That the officers of this House, in making future appointments, be governed by the principle above expressed.

7240. On December 5, 1865,[2] Mr. Thomas T. Davis, of New York, offered. the following resolution, which was agreed to:

Resolved, as the sense of this House, That the appointment of the sons of Members of the House to any office under the Clerk, Doorkeeper, Sergeant-at-Arms, or Postmaster thereof is improper, and the same is therefore prohibited.

7241. The House has insisted on its right to determine the compensation of its own officers and employees.—On March 3, 1881,[3] the House, by a resolution of instructions to its conferees, insisted on its right to determine the compensation of its officers and employees, and forced the Senate to recede.

7242. In 1875,[4] a prolonged disagreement occurred between the House and Senate over the Senate amendments to the legislative appropriation bill. The Senate insisted on diminishing the amount of compensation of the clerks at the desk of the House, and the House insisted that that was a matter in which the courtesy between the two Houses should leave it to the House to fix. There were four conferences without an agreement. The fifth conference agreed, on March 3, and the report was drawn up on the principle as stated by Mr. Horace Maynard, of Tennessee, chairman of the House conferees, "that each House shall be intrusted by the other to regulate the number and pay of its own employees."

7243. By concurrent resolution the two Houses authorized their Sergeants-at-Arms to appoint special police for an important occasion.—On January 31, 1877,[5] the House agreed to the following:

Resolved by the Senate (the House of Representatives concurring), That the Sergeants-at-Arms of the Senate and House of Representatives, respectively, be, and they are hereby, authorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such portion of said time as they shall deem necessary, said special police to be paid equally from the contingent funds of the Senate and House of Representatives.

The House also at this time adopted a rule that admission to the House during the counting of the vote should be by tickets to be distributed under direction of the Committee on Rules of the House and Senate.

7244. References to the practice governing management of the House restaurant, especially as to the sale of intoxicating liquors.—On December

[1] First session Thirty-eighth Congress, Journal, p. 912; Globe, pp. 2310, 2311.

[2] First session Thirty-ninth Congress, Journal, p. 17; Globe, p. 9.

[3] Third session Forty-sixth Congress, Journal, pp. 600, 604.

[4] Second session Forty-third Congress, Record, p. 2259.

[5] Second session Forty-fourth Congress, Journal, pp. 341, 344; Record, p. 1138.

4, 1867,[1] a debate occurred which showed the former method of letting out the restaurant of the House to the highest bidder.

On November 2, 1902,[2] in the District court of appeals, Chief Justice Alvey handed down a decision reversing, the action of the police court in the cases of the managers of the House and Senate restaurants, convicted of violation of the excise law of March 3, 1893, in selling or offering for sale intoxicating liquors in the Senate and House restaurants in the United States Capitol building. The court of appeals held that the defendants in this case did not come within the meaning, of the excise law referred to, and the cases were remanded to the police court, with directions to quash the informations against the defendants and dismiss the proceedings.

The court held that the sole question for decision was whether or not the act of Congress of March 3, 1893, applied to Congressional restaurants in the Capitol building, managed by the committees of Congress for the sole use of Congress and the Members thereof. The act of March 3, 1893, is very broad in its provisions, the court held, for it provides that no person shall sell, offer for sale, traffic in, barter, or exchange for goods any intoxicating liquor in the District of Columbia, with sundry exceptions, which do not apply to the case at hand, without first having applied for and obtained a license to carry on such sale, etc., from the excise board of the District of Columbia to conduct business under the rules and regulations therein provided. This law, it is declared, is very comprehensive, and provides for all contingencies. There is, however, no word or action to show that there was any express or definite intention on the part of Congress to include within its provisions the restaurants in the Capitol building, and thus to modify the rules of the Houses of Congress and to transfer the regulations of Congress from the committees of the two Houses to the municipal agents.

The decision of the court was therefore that to make the law apply to Congress it must be definitely provided and specifically stated that the provisions included apply with equal force to the restaurants in the Capitol and those in other parts of the city for the municipal authorities to secure and exercise jurisdiction over them. As these two restaurants are by acts of the two Houses placed under the exclusive control of the committees thereof, the restaurant keepers thereby become quasi agents and officers of their respective Houses in carrying out and enforcing the regulations for the conduct of the restaurants which were made by these committees.[3]

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[1] Second session Fortieth Congress, Globe, p. 27.

[2] Page *v.* District of Columbia, 20 Tucker, p. 469.

[3] The brief for the plaintiffs in error in this case gives this resume of the system of administering the restaurants:

[4] "It is historically true that intoxicating liquors were permitted to be sold in the Capitol without question by either House up to the Twenty-fifth Congress and up to the time of the completion of the new wings of the Capitol; it was permitted to be sold in the crypt for a time and afterwards in a room set apart for that purpose known as 'a hole in the wall,' easily accessible from the old Supreme Court and Senate Chambers, and in a similar room in the old south wing for the accommodation of the House of Representatives.

"The Twenty-fifth Congress passed two concurrent resolutions, the first prohibiting the sale of intoxicating liquors in the Capitol, and a second resolution as follows: '*Resolved,* That no spirituous liquors shall be offered for sale or exhibited within the Capitol or on the public grounds adjacent thereto.' This was and still is known as joint rule 19. Both were imperfect.

"In the Thirty-ninth Congress, for the purpose of enlarging the nineteenth rule, the Senate passed a concurrent resolution known as the Wilson Resolution. It was upon the subject of this resolution

The act of March 3, 1903,[1] provides:

That no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States.

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that Senator McDougal, of California, made his famous speech in opposition. The resolution was as follows: '*Resolved,* That the sale of spirituous liquors, wines, and intoxicating drinks of any description whatever is hereby prohibited in the Capitol building and grounds, and it shall be the duty of the Commissioner of Public Buildings and Grounds, under the direction of the President of the Senate and Speaker of the House of Representatives, immediately to cause to be moved therefrom such articles and prevent the sale hereafter of the same in the Capitol building and grounds.' The House concurred in this, but with an amendment and the resolution failed in conference. (First session Thirty-ninth Congress, Globe, p. 1879.)

"In the Fortieth Congress, March, 1867, Mr. Fessenden, from the Committee on Public Buildings and Grounds, reported a concurrent resolution on this subject, as follows: '*Resolved by the Senate (the House of Representatives concurring*), That the nineteenth joint rule of the two Houses be amended so as to read as follows: "No spirituous or malt liquors or wines shall be offered for sale, exhibited, or kept within the Capitol or any room or building connected therewith, or on the public grounds adjacent thereto; and it shall be the duty of the Sergeants-at-Arms of the two Houses, under the supervision of the presiding officers thereof, respectively, to enforce the foregoing provisions, and any officer or employee of either House who shall in any manner violate or connive at the violation of this rule shall be discharged from office."[1] This passed both Houses. (See Senate Journal, first session Fortieth Congress, p. 43.)

"Under the operation of this rule the keeper of the House restaurant surrendered his contract and in the second session of the Fortieth Congress (Dec. 4, 1867; see Globe, first session Fortieth Congress, p. 333) a House resolution permitting him to resume his contract, with the privilege of selling small beer and malt liquors, was introduced and referred to the Committee on Rules.

"Mr. Blaine reported a substitute for this from the committee as follows: '*Resolved,* That the subject of leasing the restaurant and prescribing the rules under which it shall be kept is hereby committed to the Committee on Revisal and Unfinished Business, with full power to make such regulations as may to them seem expedient; and all resolutions heretofore passed relating thereto are hereby repealed.'

"In the Forty-first Congress (April 8, 1869) the House passed a resolution as follows: '*Resolved,* That the House restaurant be placed in charge of the Committee on Public Buildings and Grounds, with the same powers heretofore possessed by the Committee on Revisal and Unfinished Business.'

"The House thus committed, with all the force of law, to its Committee on Public Buildings and Grounds the full power to prescribe the rules under which its restaurants shall be kept and to select the person or persons by whom its business shall be conducted.

"The Senate also made it the duty of its Committee on Rules by a standing order 'to make all rules and regulations respecting such parts of the Capitol, its passages and galleries, including the restaurant, as are or may be set apart for the use of the Senate and its officers, to be enforced under the direction of its presiding officer.' (See rule 34, Standing Rules of the Senate, p. 29.)

[1] 32 Stat. L., 1221.

Chapter CXLVIII.

MISCELLANEOUS.

1. Sunday in relation to legislation. Sections 7245–7246.[1]
2. Old practice as to secret sessions. Sections 7247–7255.[2]
3. Papers in the files of the House. Sections 7256–7267.
4. The libraries. Sections 7268, 7269.
5. The Hall of the House. Sections 7270–7282.
6. Privilege of the floor of the House. Sections 7283–7295.
7. Persons not Members not permitted to address the House. Sections 7296–7301.[3]
8. The galleries. Sections 7302, 7303.[4]
9. The press gallery. Sections 7304–7311.
10. Care of the Capitol. Sections 7312–7313.
11. The Congressional Cemetery. Section 7314.
12. Rules and laws relating to printing and documents. Sections 7315–7330.
13. Thanks of the House and Congress. Sections 7331–7335.
14. General matters. Sections 7336–7345.

7245. In the ordinary practice of the House Sunday is regarded as a dies non.—On February 25, 1907,[5] Mr. Joseph W. Babcock, of Wisconsin, moved to suspend the rules and pass the bill (S. 6147) entitled "An act authorizing changes in certain street railway tracks within the District of Columbia, and for other purposes."

Mr. Oscar W. Underwood, of Alabama, made the point of order that suspension of the rules was not in order, because this day was not one of the last six days of the session, since the Constitution of the United States did not recognize Sunday as a dies non in its relation to the work of the House.

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[1] See also sections 6728–6733 of this volume.

Sunday in relation to the time of serving the notice of contest in an election case. (Sec. 685 of Vol. I.)

Not taken into account in adjournment for more than one day. (Sec. 6673 of this volume.)

[2] Each House has the right to hold secret sessions. (Sec. 1640 of Vol. II.)

Secret sessions of the Senate during an impeachment trial. (Sees. 2075, 2095, 2096 of Vol. III.)

[3] Counsel heard before House in an early election case (sec. 765 of Vol. I), although House in another case declined to permit (sec. 757 of Vol. II).

As to permission for counsel to be heard when persons are arraigned for contempt. (Sees. 1601 of Vol. II, and 1666, 1696 of Vol. III.)

Instance wherein a candidate for a Senate office addressed the Senate. (Sec. 296 of Vol. I.)

[4] The galleries closed during the election of President in 1825. (Sec. 1994 of Vol. III.)

[5] Second session Fifty-ninth Congress, Record, p. 3923.

The Speaker[1] ruled:

Sunday is not taken into account in an adjournment for more than one and less than three legislative days. There are many precedents of this kind. Sunday has always been recognized, in the absence of specific action by the House, as a dies non. * * * The Chair calls the attention of the gentleman to the fact that a Sunday's session is never held except by special order of the House. Adjournment on Saturday always carries until Monday; and when we adjourn three days at a time, under the constitutional provision, as we may, Sunday is never counted as one of the three days. The line of precedents is substantially practically unbroken that Sunday is considered as a dies Don. The Chair has no hesitancy, under the rule and the practice of the House, in overruling the point of order.

7246. Sunday may be a legislative day.

Although a special order may set apart a day for a special purpose, yet the House may transact other business by unanimous consent.

On February 9, 1903,[2] a Monday, the Journal of Sunday, February 8, was read, and the question was put on its approval.

Thereupon Mr. James D. Richardson, of Tennessee, raised the question of order that the House had met on Sunday for the specially ordered purpose of eulogies on the lives and services of certain deceased Members, and therefore that the House on the Sunday might not, even by unanimous consent, transact other business. He furthermore insisted that Sunday was a dies non, and not a legislative day. Therefore he objected that a conference report, which had been presented on Sunday for insertion in the Record under the rule requiring such reports to be printed before being presented for action in the House, had been included in the proceedings improperly.

The Speaker[3] said:

It has been held more than once that Sunday may be made a legislative day. There is no question on that point. It is a legislative day, if so made by the House. Sunday was set apart for eulogies. There was no legislation transacted yesterday. The filing of this report under the rule was not legislation, but the House, by unanimous consent, permitted that to be done. This House is the omnipotent party in this Hall, subject only to the Constitution. It unanimously consented that this might be done. If the House had said, ever so emphatically, that nothing else should be done on Sunday but the pronouncing of eulogies, still it would be within the power of the House to change its mind, and it did change its mind and allowed the notations to be made under the rule. No one is hurt by this. The rule distinctly requires every report to be printed in order that due notice may be given to the House. The report was printed this morning. The House has had notice and is entirely qualified to intelligently proceed this morning to consider the conference report involved in that notation, if it so desires. The Chair sees no difficulty in the question whatever.

Mr. Richardson thereupon called attention to the rule as to pension legislation on Friday evenings, reasoning from analogy that a Sunday devoted to eulogies might not therefore be invaded by general legislation. Furthermore, any business was legislation.

The Speaker admitted that the last proposition was true in a technical sense, but as to the argument relating to Friday evening business, he said:

The Chair thinks there is no doubt the House could have done so on Friday night. This is District of Columbia day, but the House can take up something else if it so desires.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Fifty-seventh Congress, Journal, p. 220; Record, pp. 1944–1947.

[3] David B. Henderson, of Iowa, Speaker.

Mr. Richardson having raised a question as to the approval of Saturday's Journal on Sunday, the Speaker said:

It was read and approved in the usual way. The House was clothed with all the power essential to do business.

Mr. Richardson thereupon moved to strike out from the Journal of Sunday's proceedings the lines showing that the conference report in question had been presented for printing in the Record.

This motion was decided in the affirmative, yeas 125, nays 102.

Then the Journal of Sunday's proceedings was approved.

7247. A rule, not invoked for many years, provides for secret sessions of the House whenever the President may send a confidential message or the Speaker or any Member may announce that he has a confidential communication to present.

The present form and history of Rule XXX.

Rule XXX provides:

Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any Member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members and officers thereof, and so continue during the reading of such communications, the debates, and proceedings thereon, unless otherwise ordered by the House.[1]

The rule providing for secret sessions of the House dates from February 17, 1792,[2] and December 30, 1793,[3] although secret sessions were held before there was any rule for them. In the revision of 1880[4] the old rule was retained in an abbreviated form, as the Committee on Rules thought some occasion might arise for its use.[5]

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[1] Motions to remove injunctions of secrecy on proceedings were held not in order in open House. (Third session Eleventh Congress, Journal, p. 491.)

[2] First session Second Congress, Journal, p. 510 (Gales & Seaton ed.).

[3] Third and Fourth Congresses, Journal, p. 23 (Gales & Seaton ed.). Some discussion occurred at this time as to the propriety of secret sessions in a republican form of government. (First session Third Congress, Annals, pp. 150, 151.)

[4] Second session Forty-sixth Congress, Record, p. 202.

[5] In the early days of Congress secret sessions of the House were frequent. The sessions of the old Continental Congress had been secret, and under the Constitution the sessions of the Senate were so until the second session of the Third Congress. By special order the galleries were thrown open during the contested election case of A. Gallatin, from Pennsylvania. The House, on the other hand, sat regularly with the galleries open, but when occasion required, as on the receipt of a confidential communication from the President, the galleries were cleared by order of the House.

Up to and during the war of 1812 secret sessions were held quite frequently. Since that period the practice has gone into disuse, although there was one secret session in 1825, on December 27 (see House Journal, supplemental, first session Nineteenth Congress; also Debates, December 20, 1825, first session Nineteenth Congress, p. 828), when a confidential message was received from President John Quincy Adams, who transmitted a copy of the message of President Jefferson to both Houses of Congress on January 18, 1803. This message of 1803 recommended an exploring expedition across the continent to establish relations with the Indian tribes and ascertain the nature and extent of the region. The message was confidential, and as the injunction of secrecy was for some reason not removed, it had not been published up to 1825. So the secret session of the later year was held for the special and only purpose of removing the injunction of secrecy from the message of 1803. This message of President Jefferson may be found on page 352 of Volume I of Richardson's Messages and Papers of the Presidents. There was also a secret session on May 27, 1830 (first session Twenty-first Congress, Journal, p. 755; Debates, p. 1139), to receive a confidential communication from President Jackson.

7248. On January 29, 1862,[1] a concurrent resolution from the Senate was considered proposing the addition of a joint rule to provide for secret sessions of the House or Senate whenever any Member should state that the President desired the immediate action of Congress upon any matter pertaining to the suppression of the rebellion.

Mr. Thaddeus Stevens, of Pennsylvania, said he had the word of the Secretary of War that the rule was advisable, and the House agreed to it.

The Journal of the Thirty-seventh Congress does not indicate that it was ever used.

7249. The House has declined to be bound to secrecy by act of the Senate.—On January 26, 1807,[2] a message was received from the Senate by Mr. Samuel Smith (a Senator from Maryland) who said:

> Mr. Speaker, I am directed by the Senate of the United States to deliver to this House a confidential message in writing.

The House being cleared of all persons except the Members and Clerk, Mr. Smith delivered to the Speaker a communication:

> Gentlemen of the House of Representatives: The Senate have passed a bill suspending for three months the privilege of the writ of habeas corpus, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein, as speedily as the emergency of the case shall in your judgment require.

After brief debate, during which Mr. John Randolph, of Virginia, declared that they could not be bound to secrecy except by their own act, the House decided—yeas 123, nays 3—

> That the message and bill received from the Senate ought not to be kept secret, and that the doors be now opened.

7250. An illustration of legislation by the two Houses, each acting in secret session.

When legislation is enacted in secret session, messages are delivered confidentially by committees of Members.

On January 8, 1811,[3] the House passed a joint resolution relating to the southern frontier. This action was taken in secret session, and a committee of two Members were appointed to take the resolution to the Senate. The messengers were received there in secret session, and delivered their message. On January 12 the Senate passed the resolution with an amendment, and returned it to the House by a committee of two Senators, who were received in secret session and delivered their message. The House agreed to the amendment of the Senate, and communicated this fact in a confidential message taken to the Senate by a committee of two Members.

The resolution was presented to the President January 17 by the Committee on Enrolled bills, who reported that fact in secret session. The same day a message

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[1] Second session Thirty-seventh Congress, Globe, p. 554.

[2] Second session Ninth Congress, Journal pp. 550–552 (Gales & Seaton ed.); annals, pp. 402, 403.

[3] This resolution was passed in the Eleventh Congress, but the House proceedings are found in the House (Supplemental) Journal, first session Twelfth Congress, pp. 490, 497, 520; Annals, third session Eleventh Congress, pp. 376, 377.

of the President announcing his signature of the resolution was received in secret session.

7251. When messages of a confidential nature were received from the President or Senate the House went into secret session.—On January 3, 1811,[1] a message being received from the President, the Speaker, on opening it, declared it to be of a confidential nature. Thereupon the subject under discussion was postponed, the galleries were cleared, and doors closed.

The House and Senate used also to interchange confidential messages.[2]

7252. On February 8, 1813,[3] a message of a confidential nature was announced from the Senate, when the House was cleared of all persons except the Members, Clerks, Sergeant-at-Arms, and Doorkeeper, and the doors were closed. After remaining so for some time, they were again opened.

7253. In 1853 the House declined to go into secret session.—On January 21, 1853,[4] a message being received from the President of the United States in relation to certain negotiations with Spain on account of certain vessels seized, Mr. William H. Polk, of Tennessee, moved that the galleries be cleared during the reading, of the message. Objection was made to this motion, but Mr. Speaker Boyd admitted it under the rule.

7254. The motion to remove the injunction of secrecy must be made with closed doors.—On January 18, 1811,[5] Mr. Speaker Varnum decided that a motion to remove the injunction of secrecy from the secret proceedings of the House might not be made with open doors, and on appeal was sustained.

7255. As late as 1843 the President transmitted a message in part confidential.—On February 1, 1843,[6] President Tyler communicated to the House certain papers, which he requested be kept confidential for a time. The message was therefore referred without reading, and does not appear on the Journal of this date. On February 25 the committee reported, and there being no further reason for keeping the message confidential, it appears on the Journal of that date.

7256. Except in certain cases, no paper presented to the House shall be withdrawn from its files without its leave.

When leave is given for the withdrawal of a paper from the files of the House, a certified copy of it is to be left in the office of the Clerk.

When an act passes for the settlement of a claim the Clerk may transmit the papers relating thereto to the officer charged with the settlement.

The Clerk may loan to officers or bureaus of the Executive Departments papers from the files of the House, taking a receipt therefor.

The statutes provide that so much of the files of the House as are not required for immediate use shall be kept in the custody of the Librarian of Congress.

Present form and history of Rule XXXIX.

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[1] Third session Eleventh Congress, Annals, p. 486.

[2] Annals, third session Eleventh Congress, p. 1132.

[3] Second session Twelfth Congress, Journal, p. 664 (Gales & Seaton ed.).

[4] Second session Thirty-second Congress, Journal, p. 172; Globe, p. 379.

[5] Third session Eleventh Congress, Journal, pp. 138, 140.

[6] Third session Twenty-seventh Congress, Journal, pp. 296, 465.

Rule XXXIX provides:

No memorial or other paper presented to the House shall be withdrawn from its files I without its leave, and if withdrawn therefrom certified copies thereof shall be left in the office of the Clerk; but when an act may pass for the settlement of the claim, the Clerk is authorized to transmit to the officer in charge of the settlement thereof the papers on file in his office relating to such claim, or may loan temporarily to any officer or bureau of the Executive Departments any papers on file in his office relating to any matter pending before such officer or bureau, taking proper receipt therefor.

This rule [2] was adopted in the revision of 1880.[3] It was suggested by the former rule, No. 164, which dated from December 18, 1873,[4] and provided that all motions to withdraw papers from the files should be referred to the committee last considering the case, but that in a case where an adverse report had been made the original papers should not be withdrawn.[5]

The statutes [6] provide:

The Clerk of the House of Representatives is hereby authorized and directed to deliver to the Librarian of Congress all bound volumes of original papers, general petitions, printed matter, books and manuscripts now in, or that may hereafter come into, the files of the House, which in his judgment are not required to be retained in the immediate custody of the file clerk; and it shall be the duty of the Librarian of Congress to cause all such matter so delivered to him to be properly classified by Congress and arranged for preservation and ready reference. All of such matter to be held as a part of the files of the House of Representatives, subject to its orders and rules.

7257. On December 18, 1873,[7] the House, after discussion and on recommendation of the Committee on Rules, agreed to the following:

RULE—.All motions to withdraw papers from the files of the House shall be referred to the committee which last considered the case, who shall report without delay whether or not copies shall be left on file, but original papers shall not be withdrawn in any case where an adverse report has been made; and wherever the report is adverse, the same shall be in writing and ordered to be printed.

The House had been troubled by withdrawal of important papers which were needed afterwards, and also by the mutilation of papers on the files. The old rule is referred to in the debate as allowing withdrawal only by unanimous consent.

7258. On July 6, 1882,[8] Clerk McPherson called the attention of the House to the fact that the files of the House were being depleted by the withdrawal of papers from the files under the rule as it existed at that time.

7259. The House usually allows the withdrawal of papers only in cases where there has been no adverse report.

The rules for the order of business give no place to a motion to withdraw papers, and hence it is made by unanimous consent.

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[1] For a statement of the losses occasioned by the destruction of the Capitol in 1814 see Annals, Third session Thirteenth Congress, pp. 305–307.

[2] A rule similar in effect seems to have been suggested on April 6, 1830. (First session Twenty-first Congress, Journal, p. 507.)

[3] Second session Forty-sixth Congress, Record, p. 1206.

[4] First session Forty-third Congress, Record, pp. 312, 313.

[5] Although not in the rule, this requirement is usually insisted upon by the House.

[6] 31 Stat. L., p. 642.

[7] First session Forty-third Congress, Journal, p. 156; Record, pp. 312, 313.

[8] First session Forty-seventh Congress, Journal, p. 1595; Record, p. 5690.

Papers accompanying bills from the other House are restored to that House when the bills pass, or at the final adjournment if the bills do not pass. (Footnote.)

On December 9, 1895,[1] a request having been made for the withdrawal from the files of the House of papers relating to certain cases, Mr. Nelson Dingley, of Maine, raised a question as to whether or not there had been an adverse adjudication by the committees having the matters in charge.

The Speaker[2] said:

The Chair will state that these requests are only granted by unanimous consent,[3] and if the gentleman from Maine objects, of course that ends the matter. * * * The usual form, the Chair is advised, is to add to the request to withdraw papers the words "no adverse report has been made."[4]

7260. At the time of final adjournment of a Congress the clerks of committees are required to deliver to the Clerk of the House the bills and other papers referred to the committee.

All evidence taken by a committee under order of the House and not reported to the House shall be delivered to the Clerk at the final adjournment of the Congress.

Present form and history of section 1 of Rule XXXVIII.

Section I of Rule XXXVIII provides:

The clerks of the several committees of the House shall, within three days after the final adjournment of a Congress, deliver to the Clerk of the House all bills, joint resolutions, petitions, and other papers referred to the committee, together with all evidence taken by such committee under the order of the House during the said Congress and not reported to the House; and in the event of the failure or neglect of any clerk of a committee to comply with this rule the Clerk of the House shall, within three days thereafter, take into his keeping all such papers and testimony.

This is the rule as adopted in the revision of 1880. The form as reported by the Committee on Rules was perfected during the debate on February 27, 1880.[5] It was a new rule, intended to give greater security to the files of the House.

7261. The House may take from its files papers of a preceding Congress and refer them to a committee with instructions.

A proposition to refer to a committee the papers and testimony in an impeachment of the preceding Congress was admitted as a matter of privilege.

On June 4, 1879,[6] Mr. William M. Springer, of Illinois, proposed, as a question of privilege, a preamble and this resolution:

Resolved, That the report of the Committee on Expenditures in the State Department, submitted at the last session of the Forty-fifth Congress, in the matter of the investigation of charges against the

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[1] First session Fifty-fourth Congress, Record, pp. 91, 92.

[2] Thomas B. Reed, of Maine, Speaker.

[3] This means that the rules for the order of business give no place for motions as to such requests, and hence unanimous consent is asked to interrupt the order of business that the matter may be presented. Of course, were it of sufficient importance to justify the time and trouble, the same end might be attained by a motion to suspend the rules or by the adoption of a resolution reported from the Committee on Rules.

[4] All papers accompanying Senate bills are restored to that body as soon as the bill passes the House; and should the bill fail to pass the House, then at the close of the Congress; and the same course is pursued by the Senate with respect to papers accompanying House bills.

[5] Second session Forty-sixth Congress, Record, p. 1206.

[6] First session Forty-sixth Congress, Journal, pp, 442, 443; Record, pp. 1774, 1775.

said George F. Seward while consul-general at Shanghai and envoy extraordinary and minister plenipotentiary to China, the articles of impeachment and resolutions reported thereon, together with all the testimony and proceedings taken by said committee on said investigation, be, and the same axe hereby, referred to the Committee on the Judiciary; and that the said Committee on the Judiciary are hereby instructed to consider said report, resolutions, articles of impeachment, testimony, and proceedings, etc.

Mr. Omar D. Conger, of Michigan, made the point of order that the matter had never been referred to any committee of the House, and was not privileged for any Member to present.

The Speaker [1] decided:

The question whether it be a question of privilege is a very simple one, which arises under the Constitution of the United States. The Constitution declares that the House of Representatives shall have the sole power of impeachment. The question whether this particular officer comes within the range of that constitutional provision seems to have been admitted in the last Congress and is not now controverted. The officer being liable to impeachment, it follows that this is a question of privilege.

Mr. William H. Calkins, of Indiana, made the point of order that an the proceedings in this case had expired with the Forty-fifth Congress, and could not be revived by a resolution of this kind.

The Speaker held:

The Chair thinks on the point of order presented by the gentleman from Indiana [Mr. Calkins, that it is competent for this House to take papers from the files or from the custody of an officer authorized to take charge of them, and refer those papers to any appropriate committee for consideration by that committee. What that committee may do with such papers, whether they shall deem them to be valid as against a public officer or valid in any other sense, it is not for the Chair to determine. The Chair therefore overrules the point of order and decides that it is competent for this House to take from its files any papers and refer them to a committee.

7262. The House declined to allow the testimony in an election case to be withdrawn from its files.—On June 8, 1844,[2] Mr. Willoughby Newton, of Virginia, moved that John M. Botts be permitted to withdraw the testimony in the case of John M. Botts, who contested the right of John W. Jones to a seat as a Member of the House.

Objection was made to such a proceeding as unprecedented, and the motion was amended so as to permit Mr. Botts to take copies of the testimony.

Then, it being stated that the Clerk would permit this to be done without order of the House, the amended motion was laid on the table.

7263. One House requiring papers from the files of the other, asks for them by resolution.—On December 10, 1878,[3] the House, having received a message from the Senate requesting that the testimony taken before one of the committees of the House relating to Hon. Stanley Matthews, Senator from Ohio, be transmitted to the Senate, passed an order that the request be complied with.

7264. The Senate, desiring certain documents from the files of the House, passed a resolution asking for the same.[4]

7265. A Member may not offer as an amendment a paper already in possession of the House, and consequently a part of the files of the

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Twenty-eighth Congress, Journal, p. 1042; Globe, p. 698.

[3] Third session Forty-fifth Congress, Journal, p. 66; Record, pp. 66, 82.

[4] Second session Forty-sixth Congress, Journal, p. 722; Record, p. 1354.

House.—On May 22, 1902,[1] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration of aliens into the United States, and there was pending an amendment offered as a new section by Mr. Oscar W. Underwood, of Alabama.

Mr. Richard Bartholdt, of Missouri, offered and sent to the Clerk's desk an amendment in the nature of a substitute for the amendment offered by Mr. Underwood.

After Mr. Bartholdt's substitute had been read, and while it was pending, Mr. John F. Lacey, of Iowa, proposed to offer it as an amendment to the amendment of Mr. Underwood, i.e., that it should be a simple amendment instead of a substitute. And Mr. Lacey proposed to offer the actual paper submitted by Mr. Bartholdt.

The Chairman[2] held:

> The gentleman from Missouri has offered a substitute to that amendment; and the Chair suggests that the gentleman from Iowa can not in the way he proposes appropriate the paper pending as a part of the files of the House. * * * As the Chair understands the rule, the amendment offered by the gentleman from Iowa should be reduced to writing and offered by him as an amendment to the amendment of the gentleman from Alabama.

7266. A Member may not offer as an amendment a paper already offered by another Member and in possession of the Clerk.—On January 22, 1903,[3] the Committee of the Whole House on the state of the Union were considering under the five-minute rule the bill (H. R. 15520) relating to Philippine coinage, when Mr. William A. Jones, of Virginia, offered an amendment in the nature of a substitute.

While this proposed substitute was pending, Mr. E. J. Hill, of Connecticut, proposed to offer it as an amendment to the first section of the bill.

The Chairman[4] said that this might not be done, since the amendment offered by Mr. Jones and pending was not within the control of Mr. Hill.

7267. On August 27, 1856,[5] Mr. John Wheeler, of New York, presented a resolution relating to the controversy over the army bill and its proviso concerning the use of troops in Kansas.

Debate arising over this resolution, it went over under the rule.[6]

Later, on this day, Mr. George Vail, of New Jersey, submitted the same resolution.

Mr. Israel Washburn, jr., of Maine, made the point of order that this resolution was the identical paper presented previously by Mr. Wheeler, and belonged to the files of the House.

The Speaker[7] sustained the point of order, and ruled the resolution out on the ground that it was a paper from the files of the House.

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[1] First session Fifty-seventh Congress, Record, p. 5833.

[2] Henry S. Boutell, of Illinois, Chairman.

[3] Second session Fifty-seventh Congress, Record, p. 1078.

[4] James R. Mann, of Illinois, Chairman.

[5] Second session Thirty-fourth Congress, Journal, pp. 1597–1600; Globe, p. 56.

[6] Resolutions are no longer introduced under this rule, which is obsolete and abolished.

[7] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

7268. The Library of Congress (except the law library, which is controlled by the Supreme Court) is under supervision of the Joint Committee on the Library.

General provisions of the statutes relating to the Congressional Library.

The Library of Congress, now contained in a building built by Congress solely for its use, has been cared for by Congress for about a century.[1] It consists of a general library and a law library,[2] the latter remaining within the Capitol. It is under the supervision of the Joint Committee on the Library,[3] except that the law library is controlled by the justices of the Supreme Court.[4] Both the law and general libraries are open to the public for the examination of books; but books may be taken out only by certain carefully enumerated persons: President of the United States, Vice-President, Senators, Representatives, and Delegates in Congress;[5] and, under regulations prescribed by the Joint Committee on the Library, heads of Departments, justices, reporter, and clerk of the Supreme Court, members of the diplomatic corps, judges and clerk of the Court of Claims, Solicitor-General and Assistant Attorneys-General, Secretary of the Senate, Clerk of the House, Chaplains of the two Houses, Solicitor of the Treasury, financial agent of the Joint Committee on the Library, Secretary of the Smithsonian Institution, ex-Presidents of the United States residing within the District,[6] members and secretary of the Interstate Commerce Commission, Chief of Engineers, U. S. Army, residing in Washington,[7] justices of the District supreme court and court of appeals,[8] Regents of the Smithsonian Institution resident in Washington.[9]

The Librarian is appointed by the President,[10] with the approval of the Senate.[11] He makes rules and regulations for the government of the Library, selects his employees, whose positions are fixed by law, and has direction of the copyright department. At the beginning of each session of Congress the Librarian reports to Congress for the fiscal year. There is also a Superintendent of the Library Building and Grounds, who is appointed by the President. The Senate portion of the Joint Committee on the Library exercises authority during the recess between Congresses.[12]

7269. The House library is under the control and direction of the Librarian of Congress, and the House librarian and his assistants are removable only for cause and with the approval of the Committee on

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[1] Revised Statutes, section 80.

[2] Revised Statutes, section 81.

[3] Revised Statutes, sections 82, 85, 86, 87.

[4] The law library is open every day so long as either House is in session. (25 Stat. L., p. 262.) When, on February 24, 1826 (first session Nineteenth Congress, Journal, p. 285), there was a proposition to place the law library in charge of the Supreme Court, the House pronounced adversely on it.

[5] Revised Statutes, section 93.

[6] Revised Statutes, section 94.

[7] 26 Stat. L., p. 678.

[8] 28 Stat. L., p. 577.

[9] Second session Forty-third Congress, Laws, p. 512.

[10] Revised Statutes, section 88.

[11] Second session Fifty-fourth Congress, Laws, pp. 544–546.

[12] 22 Stat. L., p. 592.

Rules.—The House has a library, consisting chiefly of volumes of the Statutes of the United States, United States Supreme Court Reports, Reports of Committees of Congress, the Journals of the two Houses, the Annals of Congress, Congressional Debates, the Congressional Globe, and the Congressional Record. It is kept on the gallery floor of the House, but there is connected with it a small reference library on the floor of the House.

The Statutes [1] provide:

The library of the House of Representatives shall hereafter be under the control and direction of the Librarian of Congress, who shall Provide all needful books of reference therefor. The librarian, two assistant librarians, and assistant in the library, above provided for, shall be appointed by the Clerk, of the House, with the approval of the Speaker of the House of Representatives of the Fifty-sixth Congress, and thereafter no removals shall be made from the said positions except for cause reported to and approved by the Committee on Rules.

7270. The Hall of the House is used only for the legislative business of the House, caucus meetings of its Members, and ceremonies in which the House votes to participate.

The Speaker is forbidden to entertain a motion for a suspension of the rule relating to the use of the Hall of the House.

Present form and history of Rule XXXIII.

Rule XXXIII provides:

The Hall of the House shall be used only for the legislative business of the House and for the caucus meetings of its Members, except upon occasions where the House by resolution agree to take part in any ceremonies to be observed therein; and the Speaker shall not entertain a motion for the suspension of this rule.

This is the exact form adopted in the revision of 1880.[2] It was taken from old rule No. 155, which dated from January 31, 1866.[3] Prior to 1866 there had been many demands for the Hall, particularly for charitable occasions, which Members had usually felt disinclined to resist. But the cost of lighting was $150 and of heating $25 for each night; there was wear and tear of the furnishings; and it was rare that some Member's desk was not broken open and rifled. An exception was at that time made of divine services, which might be held under the direction of the Speaker. The further exception, which has survived, was made so that the memorial services of Abraham Lincoln and Henry Winter Davis might be held. On January 19, 1880,[4] the House agreed to a resolution that the use of the Hall be granted for a reception to Charles Stuart Parnell, and that the House meet and take part in the ceremonies. In accordance therewith the House meet in session on the evening of February 2, the Speaker in the chair, and Mr. Parnell made an address. But this proceeding was highly exceptional and has not been followed as a precedent.

In the early years of the Government the Hall was used more freely. On November 19, 1804,[5] the House ordered that in future no person should hold religious services in the Hall except with the consent of the Speaker; and on June 24, 1809,[6] the

[1] 31 Stat. L., p. 964.

[2] Second session Forty-sixth Congress, Record, p. 207.

[3] First session Thirty-ninth Congress, Globe, p. 531.

[4] Second session Forty-sixth Congress, Record, pp. 393, 664.

[5] Second session Eighth Congress, Journal, p. 17.

[6] First session Eleventh Congress, Journal, p. 84; Annals, p. 416.

use of the Hall for Fourth of July exercises was refused to the people of the District. On March 2, 1827,[1] the House ordered that the Hall should not be used for any purpose whatsoever during the recess of Congress; and on March 3, 1828,[2] it was ordered that it should not be used except for the business of Congress and religious services on Sunday.

7271. Ceremonies of removing from the old to the new Halls of the House and Senate.

Instance of an adjournment to a new place.

On December 14, 1857,[3] Mr. Edward A. Warren, of Arkansas, from the select committee appointed to inspect the new Hall of the House, made a report setting forth the condition and arrangement of the Hall, and concluding with this resolution, which was agreed to by the House:

Resolved, That when this House adjourns to-morrow, it will adjourn to meet in the new Hall of Representatives, in the south wing of the extension of the Capitol, on Wednesday noon.

The Senate moved to their Hall on January 4, 1859,[4] after farewell speeches. They went as a body, preceded by their officers.

7272. The bar of the House is within the doors leading into the Hall.— On February 5, 1858,[5] during prolonged dilatory proceedings over the disposition of the President's message relating to the Lecompton constitution of Kansas, a question arose under Rule 41, which dated from 1794, and was in force at this time, providing: "Upon a division and count of the House on any question, no Member without the bar shall be counted."

Pending a call of the yeas and nays, and before the result was announced, Mr. Reuben Davis, of Mississippi, was asked by the Speaker: "Were you within the bar when your name was called?"

Mr. Davis stated that when his name was called he was in the cloak room, which opens out of the Hall, and to which there was no entrance except from the Hall, and desired to know if he was entitled to vote under the rules of the House prescribing what should be considered the bar of the House.

The Speaker[6] decided that the gentleman was not entitled to vote, saying:

The Chair has held, pursuant to the intimation and construction, he believes, of the committee appointed for that purpose,[7] that the doors leading into the Hall of the House were to be construed to be the bar of the House. Any one to be within the bar of the House must be within either of the doors leading into it, and where a Member is within either of the recesses he can not be considered to be within the bar.[8]

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[1] Second session Nineteenth Congress, Journal, p. 370.

[2] First session Twentieth Congress, Journal, pp. 362, 369; Debates, pp. 1699, 1717.

[3] First session Thirty-fifth Congress, Journal, p. 63; Globe, pp. 31, 32.

[4] Second session Thirty-fifth Congress, Globe, pp. 202–204.

[5] First session Thirty-fifth Congress, Journal, pp. 337, 338; Globe, p. 605.

[6] James L. Orr, of South Carolina, Speaker.

[7] This seems to refer to the report on the new Hall made December 14, 1857. (First session Thirty-fifth Congress, Globe, pp. 31, 32.)

[8] The railing around the outer row of seats in the Hall was directed and authorized on December 4, 1877, on report from a select committee appointed during the preceding session. (Second session Forty-fifth Congress, Journal, p. 39; Record, p. 16.)

Mr. Davis having appealed, the appeal was laid on the table, yeas 137, nays 5.[1]

7273. The control of the Speaker extends only to the "unappropriated rooms" of the House wing, and the House itself controls the disposition of the other rooms.

A resolution assigning a room to a committee presents a question of privilege.

On January 11 and 12, 1870,[2] the assignment of committee rooms, involving the disposal of occupied rooms, was treated by means of resolutions submitted to the House.

One of these resolutions, offered January 11, was as follows:

Resolved, That the room now occupied as the private office of the Clerk of the House be assigned to the Committee on Banking and Currency.

Mr. James A. Garfield, of Ohio, offered this as a question of privilege.

The Speaker[3] said:

It is a question of privilege, and in order at any time.

7274. On May 26, 1869,[4] Mr. Speaker Blaine called attention to the fact that under the rule the power of the Speaker in regard to committee rooms was restricted, the rule giving him authority only over the unappropriated rooms.

7275. On February 8, 1884,[5] Mr. Speaker Carlisle asked the approval of the House for a change in occupied rooms of the House, the same having been made to accommodate Members and officers of the House.

7276. On March 14, 1838,[6] the House adopted a resolution assigning a certain room to the Committee on Revolutionary Claims.

7277. In 1869[7] are two instances where the subject of occupation of committee rooms was presented to the House by resolution for the action of the House.

7278. On December 21, 1887,[8] the changes whereby the rooms of the Speaker and Sergeant-at-Arms were assigned to the Committee on Appropriations, and new rooms were assigned to those officers, were authorized by a resolution reported from the Committee on Rules, and agreed to by the House.

7279. On January 13, 1890,[9] the Clerk, with the approval of the Committee on Accounts, was directed to procure rooms for committees of the House needing them in a location convenient to the Capitol.

7280. On February 8, 1882,[10] the approval was announced to the House of the act (H. R. 3181) "authorizing and directing the Architect of the Capitol to make certain changes and repairs in the House wing of the Capitol.

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[1] The House had recently moved into the new Hall, which it occupies at present.

[2] Second session Forty-first Congress, Globe, pp. 366, 369, 407.

[3] James G. Blaine, of Maine, Speaker.

[4] First session Forty-first Congress, Globe, p. 319.

[5] First session Forty-eighth Congress, Record, p. 1001.

[6] Second session Twenty-fifth Congress, Journal, p. 612; Globe, p. 237.

[7] First session Forty-first Congress, Journal, pp. 133, 154.

[8] First session Fiftieth Congress, Journal, p. 100.

[9] First session Fifty-first Congress, Journal, p. 110.

[10] First session Forty-seventh Congress, Journal, p. 528.

7281. In 1882[1] changes in the House wing of the Capitol were authorized by an act of Congress.

7282. The desks in the Hall of the House and the various attempts to remove them.—In the arrangements of the seats of Members in the Hall of the House, each Member has before him a desk. These desks have been the subject of much controversy. On January 30, 1829,[2] Mr. Ichabod Bartlett, of New Hampshire, criticised them as a cause of confusion detrimental to the public business; but they were defended as a convenience. Again on June 1, 1841,[3] they were the subject of criticism. On March 7, 1842,[4] Mr. William Cost Johnson, of Maryland, attempted to bring before the House a proposition to remove the desks, but failed by a vote of 74 to 93. Also on December 20, 1847,[5] Mr. Thomas B. King, of Georgia, proposed their removal, but without result.

On March 3, 1859,[6] the House voted, 103 yeas to 73 nays, that at the next session the desks should be removed and that benches should be placed for the accommodation of Members. On February 21, 1860,[7] Mr. Elihu B. Washburne, of Illinois, from a select committee on the subject, reported a resolution directing the removal of the benches and the restoration of the chairs and desks. This resolution was agreed to, 95 yeas to 86 nays. The majority report, which was signed by Elihu B. Washburne and John G. Davis, of Indiana, says that the daily sessions of the House for twelve weeks had afforded a fair opportunity of testing the arrangement which had been authorized by the last Congress. The majority expressed the opinion that most of the important objects that were sought by the change had failed to be realized, and recommended that the old arrangement of seats and desks be restored. The minority report was submitted by Mr. W. Porcher Miles, of South Carolina, who had made the report the year before in favor of the change, in association with George H. Pendleton, of Ohio, J. Letcher, of Virginia, Edward Joy Morris, of Pennsylvania, and Israel Washburn, jr., of Maine. In his minority report Mr. Miles said that the question was one of the comfort and convenience of Members on the one side and the intelligent and expeditious dispatch of the business of the country on the other. He then submitted again the arguments for the change which were made in the preceding Congress and which brought about the change. The chief argument for retaining the desks was the strongest reason for the abolition, namely, the convenient facility which they afforded Members for writing letters and franking documents.[8] The first duty of the Representative was to attend to the business going on in the House. The space occupied by the desks was so great that Members speaking and the clerk reading could not be heard readily, and much time was lost in the repetitions and misunderstandings resulting. The English House of Commons, numbering 654 Members, held sessions in a hall

[1] First session Forty-seventh Congress, Record, p. 767; see bill H. R. 768.

[2] Second session Twentieth Congress, Debates, p. 297.

[3] First session Twenty-seventh Congress, Globe, p. 9.

[4] Second session Twenty-seventh Congress, Journal, p. 497; Globe, p. 291.

[5] First session Thirtieth Congress, Journal, p. 127; Globe, p. 58.

[6] Second session Thirty-fifth Congress, Journal, pp. 581, 582; Globe, p. 1670.

[7] First session Thirty-sixth Congress, Journal p. 351; Globe pp. 855, 856.

[8] This was before Members had secretaries. Members first had secretaries in the Fifty-third Congress.

much smaller than our own, which had to accommodate 236 Members. The Commons did not have desks, and the arrangement of the seats brought them in a much smaller area. The committee expressed confidently the opinion that the change would tend to produce quiet, orderly debate, real, legitimate discussion of the subject-matter, and in time a change in Congressional oratory, eliminating the prosy manuscript speeches and the orations for the constituencies rather than for the House and on the subject before the House.

The subject was again revived when, on March 28, 1878,[1] a committee of which Mr. John G. Carlisle, of Kentucky, was a member, submitted a report in favor of removing the desks, but no action resulted.

On December 19, 1883,[2] the Committee on Rules reported adversely, and the House laid on the table a resolution providing for the removal of the desks from the Hall of the House.

In 1899[3] the Committee on Ventilation and Acoustics submitted an elaborate illustrated report, recommending a reduction in the size of the Hall, the removal of the desks and a rearrangement of the seats.

On February 20, 1901,[4] an amendment providing for the removal of the desks was proposed on an appropriation bill, but the House decided on it adversely.

7283. The rules limit strictly the classes of persons having the privileges of the floor during sessions of the House.

The Speaker is forbidden to entertain a request for the suspension of the rule relating to the privilege of the floor.

The President and Vice-President of the United States and their secretaries have the privilege of the floor.

The judges of the Supreme Court have the privileges of the floor.

"Heads of Departments," meaning members of the President's Cabinet, have the privilege of the floor.

Members of Congress, Members-elect, and, under certain conditions, ex-Members of the House and contestants in election cases have the privilege of the floor.

The Secretary and Sergeant-at-Arms of the Senate, the Superintendent of the Capitol, the Librarian of Congress, and his assistant in the law library have the privilege of the floor.

Ministers from foreign governments and governors of States (but not of Territories) have the privilege of the floor.

The Resident Commissioner to the United States from Porto Rico has the privilege of the floor.

Persons who have by name received the thanks of Congress have the privilege of the floor.

Present form and history of Rule XXXIV.

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[1] Second session Forty-fifth Congress, Record, p. 2110.

[2] First session Forty-seventh Congress, Journal, p. 155; Record, p. 196.

[3] This report was an embodiment of the plan of Mr. Speaker Reed, who believed that the confusion of the great hall, with its numerous desks, was destructive of the deliberative character of the House.

[4] Second session Fifty-sixth Congress, Record, pp. 2704–2708.

Rule XXXIV provides:

1. The persons hereinafter named, and none other, shall be admitted to the Hall of the House or rooms leading thereto, viz: The President and Vice-President of the United States and their private secretaries, judges of the Supreme Court, Members of Congress and Members-elect, contestants in election cases during the pendency of their cases in the House, the Secretary and Sergeant-at-Arms of the Senate, heads of Departments, foreign ministers, governors of States, the Superintendent of the Capitol Building and Grounds, the Librarian of Congress and his assistant in charge of the law library, the Resident Commissioner to the United States from Porto Rico, such persons as have, by name, received the thanks of Congress, ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress, and clerks of committees when business from their committee is under consideration; and it shall not be in order for the Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any Member for unanimous consent.

This is the form agreed to in the revision of 1880,[1] with a few modifications made since. The Committee on Rules in 1880[2] gave a history of the various modifications of the rule since 1802.

The words "heads of Departments" is construed to mean the members of the President's Cabinet, as is evident from the fact that in 1886[3] the House did not agree to a proposition to add such officers as the Commissioners of Patents, Internal Revenue, Pensions, etc.

The words "foreign ministers" are construed to mean the representatives of foreign governments duly accredited to this Government and not representatives of this Government abroad who may be in Washington temporarily. This is evident from the fact that in former years the language was "foreign ministers and their secretaries,"[4] indicating an official with his established office in Washington. As early as December 8, 1798,[5] the ministers of Great Britain and Denmark attended a joint meeting of the two Houses in Representatives' Hall to hear the President's speech. Foreign ministers have not often in later years availed themselves of the privilege, usually preferring the Diplomatic Gallery.

The "Superintendent of the Capitol Building and Grounds" was included by amendment of June 28, 1902,[6] when the designation of the old office of "Architect of the Capitol" was changed. At the same time the "Resident Commissioner to the United States from Porto Rico" was included, after proposed legislation to authorize a Delegate from that island had failed.

Until 1857 persons who had been Members of either the Senate or the House were admitted to the privileges of the floor of the House under a very liberal rule.[7] In that year, when the House was about to move from the old Hall to the new, it was thought desirable, in view of the enlarged gallery accommodations of the

[1] Second session Forty-sixth Congress, Record, pp. 207, 1205.

[2] Second session Forty-sixth Congress, Record, p. 202.

[3] First session Forty-ninth Congress, Record, p. 2411.

[4] Second session Twenty-ninth Congress, Journal, p. 536.

[5] Third session Fifth Congress, Annals, p. 2420.

[6] First session Fifty-seventh Congress, Record, p. 7608.

[7] Third session Thirty-fourth Congress, Journal, p. 694.

new Hall, to restrict the admissions to the floor. So on December 23, 1857,[1] this rule was adopted:

> That no person, except Members of the Senate, their Secretary, heads of Departments, President's private secretary, the governor for the time being of any State, and judges of the Supreme Court of the United States, shall be admitted within the Hall of the House of Representatives.

This new rule cut off from the privilege the following persons who had enjoyed it under the old rule: The Treasurers of the United States, Comptrollers, Registers, Auditors, Chaplains to Congress, judges of the United States, foreign ministers and their secretaries, officers thanked by Congress for gallantry and good conduct in the public service, governors of Territories, ex-Members of the House and Senate, persons who had been heads of Departments, members of State and Territorial legislatures, and members of the legislative bodies of foreign nations in amity with the United States.

Ex-Members of Congress were readmitted to the floor by rule of March 16, 1867,[2] which excluded all such as were "interested in any claim pending before Congress," and required that ex-Members should register themselves as not so interested before admission.[3] The word "claim" in this rule was construed strictly, and on April 23, 1872,[4] an attempt of the Committee on Rules to change the word to "any legislative measure" was defeated by recommittal. With the exception of ex-Members of Congress and persons who have by name received the thanks of Congress[5] the strictness of the rule of 1857 was continued[6] until the revision of 1880. In that revision the rule was framed in practically its present form,[7] but ex-Members of Congress were admitted, as to whom it was provided, as now, that they should "not be interested in any claim or directly in any bill pending before Congress." In 1884[8] ex-Senators were excluded by confining the privilege to ex-Members of the House instead of ex-Members of Congress.

In the Fifty-second Congress the words "directly in any" were omitted before "bill" in the clause relating to ex-Members. In the Fifty-third Congress the Secretary of the Smithsonian Institution was added to the number of privileged persons, and after the word "interested," in the clause relating to ex-Members, the words "either as party, agent, or attorney" were added. In the Fifty-fourth Congress the form of the Fifty-first Congress was restored.

7284. Rigid enforcement of the rule forbidding requests for extension of the privileges of the floor.—On December 18, 1900,[9] the House was considering the bill (S. 1929) to provide for eliminating certain grade crossings in the city

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[1] First session Thirty-fifth Congress, Journal, p. 116; Globe, pp. 170, 171.

[2] First session Fortieth Congress, Journal, p. 46; Globe, pp. 119, 120.

[3] Although this provision as to registering disappeared from the rule in the revision of 1880, the secretary of the Speaker still keeps the register, and ex-Members are required to sign it before receiving a card of admission.

[4] Second session Forty-second Congress, Globe, pp. 2688–2691.

[5] Included in rule of March 15, 1867 (first session Fortieth Congress, Journal, p. 46; Globe, pp. 119, 120).

[6] First session Forty-sixth Congress, Journal, p. 633.

[7] Second session Forty-sixth Congress, Journal p. 1552.

[8] First session Forty-eighth Congress, Journal, p. 1777.

[9] Second session Fifty-sixth Congress, Record, p. 395.

of Washington, when Mr. Joseph W. Babcock, of Wisconsin, asked unanimous consent that the Engineer Commissioner of the District of Columbia might be permitted to come on the floor and explain the engineering features of the plan, as had been permitted in the Senate.

The Speaker,[1] having caused Rule XXXIV to be read, said:

This rule, it seems to the Chair, is explicit; and it meets completely the request of the gentleman from Wisconsin. This is not the United States Senate, but the House of Representatives, acting under its own rules. Under the specific rule just read the Chair is not permitted to entertain the request of the gentleman from Wisconsin.

7285. The rule forbidding the Speaker to entertain requests for the suspension of the rule relating to admission to the floor is held to apply also to the Chairman of the Committee of the Whole.—On January 15, 1894,[2] Mr. Julius C. Burrows, of Michigan, submitted the question of order whether it was in order for the Chairman of the Committee of the Whole to entertain a request for unanimous consent that persons other than Members of the House be admitted to the floor of the House during its sessions.

The Speaker[3] expressed the opinion that it would not be in order to entertain such request and that the rule respecting admission to the floor was applicable in Committee of the Whole.

7286. It being alleged that an ex-Member was violating the privileges of the floor, the Speaker declared it a matter for the House and not the Chair to consider.—On May 22, 1884,[4] while the House was considering the contested-election case of English *v.* Peelle, Mr. Roswell G. Horr, of Michigan, made the point of order, as a question of privilege, that an ex-Member of the House, father of the contestant, had been upon the floor soliciting assistance for the case of his son, in violation of Rule XXXIV.

Mr. William M. Springer, of Illinois, made the point of order that the rule did not apply to a contested-election case, but only to ex-Members interested in any claim or bill pending before Congress.

The Speaker[5] said:

The fact that the gentleman of whom complaint is made is an ex-Member of the House is not disputed. But it is alleged by the gentleman from Michigan that he has violated his privileges or abused the privileges of the House as an ex-Member in connection with the contest in this election case. That is a matter for the House to investigate or determine. It is not a matter for the Chair to determine; nor is the statement alone sufficient to warrant the Chair in determining that the gentleman, under the rule, should be excluded from the floor. The Chair thinks, therefore, that no question is presented for the consideration of the Chair, though there might be a fact, as alleged by the gentleman from Michigan, for the consideration of the House.[6]

7287. An alleged abuse of the privilege of the floor by an ex-Member was inquired into by a special committee.—On July 3, 1884, Mr. N. J. Hammond, of Georgia, from the Select Committee on Alleged Abuse of the Privileges of

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 90; Record, p. 840.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Forty-eighth Congress, Journal, p. 1298; Record, p. 4405.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] The House did make an investigation. Section 7287.

the Floor, submitted a report [1] relating particularly to the conduct of Hon. William H. English, an ex-Member of the House, who was alleged to have violated the privileges of the floor in urging Members to favor his son, the contestant in the election case of English *v.* Peelle.

The committee agreed, both in the minority and majority reports, that Mr. English did approach Members on the floor of the House during the sessions and urge them to vote for his son.

The majority of the committee, Messrs. Hammond, J. H. Rogers, of Arkansas, Barclay Henley, of California, and James M. Riggs, of Illinois, declare in their report that Mr. English's actions were done quietly, without disturbing the House, and that there was no evidence to indicate that he used or attempted to use corrupt means. The rule of the House admitted to the floor "ex-Members of Congress who are not interested in any claim or directly in any bill pending before Congress." The report contends that the word "interested" referred only to pecuniary interest, and not relationship to a contestant or a contestee. By the Constitution the "House may determine the rules of its proceedings." It must have authority to maintain its privileges and be judge of their infringement. But it must proceed according to law. May, on Law of Parliament, divided breach of privilege into: (1) Disobedience to general orders or rules of either House; (2) disobedience to particular orders; (3) indignities offered to the character or proceedings of Parliament; (4) assaults upon its members or reflections upon their character and conduct in Parliament, or interferences with officers of the House in discharge of their duty. Mr. Cushing had stated that formerly privilege was undefined by Parliament, being "what each House chose to make so upon the particular occasion," but "since the period above mentioned a different doctrine has been established as to the nature of parliamentary privilege, which is now regarded as a part of the law of the land, evidenced by the customs and usages of Parliament, when not specifically defined by statute and incapable of enlargement by the resolutions or proceedings of either House." The committee concluded that they had found no custom or usage of Parliament which would justify them in concluding that Mr. English's conduct was a breach of the privileges of the House, and they recommended that the whole matter be laid on the table.

The minority of the committee, Messrs. Stephen C. Millard, of New York, Thomas M. Bayne, of Pennsylvania, and J. B. Wakefield, of Minnesota, reported a resolution declaring that Mr. English's conduct "was improper and a violation of the privileges "of the House, "and that he be excluded therefrom during the present Congress." The minority say:

> One of the most important privileges of the House undoubtedly is the immunity of its Members from all influences that would warp their deliberations. The Members of the House discuss the matters that come before them not only publicly, as in open debate, but also in conversation among themselves. Exemption from external influence is intended to be secured by excluding others than Members from the floor of the House. Is it not clear that the entrance of a stranger, admitted not of right, but by courtesy, who for days and weeks is actively engaged in lobbying, is a clear violation of this privilege? It is also the duty of the House to protect itself from scandal. Its integrity, honor, and good fame should be held to be sacred. Can it be so regarded and esteemed when that universal servitor and censor, the press of the country, publishes broadcast the news that lobbying is carried on open y on its floor and during its deliberations?

[1] First session Forty-eighth Congress, House Report No. 2136.

When the report was presented in the House on July 3,[1] Mr. Hammond moved to lay the whole subject on, the table. After debate this motion was agreed to, yeas 137, nays 72.

7288. An ex-Member who was abusing the privileges of the floor was excluded by direction of the Speaker.—On March 12, 1900,[2] the House was considering the contested-election case of Richard A. Wise *v.* W. A. Young, of Virginia. During the debate Mr. James D. Richardson, of Tennessee, made the point of order that an ex-Member of the House, who, as such, was entitled to the privileges of the floor, was abusing that privilege by prompting gentlemen in debate, handing to them papers, etc. Mr. Richardson also called attention to the fact that once before during the debate complaint had been made that this ex-Member, who was a brother of the contestant, had interrupted in debate.

After debate the Speaker inquired whether or not the ex-Member referred to, Mr. John S. Wise, was attorney of record in the pending case.

An affirmative answer having been given to this question, the Speaker[3] said:

The Chair will rule on the case. From a hasty examination, and from the recollection of such matters which the Chair has, it is usual to appoint a select committee to ascertain the question of facts. The law, under the rule, is explicit. Among those who are mentioned as entitled to admission to the floor are included the following:

"Ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress."

The Chair thinks that the term "claim" or "bill" would apply to a contested election case before Congress. He thinks that it is the intention of the rule, and if the record shows a state of facts which a select committee would have to ascertain, the Chair thinks that it would be his duty to act without waiting for the action of a select committee.

The custom has been, the practice has been, to appoint a select committee to investigate such matters and report to the House. But when it appears that an ex-Member of Congress is the attorney of record in a case pending before the House, it seems to the Chair that action should be taken at once, especially when the case is pending and up for consideration; and in justice to the House and the dignity of the House and every element of fair play, while the Chair has not been able to find a precedent for the Chair's ruling before the appointment and report of a select committee, still the law does not expect unnecessary things to be done; and as it is conceded on the floor that Mr. John S. Wise is attorney of record, the Chair will hold that he must not occupy a place on this floor, subject to an appeal from this decision by the House. No appeal being demanded, the Doorkeeper is instructed to exclude Mr. John S. Wise from the floor until this question is disposed of.

7289. The meaning of the rule relating to admission to the floor has been interpreted by a committee.—On January 27, 1887, Mr. James D. Richardson, of Tennessee, from the Select Committee on Admissions to the Floor, submitted a report[4] in which was discussed the meaning of the words of Rule XXXIV, which forbids the privileges of the floor to "ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress." The committee came to the conclusion that the words did not call for the exclusion of an ex-Member who, as attorney for a bill, had simply an attorney's interest in caring for the interests of his clients. The committee made

[1] First session Forty-eighth Congress, Journal, p. 1646; Record, pp. 5969–5977.

[2] First session Fifty-sixth Congress, Record, p. 2792; Journal, p. 338.

[3] David B. Henderson, of Iowa, Speaker.

[4] Second session Forty-ninth Congress, House Report No. 3798.

a distinction, however, in the case of those attorneys who prosecuted claims for acontingent fee. Such were not entitled to admission to the floor under the rule.

The committee recommended that the words in question be stricken from the rule and that the following be substituted:

Ex-Members of the House of Representatives who are not interested personally, nor as attorneys or agents, in any claim or bill pending before Congress.[1]

7290. The rule relating to admissions to the floor is construed broadly on the occasion of ceremonies.—On December 19, 1894[2] the House agreed to a resolution for the admission of the governor of New Hampshire and his staff to the floor of the House on December 20, at the time of the presentation of the statues of Webster and Stark. The Speaker[3] in putting the motion said that the rule provided that the Speaker should not submit a motion for unanimous consent on this subject, but he considered that rule to apply to cases where the House was engaged in the transaction of ordinary business. But in these ceremonies it had been customary to admit the governors of States.

7291. A register of persons other than Members who are entitled to the privileges of the floor was authorized in 1853.—On December 20, 1853,[4] the Speaker[5] announced that he had directed the Doorkeeper to prepare a register for the names of those persons other than Members who were entitled to the privileges of the floor. But as question had been raised as to the authority of the Speaker to do this, he asked the sanction of the House. Whereupon it was,

Ordered, That a book be provided by the Doorkeeper in which shall be registered the names of all persons other than Members of Congress who may apply for admission upon the floor of the House, setting forth by virtue of what position such privilege is claimed.[6]

7292. It has been held that the rule relating to admission to the floor does not apply to joint sessions of the two Houses.—On February 11, 1885,[7] Mr. Benton McMillin, of Tennessee, offered this resolution:

Resolved, That the Doorkeeper be directed to admit to the floor of the House ladies having tickets issued for the Members' gallery during the joint session for the count of the electoral vote.

Mr. Goldsmith W. Hewitt, of Alabama, made the point of order that the resolution was not privileged, but being a change of the rule relating to admission to the floor should be referred to the Committee on Rules.

The Speaker pro tempore[8] overruled the point of order in accordance with the ruling of a former Speaker,[9] and also on the ground that the rule referred to by

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[1] This recommendation was not carried out, but in the Fifty-second and Fifty-third Congresses a provision to carry out the purpose was incorporated in the rule. Since the Fifty-third Congress the old form of the rule has been again in use.-

[2] Third session Fifty-third Congress, Record, p. 476.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Thirty-third Congress, Journal, p. 109; Globe, pp. 68, 69.

[5] Linn Boyd, of Kentucky, Speaker.

[6] A register is now kept in the Speaker's room wherein all ex-Members are required to sign their names to an obligation to observe the rules before receiving cards of admission.

[7] Second session Forty-eighth Congress, Journal, p. 516; Record, p. 1528.

[8] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

[9] Speaker Randall, on February 9, 1881, admitted such a resolution "under the circumstances." (Third session Forty-sixth Congress, Journal, p. 358; Record, p. 1386.)

Mr. Hewitt did not apply to a joint meeting of the two Houses, but solely to a session of the House.

7293. A special admission to the privileges of the floor is a rare honor.—On February 10, 1870,[1] on motion of Mr. Nathaniel P. Banks, of Massachusetts, by unanimous consent, the privileges of the floor for a day were extended to John Kitts, born in Pennsylvania in 1762, and a soldier of the Revolution and war of 1812, who had seen the surrender of Cornwallis at Yorktown.

7294. In a former Congress exclusion from the privileges of the floor was made a penalty for attempting to corrupt Members of Congress.—On March 24, 1870,[2] Mr. John A. Logan, of Illinois, from the Committee on Military Affairs, which had investigated the sale of cadetships by Members of the House, reported a resolution, which, after modification, was agreed to as follows:

Resolved, That in addition to the penalties now imposed by law, any person or persons who have been or may hereafter be proven guilty of having been engaged in corrupting or attempting to corrupt any Member of Congress, by directly or indirectly offering him any valuable consideration with a view of influencing his action in any matter pertaining to his official duties, shall hereafter be excluded from all privileges of the floor, committee rooms, clerks' rooms, and all galleries of the House of Representatives.

7295. The Doorkeeper is required to clear the floor fifteen minutes before the hour of meeting of all persons not privileged to remain, and keep it cleared until ten minutes after adjournment.

The Doorkeeper is to see that no one enters the room over the Hall of the House during the sittings.

Present form and history of section 3 of Rule V.

Section 3 of Rule V provides:

He shall allow no person to enter the room over the Hall of the House during its sittings; and fifteen minutes before the hour of the meeting of the House each day he shall see that the floor is cleared of all persons except those privileged to remain, and kept so until ten minutes after adjournment.

The portion of the rule requiring the floor to be cleared fifteen minutes before the hour of meeting was adopted March 31, 1869.[3] When the rules were revised in 1880, the clause relating to the room over the Hall was added on motion of Mr. Joseph R. Hawley, of Connecticut, it being recalled by Mr. James A. Garfield, of Ohio, that not long before, during a session of the House, a man had stepped through one of the squares of glass.[4] So careful was the House after this accident that for a time the key of the room was each day brought down and deposited with the Speaker. In the revision of 1890[5] the provision that the floor should be kept clear ten minutes after adjournment was added.

7296. Persons not Members and not claiming to be Members have been permitted to address the House only in early and rare instances.—On October 26, 1807,[6] during the balloting for the election of a Clerk, and after an

[1] Second session Forty-first Congress, Globe, p. 1191; Journal, p. 298.

[2] Second session Forty-first Congress, Journal, p. 523; Globe, p. 2197.

[3] First session Forty-first Congress, Globe, p. 396.

[4] Second session Forty-sixth Congress, Record, p. 557.

[5] First session Fifty-first Congress, Report No. 23.

[6] First session Tenth Congress, Annals, p. 784.

announcement had been made showing that Nicholas B. Vanzandt had a plurality of votes, but that there was no election. Mr. John Randolph, of Virginia, rising in his place, denounced Mr. Vanzandt as one who had in a previous Congress disclosed the secrets of the secret sessions of the House.

Presently the Speaker laid before the House a letter from Mr. Vanzandt, who was present, asking permission to be heard at the bar of the House in order to disprove the assertions of the gentleman from Virginia.

Mr. John Smilie, of Pennsylvania, hoped no order would be taken on the letter. He thought the request to be heard at the bar very extraordinary, and if listened to might form a dangerous precedent.

The House then proceeded to another ballot for Clerk.'

7297.[1] On December 6, 1875,[2] after the Speaker had been chosen, a question was pending concerning the certificate of a Member, and the Clerk was, by unanimous consent, permitted on a request put to the House through the Speaker, to address the House in explanation of his action in relation to the certificate.

7298. On January 11, 1804,[3] the House agreed to a resolution, yeas 61, nays 49, that the agent or agents of the Virginia Yazoo Company be heard in person or by counsel at the bar of the House on Monday next. The same privilege was also given to the agent of the South Carolina Yazoo Company.

And on January 16 Alexander Moultrie, agent of the South Carolina Yazoo Company, was heard at the bar of the House; and the said agent, being fully heard, withdrew from the bar.

7299. On March 11, 1806,[4] the Speaker laid before the House a letter and petition from Maj. Gen. Arthur St. Clair, praying to be heard at the bar of the House in support of his petition.

On March 14 the House agreed to this resolution, reconsidering the action of the previous day, when the resolution was tabled:

Resolved, That Maj. Gen. Arthur St. Clair be heard at the bar of the House in support of his claim.

The next Monday was thereupon assigned for the hearing, but on that day it was—

Resolved, That the order of the day to hear Arthur St. Clair at the bar of the House in support of his claim, be postponed indefinitely.

7300. On February 12, 1808,[5] Mr. Ezekiel Bacon, of Massachusetts, presented the memorial of Joseph Storey, who prayed that he might be admitted to the bar of the House to explain, as agent of the New England Mississippi Company, their rights and state their claims.

Mr. Bacon also presented a resolution that the prayer be granted and setting a time for a hearing. He said he had taken the form of the resolution from a prece-

[1] The Journal does not record this incident; and, in fact, does not mention the several ballotings, simply stating the election of a Clerk by ballot.

[2] First session Forty-fourth Congress, Record, p. 170.

[3] First session Eighth Congress, Journal, pp. 526, 538 (Gales & Seaton ed.); Annals, pp. 878, 887.

[4] First session Ninth Congress, Journal, pp. 315, 317, 320, 324 (Gales & Seaton ed.); Annals, pp. 698, 779, 799.

[5] First session Tenth Congress, Journal, p. 175 (Gales & Seaton ed.); Annals, pp. 1601–1613.

dent, where, in the case of the South Carolina Company, Mr. Moultrie had been heard at the bar in support of their claim.

After debate, the resolution was negatived, 28 yeas to 76 nays.

7301. On January 10, 1878,[1] a resolution was offered in the Senate to the effect that at a certain day, during the session of the Senate, certain women might appear in the Senate Chamber and be heard before the Senate on the subject of woman suffrage. The proposition was opposed on the ground that such a proceeding would be contrary to the practice of the Senate since 1792, as well as upon the ground that if one class were heard all other petitioners might claim the same right. The resolution was disagreed to, yeas 13, nays 31.

On the same day a similar proposition was objected to in the House.[2] On January 14[3] the resolution was brought to a vote in the House and was disagreed to, yeas 106, nays 141.

7302. The Speaker is required to set aside a portion of the west gallery for the use of the President, members of his Cabinet, Justices of the Supreme Court, and foreign ministers and suites, and their respective families.

The Speaker is required to set aside a portion of the west gallery for persons admitted on the cards of Members.

A portion of the east gallery is assigned to the use of families of Members, the Speaker issuing a card to each Member for his family and visitors.

The Speaker controls one bench in the gallery assigned to the families of Members.

Present form and history of Rule XXXV.

Rule XXXV provides:

> The Speaker shall set aside a portion of the west gallery for the use of the President of the United States, the members of his Cabinet, Justices of the Supreme Court, foreign ministers and suites, and the members of their respective families, and shall also set aside another portion of the same gallery for the accommodation of persons to be admitted on the card of Members. The southerly half of the east gallery shall be assigned exclusively for the use of the families of Members of Congress, in which the Speaker shall control one bench, and on request of a Member the Speaker shall issue a card of admission to his family, which shall include their visitors, and no other person shall be admitted to this section.

This rule is as reported in the revision of 1880, when it was a new rule, designed to secure gallery accommodations for members of State governments, delegations from boards of trade, etc., as well as for the families of Members.[4] Previous to 1857 foreign ministers were entitled to the privileges of the floor as at present; but in that year the select committee appointed to arrange the occupation of the new Hall of the House set apart a diplomatic gallery, a press gallery, and a ladies' gallery.[5]

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[1] Second session Forty-fifth Congress, Record, pp. 267, 268, 269.

[2] Record, p. 270.

[3] Record, p. 320; Journal, p. 193.

[4] Second session Forty-fifth Congress, Record, p. 203.

[5] First session Thirty-fifth Congress, Globe, pp. 170, 171.

7303. In times of great interest the House sometimes makes a special rule for admission to the galleries.—On April 6, 1898,[1] Mr. David B. Henderson, of Iowa, from the Committee on Rules, reported, and the House adopted this resolution:

Resolved, That until otherwise ordered by the Speaker there be issued daily by the Doorkeeper to each Representative and Delegate two tickets to the galleries of the House, and the Doorkeeper is hereby authorized and directed to reserve sufficient space to accommodate the holders thereof.

During the pendency of this order the rules as to the Members' family and the visitors' galleries are suspended.

On January 26, 1792,[2] it being desired, during discussion in Committee of the Whole, that the galleries be cleared for discussion of a matter contained in a confidential communication of the President, it was decided that the House and not the Committee should do this, so the committee rose for the purpose of having the House close the galleries.

7304. Stenographers and reporters other than the official reporters are admitted by the Speaker to the gallery over the Speaker's chair under such regulations as he may prescribe.

Representatives of certain specified news associations are admitted to the floor of the House under regulations prescribed by the Speaker.

Present form and history of section 2 of Rule XXXVI.

Section 2 of Rule XXXVI provides:

Stenographers and reporters, other than the official reporters of the House, wishing to take down the debates and proceedings, may be admitted by the Speaker to the reporters' gallery over the Speaker's chair, under such regulations as he may, from time to time, prescribe; and he may assign one seat on the floor to Associated Press reporters, one to the Sun Press Association, and one to the Scripps-McRae League, and regulate the occupation of the same. And the Speaker may admit to the floor, under such regulations as he may prescribe, one additional representative of each press association.

Except for certain amendments caused by changes in the news associations,[3] and by an increase of the number of persons permitted to each association, this rule is as adopted in the revision of 1880.[4]

It was taken from old rule 135, which dated from December 23, 1857,[5] and was a portion of a report made by Mr. Charles J. Faulkner, of Virginia, from a select committee in relation to accommodations in the new Hall of the House.

7305. At first the Representatives of the press were admitted to the floor, but later the present practice of assigning to them the use of a gallery under certain regulations was adopted.

Representatives of the press have been admitted by permission of the Speaker.

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[1] Second session Fifty-fifth Congress, Record, pp. 3634, 3635.

[2] First session Second Congress, Annals, p. 348.

[3] The last change was January 22, 1902 (first session Fifty-seventh Congress, Record, p. 870).

[4] Second session Forty-sixth Congress, Record, p. 207.

[5] First session Thirty-fifth Congress, Journal, p. 116; Globe, pp. 170, 171.

On March 1, 1838,[1] Mr. Abraham Rencher, of North Carolina, by consent, offered the following resolutions:

Resolved, That the Doorkeeper be required to execute strictly the thirteenth and fourteenth rules of the House relative to the privilege of the Hall.

Resolved, That no person shall be allowed the privilege of the Hall under the character of stenographer without a written permission from the Speaker, specifying the part of the Hall assigned to him.

Mr. Waddy Thompson, jr., of South Carolina, moved to amend the second resolution by adding the following:

And no reporter or stenographer shall be admitted, under the rules of the House, unless such reporter or stenographer shall state, in writing, for what paper or papers, he is employed to report.

This amendment was agreed to, and the resolutions as amended were then agreed to.

7306. On December 14, 1852,[2] to remedy an abuse that had been increasing, the House adopted a rule that no reporter or stenographer should be admitted to the floor of the House except the condition that he should not be a claim agent should be a part of the written permission given by the Speaker. At that time there were 22 seats for reporters on the floor, exclusive of those occupied by city reporters.

7307. The committee appointed to examine the new Hall of Representatives reported on December 14, 1857,[3] in favor of giving to the reporters of the public press the gallery over the Speaker's desk and the room behind it.

Mr. Speaker Orr assigned them to the gallery, although some suggestions were made that they continue on the floor.[4]

7308. On December 23, 1857,[5] when the new Hall of the House was first occupied by the House, Mr. Charles J. Faulkner, of Virginia, from a select committee appointed on the subject, made a report assigning the reporters to the gallery over the Speaker's desk and continuing the restrictions in regard to reporters acting as claim agents, etc., and requiring them to make their applications in writing:

Stenographers and reporters other than the official reporters of the House wishing to take down the debates may be admitted by the Speaker to the reporters' gallery over the Speaker's chair, but not on the floor of the House; but no person shall be allowed the privilege of said gallery under the character of stenographer or reporter without a written permission of the Speaker, specifying the part of said gallery assigned to him; nor shall said stenographer or reporter be admitted to said gallery unless he shall state in writing for what paper or papers he is employed to report; nor shall he be so admitted or, if admitted, be suffered to retain his seat if he shall be or become an agent to prosecute any claim pending before Congress; and the Speaker shall give his written permission with this condition.

7309. On February 26, 1866,[6] the House voted that the Speaker should assign a desk on the floor of the House to the reporter of the Associated Press.

7310. On April 3, 1878,[7] the House agreed to a rule admitting newspaper correspondents to the lobby. This rule was rescinded later, however, and although

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[1] Second session Twenty-fifth Congress, Journal, p. 510; Globe, p. 203.

[2] Second session Thirty-second Congress, Journal, pp. 44, 45; Globe, p. 52.

[3] First session Thirty-fifth Congress, Globe, p. 32.

[4] Globe, pp. 59, 60.

[5] First session Thirty-fifth Congress, Journal, p. 117; Globe, p. 170.

[6] First session Thirty-ninth Congress, Journal, p. 330; Globe, p. 1032.

[7] Second session Forty-fifth Congress, Journal, p. 788; Record, p. 2236.

the practice was revived in the Fifty-second and Fifty-third Congresses, it was definitely abandoned in 1895, at the beginning of the Fifty-fourth Congress.

7311. To obviate the necessity of clearing the galleries the Senate authorized the Sergeant-at-Arms to arrest any person disturbing the proceedings.—On February 21, 1866,[1] on motion of Mr. John Sherman, of Ohio, the Senate adopted a resolution instructing the Sergeant-at-Arms to arrest without further order any person found disturbing the proceedings by evidences of applause or dissent in the gallery. This was done to obviate the necessity of clearing the galleries, a process which punished the innocent with the guilty.

7312. The care, preservation, and orderly keeping of the House wing of the Capitol devolve on the Superintendent under regulations prescribed by the Speaker.

The electrician and laborers connected with the lighting, heating, and ventilating of the House are under direction of the Superintendent, subject to the control of the Speaker.

No work of art not the property of the Government shall be exhibited in the Capitol, and no room shall be used for private studios without permission of the Joint Committee on the Library.

No intoxicating liquors may be sold within the Capitol.

The Speaker and President of the Senate have discretion as to the use of the Capitol grounds for processions, assemblies, music, and speeches on occasions of national interest.

General provisions of the statutes as to concerts, operation of street cars, delivery of fuel, and landscape features of the Capitol grounds.

The care, preservation, and orderly keeping of the south wing of the Capitol devolves upon the Superintendent of the Capitol Building and Grounds, under regulations prescribed by the Speaker.[2] Since 1869 the leasing and regulation of the House restaurant has been under charge of the Committee on Public Buildings and Grounds.[3] The electrician and all laborers connected with the lighting, heating, and ventilating of the House are under the direction of the Superintendent subject to the control of the Speaker.[4] No work of art or manufacture not the property of the United States shall be exhibited in Statuary Hall, the corridors, or the Capitol generally, nor shall any room in the Capitol be used for private studios or works of art without written permission from the Joint Committee on the Library. The Superintendent is charged with the enforcement of this law.[5]

No intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States.[6] The statutes[7] also forbid violent driving, heavy teaming, except in the Government service, the exposure of articles for sale,

[1] First session Thirty-ninth Congress, Globe, p. 957.

[2] 4 Stat. L., p. 266; 19 Stat. L., p. 147.

[3] First session Forty-first Congress, Journal, p. 201. See second session Forty-fifth Congress, Record, p. 10, for statement as to former control of restaurant by the Speaker.

[4] 21 Stat. L., p. 388.

[5] 18 Stat. L., p. 376; 20 Stat. L., p. 391.

[6] 32 Stat. L., p. 1221.

[7] 22 Stat. L., pp. 126, 127.

the soliciting of alms, the discharge of firearms, the utterance of loud or abusive language, the making of any harangue or oration, or parading or moving in procession on the Capitol grounds; but to permit the due observance of occasions of national interest the Speaker and President of the Senate, acting concurrently,[1] may suspend so much of these prohibitions as relate to processions and assemblages, and the use of suitable decorations, music, addresses, and ceremonies. The use of the Rotunda of the Capitol building has been controlled by concurrent resolution of the two Houses.[2] No change in the architectural features of the Capitol or the landscape features of the Capitol grounds may be made except on plans approved by Congress.[3] Fuel is delivered under direction of the Superintendent of the Capitol Building and Grounds.[4] Concerts are held on Capitol grounds under direction of the Superintendent of the Capitol Building and Grounds.[5] The operation of certain street cars on the grounds is under direction of the Superintendent of the Capitol Building and Grounds.[6] The use of rooms in the Capitol not belonging strictly to either wing has been controlled by statute.[7]

Laws of the District of Columbia for the preservation of the public peace are extended to the Capitol square upon the application of the presiding officer of either House.[8]

7313. The use of the Rotunda of the Capitol is controlled by concurrent action of the two Houses.—On March 31, 1882,[9] the House and Senate agreed to the following concurrent resolution:

Resolved (the Senate concurring), That the use of the Rotunda and rooms immediately adjacent be granted to the ladies of the National Aid Association for the Garfield Memorial Hospital on the first Saturday in May to hold a reception, the object being to raise funds for the current expenditures of the association.

7314. History of the Congressional Cemetery.—The Congressional Cemetery originally belonged to the members of Christ's Church. In 1816 the vestry voted to assign 100 sites of the burial ground for the interment of Members of Congress. Since that time the cemetery has been called the Congressional Cemetery. Congress appropriated a sum to enable the parish to inclose the cemetery with a brick wall, and the parish added 300 burial sites to those already laid aside for Members of Congress. Congress also added to the cemetery additional squares of land, which was disposed of in 1850. A few years later Congress gave another square. Since the introduction of railroads Members of Congress dying in Washington have almost always been taken to their homes for burial.

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[1] In the absence of either of these officers the authority devolves on the other, and in the absence of both, on the Capitol Police Commission.

[2] First session Forty-seventh Congress, Journal, pp. 951, 952.

[3] 32 Stat. L., p. 20.

[4] 31 Stat L., p. 612.

[5] 31 Stat. L., p. 613.

[6] 31 Stat. L., p. 669.

[7] 31 Stat. L., p. 719. See also first session Forty-seventh Congress, Record, p. 767, for legislation directing certain changes in the House wing.

[8] Revised Statutes, section 1819.

[9] First session Forty-seventh Congress, Journal, pp. 951, 952.

Apparently the only important legislation [1] on the subject of this cemetery was in 1876, when Congress passed a law [2] providing that whenever a Senator or Member of the House should be actually interred in the cemetery, the Sergeant-at-Arms of the House to which he belonged should have erected a granite monument suitably inscribed, the cost to be defrayed from the contingent fund.[3]

7315. All documents referred to committees or otherwise disposed of are printed unless otherwise specially ordered.

Unless ordered by the House, no bill, resolution, or other proposition reported by a committee shall be printed unless placed on the Calendar.

Motions to print additional numbers of a bill, report, resolution, or document shall be referred to the Committee on Printing, and the report thereon must be accompanied by an estimate of cost.

Present form and history of Rule XLV.

Rule XLV provides:

1. All documents referred to committees or otherwise disposed of shall be printed unless otherwise specially ordered.

2. Motions to print additional numbers of any bill, report, resolution, or other public document shall be referred to the Committee on Printing, and the report of the committee thereon shall be accompanied by an estimate of the probable cost thereof. Unless ordered by the House, no bill, resolution, or other proposition reported by a committee shall be reprinted unless the same be placed upon the Calendar. Of bills which have passed the Senate, and of House bills as amended by the Senate, when referred in the House, there shall be printed 400 copies.

Section 1 of this rule dates from the revision of 1890.[4] Section 2 was the former rule regulating the number, etc., of bills printed by order of the House, and in the Fifty-fourth Congress was modified to meet the requirements of a new law relating to printing.[5]

7316. The statutes define the term "public document," and provide for the division of documents among Members and the distribution thereof.— By the statutes of the United States the term "public document" is defined to be all publications printed by order of Congress or either House thereof.[6]

The division of documents among Members is provided for by law. A retiring Member not drawing his documents prior to the convening of the succeeding Congress forfeits them to his successor.[7]

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[1] First session Forty-fourth Congress, Record, p. 2355, April 10, 1876.

[2] 19 Stat. L., p. 54.

[3] At the second session Fifty-first Congress (House Report No. 3645) and second session Fifty-third Congress (House Report No. 1214) reports were made on bills to allow the sale of sites in the cemetery. These reports give a history of the cemetery. (Also see Report No. 413, second session Fifty-fifth Congress.) In 1902, the Speaker was requested to sanction the interment of the body of a person not a Member of Congress. He could find no authority enabling him to give the permit. A complete history of the cemetery is found in Senate Document No. 72, second session Fifty-ninth Congress. The funeral expenses of deceased Members are usually paid by Congress, the custom apparently dating from 1802. (First session Seventh Congress, Journal, pp. 168, 169.)

[4] House Report No. 23, first session Fifty-first Congress.

[5] 28 Stat. L., p. 609. (See also 33 Stat. L., p. 610.)

[6] First session Forty-third Congress, Session Laws, p. 237.

[7] 28 Stat. L., p. 612.

A Member is entitled to the binding in half morocco, or material no more expensive, of one copy of each public document.[1]

No Government publications may be delivered to officers or employees of Congress except for the use of Members, unless authorized by law or upon requisition approved by the Joint Committee on Printing.[1]

Bound copies of the Journal are distributed from the document room.[2]

7317. General provision of the statutes relating to printing of memorial addresses, drawings, maps, etc., and editing of documents.—All drawings, maps, charts, etc., which may come before the House for engraving, lithographing, or publishing in any way, are referred to the Committee on Printing, and, if published, are published by direction of that committee.[3]

If at any time there is no Joint Committee on Printing the duties and powers conferred on it by law[4] are exercised by the committee in existence in either House.[5]

The Joint Committee on Printing appoint a competent person to edit such portions of the reports and documents accompanying the annual message of the President, or made directly to Congress, as are suitable for popular distribution.[6]

Memorial addresses are printed in accordance with the provisions of the general law.[7]

By the act of January 12, 1895, and subsequent amendments thereto,[8] the subject of the printing and distribution of documents is fully provided for.[9]

7318. The statutes provide specifically for the number of public and private bills to be printed when they are introduced, when reported, etc., and the distribution thereof.

The printing and distribution of documents and reports are specifically regulated by statute.

The law of January 12, 1895,[10] provides specifically for the printing of bills, the method of ordering printing by the House, and the printing of documents:

SEC. 53. The Public Printer shall examine closely the orders of the Senate and House for printing, and in case of duplication he shall print under the first order received.

SEC. 54. Whenever any document or report shall be ordered printed by Congress, such order to print shall signify the "usual number" of copies for binding and distribution among those entitled to receive them. No greater number shall be printed unless ordered by either House, or as hereinafter provided. When a special number of a document or report is ordered printed, the usual number shall also be printed, unless already ordered. The usual number of documents and reports shall be one thousand six hundred and eighty two copies, which shall be distributed as follows:

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[1] 28 Stat. L., p. 624.

[2] 28 Stat. L., p. 609.

[3] Revised Statutes, section 3779.

[4] 28 Stat. L., p. 601.

[5] 28 Stat. L., p. 962.

[6] 28 Stat. L., pp. 616, 617.

[7] 28 Stat. L., p. 616.

[8] See the following sections of this chapter for amendments to the general printing law.

[9] See 28 Stat. L., pp. 601–624. As early as 1801 (first session Seventh Congress, Journal, p. 20) a proposition was made that the House appoint a printer. In 1819 the law provided for regulation of the public printing, and the election of a printer for each House by ballot. (3 Stat. L., p. 538.) In 1860 a Government printing establishment was authorized. (12 Stat. L., p. 117.)

[10] 28 Stat. L., pp. 601–624, as amended by the act of January 20, 1905 (33 Stat. L., p. 610).

This distribution is in tabulated form as follows:

Places of distribution.	House documents and reports.	Senate document and reports.
Unbound:		
Senate document room	150	220
Office Secretary of Senate	10	10
House document room	420	360
Clerk's Office of House	20	10
Bound:		
Senate Library	15	15
Library of Congress	52	52
House Library	15	15
Superintendent of Documents [1]	500	500
Reserved in unstitched form to be bound on order of Members, etc	500	500
Total "usual number"	1,682	1,682

[1] This quota is for distribution to State and Territorial libraries and designated depositories, and by section 4 of act of March 1, 1907 (34 Stat. L.), the Public Printer has a discretion as to the distribution.

That hereafter the usual number of reports on private bills, concurrent or simple resolutions, shall not be printed. In lieu thereof there shall be printed of each Senate report on a private bill, simple or concurrent resolution, three hundred and forty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the Superintendent of Documents, ten copies; and of each House report on a private bill, simple or concurrent resolution, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the Superintendent of Documents, ten copies: Provided, That nothing contained in this act shall be construed to prevent the binding of all Senate and House reports in the reserve volumes bound for and delivered to the Senate and House libraries: Provided, That not less than twelve copies of each report on bills for the payment or adjudication of claims against the Government shall be kept on file in the Senate document room.

SEC. 55. There shall be printed of each Senate and House public bill and joint resolution six hundred and twenty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty-five copies; office of Secretary of Senate, fifteen copies; House document room, three hundred and eighty-five copies. There shall be printed of each Senate private bill, when introduced, when reported, and when passed, three hundred copies, which shall be distributed as follows: To the Senate document room, one hundred and seventy copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies. There shall be printed of each House private bill, when introduced, when reported, and when passed, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the Superintendent of Documents, ten copies. The term "private bill" shall be construed to mean all bills for the relief of private parties, bills granting pensions, bills removing political disabilities, and bills for the survey of rivers and harbors. All bills and resolutions shall be printed in bill form, and, unless specially ordered by either House, shall only be printed when referred to a committee, when favorably reported back, and after their passage by either House. Of concurrent and simple resolutions, when reported, and after their passage by either House, only two hundred and sixty copies shall be printed, except by special order, and the same shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate fifteen copies; to the House document room, one hundred copies; to the Superintendent of Documents, ten copies.

SEC. 56. There shall be printed in slip form one thousand eight hundred and ten copies of public and four hundred and sixty of private laws, postal conventions, and treaties, which shall be distributed as follows: To the House document room, one thousand copies of public and one hundred copies of private laws; to the Senate document room, five hundred and fifty copies of public and one hundred copies of private laws; to the Department of State, five hundred copies of all laws; and to the Treasury Department, sixty of all laws. Postal conventions and treaties shall be distributed as private laws.

7319. The Secretary of the Senate and Clerk of the House have a discretionary power to order the reprinting of bills, resolutions, documents, etc.

Extra copies of bills may be ordered printed by simple resolution of the House if the cost does not exceed $500, or by concurrent resolution if the cost exceeds that sum.

Self-appropriating orders for printing extra copies of bills, documents, etc., are required to be by joint resolution.

Resolutions for printing extra copies of bills, documents, etc., are required to be referred to the Committee on Printing to be reported with estimates of cost.

The Joint Committee on Printing may order printed extra copies of a bill, document, etc., at a cost of not to exceed $200 in any one instance.

Limitation on the power of committees to order printing of hearings.

The act approved March 1, 1907,[1] amendatory of the general printing law, provides as follows as to the printing of extra copies:

PAR. 2. The Secretary of the Senate and the Clerk of the House of Representatives may order the reprinting in a number not exceeding one thousand copies of any pending bill or resolution, or any public law not exceeding fifty pages, or any report from any committee or Congressional commission on pending legislation not accompanied by testimony or exhibits or other appendices and not exceeding fifty pages, when the supply shall have been exhausted. The Public Printer shall require each requisition for reprinting to cite the specific authority of law for its execution.

PAR. 3. No committee of Congress shall be empowered to procure the printing of more than one thousand copies of any hearing or other document, which shall be germane thereto, for its use except by simple, concurrent, or joint resolution, as hereinafter provided.

PAR. 4. Orders for printing extra copies, otherwise than herein provided for, shall be by simple, concurrent, or joint resolution. Either House may print extra copies to the amount of five hundred dollars by simple resolution; if the cost exceeds that sum, the printing shall be ordered by concurrent resolution, except when the resolution is self-appropriating, when it shall be by joint resolution. Such resolutions, when presented to either House, shall be referred immediately to the Committee on Printing, who, in making their report, shall give the probable cost of the proposed printing upon the estimate of the Public Printer; and no extra copies shall be printed before such committee has reported: Provided, That the printing of additional copies may be performed upon orders of the Joint Committee on Printing, within a limit of two hundred dollars in cost in any one instance: And provided further, That nothing in this paragraph shall be held to contravene, the provisions of Public Resolution Numbered Eleven, approved March twenty-eighth, nineteen hundred and four.[2]

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[1] 34 Stat. L. p. 1012.

[2] See 33 Stat. L., p. 584. This public resolution provided for the printing of certain numbers of the documents known as "Special Report on the Diseases of the Horse "and "Special Report on the Diseases of Cattle," and further provided: "The superintendent of documents is hereby authorized to order reprinted, from time to time, such public documents as may be required for sale, such order for reprinting to be subject to the approval of the Secretary or head of the Department in which such public document shall have originated," etc.

PAR. 5. The term "extra copies" as used herein shall be construed to mean copies in addition to the usual number as defined in the act providing for the public printing and binding and the distribution of public documents, approved January twelfth, eighteen hundred and ninety-five, and amendments thereto.

7320. The statutes limit the printing of documents and reports.

The Congressional order to print must expressly authorize the printing of illustrations which are parts of documents or reports.

The act approved March 1, 1907,[1] provides:

PAR. 6. Either House may order the printing of a document not already provided for by existing law, but only when the same shall be accompanied by an estimate from the Public Printer as to the probable cost thereof. Any Executive Department, bureau, board, or independent office of the Government submitting reports or documents in response to inquiries from Congress shall submit therewith an estimate of the probable cost of printing to the usual number. Nothing in this paragraph relating to estimates shall apply to reports or documents not exceeding fifty pages.

Sections 73 and 80 of the law of January 12, 1895,[2] provide:

SEC. 73. The following reports required by law to be made to Congress shall not be printed unless the printing be recommended by the head of the Department making the same, and ordered by concurrent resolution of Congress, namely: Report of contracts for conveying the mails, report of fines and deductions in the Post-Office Department, the report of the Treasurer of accounts by him from time to time rendered to and settled with the First Comptroller, and the report of the proceedings of the annual meetings of the Board of Supervising Inspectors of Steam Vessels.

SEC. 80. No document or report to be illustrated or accompanied by maps shall be printed by the Public Printer until the illustrations or maps designed therefor shall be ready for publication; and no order for public printing shall be acted upon by the Public Printer after the expiration of one year, unless the entire copy and illustrations for the work shall have been furnished within that period: *Provided,* This section shall not apply to orders heretofore made for the printing of a series of volumes on one subject.

The law approved March 3, 1905,[3] provides:

No part of the appropriation made for printing and binding shall be used for any illustration, engraving, or photograph in any document or report ordered printed by Congress unless the order to print expressly authorizes the same.

7321. Illustrations in documents or reports are printed only on express authorization of the House.—On December 13, 1905,[4] Mr. Theodore E. Burton, of Ohio, proposed this resolution, but withdrew it later after objection:

Resolved, That during the Fifty-ninth Congress the order of the House to print executive documents shall be held to authorize with such printing the engraving of drawings and maps, unless the Speaker shall, in the case of any document, otherwise direct.

The sundry civil appropriation act of March 3, 1905,[5] provided as follows:

That hereafter no part of the appropriations made for printing and binding shall be used for any illustration, engraving, or photograph in any document or report ordered printed by Congress unless the order to print expressly authorizes the same.

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[1] 34 Stat. L., p. 1013.

[2] 28 Stat. L., pp. 616, 621.

[3] 33 Stat. L., p. 1213.

[4] First session Fifty-ninth Congress, Record, p. 360.

[5] 33 Stat. L., p. 1213.

This was a substitution of a permanent provision of law for a limitation which had been placed in a previous law.[1]

7322. Stationery, blank books, and other papers necessary to legislation are furnished to the House and Senate and their committees on requisition of the Clerk of the House and Secretary of the Senate, respectively.—The act approved March 1, 1907,[2] provides:

PAR. 8. Stationery, blank books, tables, forms, and other necessary papers preparatory to Congressional legislation, required for the official use of the Senate and the House of Representatives, or the committees and officers thereof, shall be furnished by the Public Printer upon requisition of the Secretary of the Senate and the Clerk of the House of Representatives, respectively. This shall not operate to prevent the purchase by the officers of the Senate and House of Representatives of such stationery and blank books as may be necessary for sale to Senators and Members in the stationery rooms of the two Houses as now provided by law.

7323. Each Member is entitled to one bound copy of each public document to which he may be entitled.—The act of March 1, 1907,[2] provides:

PAR. 9. Each Senator and Representative shall be entitled to the binding in half morocco, or material not more expensive, of but one copy of each public document to which he may be entitled, an account of which, with each Senator and Representative, shall be kept by the Secretary of the Senate and Clerk of the House, respectively.

7324. The statutes governing the numbering in series and binding of House and Senate reports and documents.—The act of March 1, 1907,[3] provides:

That publications ordered printed by Congress, or either House thereof, shall be in four series, namely: One series of reports made by the committees of the Senate, to be known as Senate Reports; one series of reports made by the committees of the House of Representatives, to be known as House Reports; one series of documents other than reports of committees, the orders for printing which originate in the Senate, to be known as Senate Documents, and one series of documents other than committee reports, the orders for printing which originate in the House of Representatives, to be known as House Documents. The publications in each series shall be consecutively numbered in the order in which they are received, the number of each series continuing in unbroken sequence throughout the entire term of a Congress; but these provisions shall not apply to documents printed in confidence for the use of the Senate in executive session or to confidential hearings of committees. If the publication so ordered be an annual report or serial publication originating in or prepared by an Executive Department, bureau, office, commission, or board, it shall not be numbered in the document or report series of either House of Congress, but shall be designated by title, as hereinafter provided. Of all Department reports required by law to be printed, the usual number shall be printed concurrently with the departmental edition.

In the binding of Congressional numbered documents and reports, and departmental publications furnished for distribution to State and Territorial libraries entitled by law to receive them, every publication of sufficient size on any one subject shall hereafter be bound separately, and receive the title suggested by the subject of the volume; and the others, if of a general public character, shall be arranged in convenient volumes and bound in a manner as directed by the Joint Committee on Printing; and those not of a general public character shall be delivered to the depositories in unbound form, and ten copies shall be bound and distributed as follows: To the Senate library, three copies; to the House library, three copies; the Library of Congress, three copies, and to the office of the Superintendent of Documents, one copy.

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[1] 32 Stat. L., p. 1147.

[2] 34 Stat. L., p. 1013.

[3] 34 Stat. L., pp. 1013, 1014.

7325. The statutes require the binding for the files of copies of bills and resolutions of each Congress.—Section 82 of the act of January 12, 1895,[1] provides:

SEC. 82. The Public Printer shall bind four sets of Senate and House of Representatives bills, joint and concurrent resolutions of each Congress, two for the Senate and two for the House, to be furnished him from the files of the Senate and House document room, the volumes when bound to be kept there for reference.

7326. On February 4, 1880,[2] the House agreed to a resolution, originally proposed by Mr. Alexander H. Stephens, of Georgia, providing that the Doorkeeper be instructed to have bound sets of bills and resolutions of the House and Senate, not exceeding ten sets for any session, two sets to be deposited in the document room and the remainder in the library of the House of Representatives.

7327. The Joint Committee on Printing have power to regulate the printing of documents to the demand, within certain limits.—The act approved March 30, 1906,[3] provides:

That the Joint Committee on Printing is hereby authorized and directed to establish rules and regulations, from time to time, which shall be observed by the Public Printer, whereby public documents and reports printed for Congress, or either House thereof, may be printed in two or more editions, instead of one, to meet the public requirements: *Provided,* That in no case shall the aggregate of said editions exceed the number of copies now authorized or which may hereafter be authorized: *And provided further,* That the number of copies of any public document or report now authorized to be printed or which may hereafter be authorized to be printed for any of the Executive Departments, or bureaus or branches thereof, or independent offices of the Government may be supplied in two or more editions, instead of one, upon a requisition on the Public Printer by the official head of such Department or independent office, but in no case shall the aggregate of said editions exceed the number of copies now authorized, or which may hereafter be authorized: *Provided further,* That nothing herein shall operate to obstruct the printing of the full number of any document or report, or the allotment of the full quota to Senators and Representatives, as now authorized, or which may hereafter be authorized, when a legitimate demand for the full complement is known to exist.

7328. Statutes relating to printing the laws for the use of House and Senate.—At the close of each session of Congress there are printed and bound for the use of the Senate 3,000 copies of the acts, joint resolutions of the session, treaties, and postal conventions; and for the use of the House 10,000 copies of the same. The publication has a complete alphabetical index prepared under the direction of the Department of State.[4]

7329. The falsification of a House document was made the subject of examine ion by a select committee.—On December 10, 1840,[5] the House created a select committee, with power to send for persons and papers, to ascertain whether a certain House document of the preceding session had been falsified. This committee reported on January 4, 1841, stating that the document had been falsified, and how, and by whom.

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[1] 28 Stat. L., p. 622.

[2] Second session Forty-sixth Congress, Journal, p. 399; Record, p. 699.

[3] 34 Stat. L., p. 826.

[4] Revised Statutes, sections 210, 3803, 3805, 3807, 3808; Laws, second session Forty-third Congress, p. 401. (18 Stat. L.)

[5] Second session Twenty-sixth Congress, Journal, pp. 28, 140; Globe, pp. 13, 79.

7330. Public documents are distributed to Members in trust for the benefit of the people.—On February 19,1859,[1] the House agreed to the following resolution reported from the select committee appointed to examine the conduct and accounts of the late Doorkeepers:

Resolved, That all extra copies of books and documents printed by order of the House of Representatives, and divided equally among the Members of the House, are intended for gratuitous distribution to public libraries and among the people, and are given to Members, respectively, in trust for that purpose; and that any other use or disposition of the same is a violation of the trust aforesaid and an abuse which meets the unqualified disapprobation of this House.

7331. The House has sometimes thanked organizations and individuals for public services.—The House, by simple resolution, on July 16, 1861,[2] extended its thanks to Gen. George B. McClellan and the officers and soldiers under his command, for their achievements in western Virginia.

On July 22,[3] in a similar manner, resolutions were agreed to giving the thanks of the House to the Sixth Massachusetts Regiment and to Pennsylvania troops.

On July 1[4] the Eighth Massachusetts Regiment was thanked by the House.

7332. On January 7, 1863,[5] the House tendered its thanks to Gen. B. F. Butler for his administration in the Department of the Gulf.

7333. The thanks of Congress have been bestowed in recognition of public services since the early days of the Government.—On February 26, 1885,[6] the House and Senate, by concurrent resolution, gave the thanks of Congress to Col. Thomas L. Casey and his assistants for their work in completing the Washington Monument.

7334. December 4, 1794,[7] the thanks of Congress were voted to Generals Wayne and Scott and their soldiers, and the President was asked to transmit this action.

7335. The Thirteenth Congress[8] recognized the achievements of the soldiers and sailors in the then existing war by the passage of joint resolutions giving the thanks of Congress to individuals by name, and to soldiers and sailors of certain commands generally; and requesting the President to cause commemorative medals to be struck and presented. These acts of Congress were done by joint resolutions, approved by the President of the United States.

Previous to this the Twelfth Congress had requested the President to present gold medals and swords to officers for gallantry on land and sea, but did not give the thanks of Congress.[9]

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[1] Second session Thirty-fifth Congress, Journal, p. 441; Globe, p. 1160.

[2] First session Thirty-seventh Congress, Journal, p. 96, Globe, p. 148.

[3] Journal, p. 125, 126; Globe, pp. 223, 224.

[4] Journal, p. 182.

[5] Third session Thirty-seventh Congress, Journal, pp. 152, 153.

[6] Second session Forty-eighth Congress, Journal, p. 667; Record, p. 2200.

[7] Second session Third Congress, Journal, pp. 251, 252 (Gales and Seaton ed.).

[8] 3 Stat. L., pp. 245–249.

[9] 2 Stat. L., pp. 830, 831.

The Eighth Congress, by joint resolution, recognized gallantry at Tripoli by extending the thanks of Congress, and requesting the President to present medals and swords.[1]

The Seventh Congress,[2] for gallantry of a naval officer, requested the President to present a sword. The joint resolution was approved by the President.

The Sixth Congress gave a medal.[3]

In the Fifty-fifth Congress [4] Commodore George Dewey and his officers and men were thanked by joint resolution.

7336. Managers of the National Home for Disabled Volunteer Soldiers are elected by joint resolution of Congress.—Nine managers for this Home are elected, from time to time as vacancies occur, by joint resolution of Congress.[5] The Secretary of the Senate and Clerk of the House shall send to each of its branches all documents which may be printed and bound by order of either House.[6]

7337. Resignation of member of Board of Managers of National Home for Disabled Volunteer Soldiers.—On January 2, 1891,[7] the Speaker presented to the House the resignation of H. H. Markham, of Los Angeles, Cal., as a member of the Board of Managers of the National Home for Disabled Volunteer Soldiers. The resignation was referred to the Committee on Military Affairs and printed in the Journal.

7338. Vacancies and appointments on the Board of Regents of the Smithsonian Institution.—On March 7, 1867,[8] the Speaker [9] announced that he had appointed Mr. Luke P. Poland, of Vermont, a regent of the Smithsonian Institution in place of Mr. Patterson, who had been elected to the Senate.

7339. On February 26, 1883,[10] Mr. George F. Edmunds, of Vermont, in a letter to the Senate, declined the appointment of regent of the Smithsonian Institution. The letter was read and a successor appointed, without any question being raised as to the consent of the Senate to the declination.

7340. Resignation and expulsion from the Board of Regents of the Smithsonian Institution.—On January 17, 1855,[11] the Speaker laid before the House, by unanimous consent, a letter from Rufus Choate resigning to the two Houses of Congress [12] his office as regent of the Smithsonian Institution. As this letter raised certain questions as to the management of the institution, the House referred it to a select committee.

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[1] 2 Stat. L., pp. 346, 347.

[2] 2 Stat. L., p. 198.

[3] 2 Stat. L., p. 87.

[4] 30 Stat. L., p. 742.

[5] Revised Statutes, section 4826. This joint resolution is approved by the Executive. (29 Stat. L., p. 472.)

[6] Revised Statutes, section 4837.

[7] Second session Fifty-first Congress, Journal, p. 92; Record, p. 900.

[8] First session Fortieth Congress, Journal, p. 21; Globe, p. 25.

[9] Schuyler Colfax, of Indiana, Speaker.

[10] Second session Forty-seventh Congress, Record, p. 3261.

[11] Second session Thirty-third Congress, Journal, p. 189; Globe, p. 282.

[12] A copy of this letter was also laid before the Senate. (See Globe, p. 302.)

7341. In 1863[1] the House and Senate passed a joint resolution (S. R. 126) expelling George E. Badger from the Board of Regents of the Smithsonian Institution and appointing Louis Agassiz in his place. It appeared from the debates that Mr. Badger adhered to the cause of the Confederate States.

7342. The Congressional Directory is compiled under direction of the Joint Committee on Printing.—The Congressional Directory, containing a list of Members and Senators, with a short biographical sketch of each, and other useful information relating to the Government, is compiled each session under the direction of the Joint Committee on Printing, for distribution and sale.[2]

7343. References to statutes providing for various indexes.—An index of the acts passed at each session of Congress is prepared under the direction of the Department of State.[3] At the close of each session of Congress the committee reports of House and Senate are indexed and bound; one copy is deposited in the library of each House and one in the committee room whence the reports emanated.[4] The general index of the Journals, begun in 1878,[5] was discontinued in 1891.

7344. The use of the Government telegraph lines at the Capitol is regulated by statute.

References to statutes regulating the distribution of seeds by Members through the Agricultural Department.

Members may use the Government telegraph lines[6] connecting the Departments with the Capitol only for public business.[7]

The distribution of seeds by Members is made through the Agricultural Department in accordance with provisions of law.[8]

7345. Relations of the House and its Members to the Military and Naval academies.—Three Members of the House are designated by the Speaker at the session preceding the annual examination of cadets at the Naval Academy as visitors at that institution.[9] In the same manner three visitors are appointed to attend the examinations at the Military Academy.[10]

As soon after the 5th of March each year as possible the Secretary of the Navy notifies each Member and Delegate of any vacancy that may exist in the naval cadetship for his district, and a nomination must be made for the vacancy by the first day of June of that year, or the Secretary of the Navy will be required to appoint from the district where the vacancy exists.[11] The law of 1903 made a

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[1] Third session Thirty-seventh Congress, Journal, p. 730.

[2] Revised Statutes, sections 77 and 3801; 22 Stat. L., p. 642; 32 Stat. L., p. 583.

[3] 18 Stat L., p. 401.

[4] 24 Stat. L., p. 346.

[5] Second session Forty-fifth Congress, 25 Stat. L., p. 709.

[6] This line was established and its operation authorized on December 4, 1873. (First session Forty-third Congress, Journal, p. 58; Record, p. 70.)

[7] 18 Stat. L., p. 20.

[8] 28 Stat. L., pp. 269, 270; 29 Stat. L., p. 106, and other volumes.

[9] 20 Stat. L., p. 290.

[10] Revised Statutes, section 1327.

[11] 28 Stat. L., pp. 136, 137.

temporary increase to continue until 1913 of the number of cadets allotted to each Representative, Delegate, and Senator, giving to each the yearly appointment of two instead of one.[1]

At the Military Academy the corps of cadets is composed of one from each Congressional district, one from each Territory, one from the District of Columbia, and ten at large. Cadets are usually appointed one year in advance of their admission.[2]

7346. With certain exceptions all persons not entitled to the privileges of the floor during a session are excluded from the floor of the House at all times.

Accredited members of the press having seats in the gallery and employees of the House may go upon the floor of the House until within fifteen minutes of the hour of meeting.

Present form and history of section 2 of Rule XXXIV.

Section 2 of Rule XXXIV provides:

> There shall be excluded at all times from the Hall of the House of Representatives and the cloakrooms all persons not entitled to the privilege of the floor during the session, except that until fifteen minutes of the hour of the meeting of the House persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of Members, by card or in writing, may be admitted.

This rule was reported from the Committee on Rules on January 22, 1902,[3] by Mr. John Dalzell, of Pennsylvania, and was agreed to by the House on the same day.

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[1] 32 Stat. L., pp. 1197, 1198.

[2] Revised Statutes, sections 1315–1319.

[3] First session Fifty-seventh Congress, Record, pp. 870, 871.

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