

Chapter CCIV.¹

PRIVILEGE OF THE HOUSE.

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571. A resolution alleging that the rights and dignity of the House have been invaded by the Executive presents a question of privilege.

On February 23, 1909,² Mr. Frank Clark, of Florida, claiming the floor for a question of privilege, submitted the following:

Whereas on the 26th day of January, A. D. 1909, this House of Representatives being then in session at the Capitol, and having under consideration in Committee of the Whole House on the state of the Union H.R. 26305, in “general debate,” the Hon. Henry T. Rainey, a Representative in the Congress of the United States from the State of Illinois, then and there delivered from his place on the floor of the House an address in which he discussed the manner in which the Government of the United States acquired rights on the Isthmus of Panama, with relation to the proposed canal across said Isthmus; the manner of consummating the contract for the purchase of the canal property; the conduct of certain persons, official and nonofficial, connected therewith; and the general subject of the acquirement, construction, and management of the said Panama Canal, as well as the acts and doings of the said persons in and about the same; and

Whereas on the 29th day of January, A. D. 1909, in the open session of the House of Representatives, the same being in Committee of the Whole House on the state of the Union, and having under consideration in “general debate” H.R. 26915, the said Hon. Henry T. Rainey, a Representative as aforesaid, again further addressed the House in Committee of the Whole as stated, on the subject aforesaid, and in continuation of his address so delivered as aforesaid on the said 26th day of January, A. D. 1909; and

Whereas on the 9th day of February, A. D. 1909, the Hon. Robert Bacon, Secretary of State of the United States, caused to be composed, written, printed, and published in certain and numerous newspapers, which are published in the city of Washington and elsewhere throughout the United States, and which are of general circulation in the United States and elsewhere, as well as making the same by filing therein a part of the permanent records of the State Department of the United States, a certain document alleged to be in reply to a communication said to have been

¹Supplementary to Chapter LXXXI.

²Second session Sixtieth Congress, Record, p. 2950.

received by him, the said Hon. Robert Bacon, Secretary of State as aforesaid, and to have been written by some official of the Government of the Republic of Panama, taking exception to and complaining of the said addresses of the said Hon. Henry T. Rainey, a Representative as aforesaid, in behalf of his Government, the said Republic of Panama, and which said document so composed and published by the said the Hon. Robert Bacon, Secretary of State as aforesaid, as the same was published and appeared in the Washington Post, a daily newspaper published at the city of Washington, D.C., in its issue of the 10th day of February, A. D. 1909, and which said newspaper has and enjoys a wide circulation throughout the United States, was and is as follows, viz:

“SIR: The President directs me to say in answer to your communication of February 9, 1909, that the remarks complained of were made in the House of Representatives. Under our Constitution we have, for what we regard wise reasons, provided that for any speech or debate in either House they (the Senators and Representatives) shall not be questioned in any other place.

“This provision we regard as essential to secure full liberty of speech to the elected representatives of the people; and we feel that such liberty of speech should be preserved even though it may occasionally be abused.

“It ought to be understood that the utterances of individual Members are not to be taken as expressing the views either of the Government of the United States or the House in which such remarks are made. As regards the statement in question made by Representative Rainey, the President attached so little importance to him that he had not even read them until your protest came. He has now read them, and none of them concerning which he has knowledge have any foundation in fact.

“The President wishes me to recall to your attention that the attack was made even more upon Americans, including the President-elect, than upon the officials of Panama. The President need hardly say that this Government disavows all responsibility for the remarks of Representative Rainey, to which you refer.

“Accept, sir, the renewed assurance of my high consideration.

“ROBERT BACON.”

Now, therefore, be it resolved:

First, That the matter of the said communication of the said the Hon. Robert Bacon, Secretary of State of the United States, to the said official of the Government of the Republic of Panama and a matters connected therewith, be, and the same is hereby, referred to the Committee on the Judiciary of the House of Representatives for the careful consideration of the said committee to determine:

(1) If the said communication of the said Hon. Robert Bacon, Secretary of State as aforesaid, constitutes a breach of the privileges of a Member of the House and of the House, violating either in letter or spirit section 6 of Article I of the Constitution of the United States, where it is provided that a Representative in Congress “shall not be questioned in any other place” for “any speech or debate” in the House.

(2) If there has been such violation, what remedy, if any, exists.

(3) If there has been such violation and it is found that no remedy exists, to suggest some plan to prevent such violations and to punish them in the future.

Second, That the said Committee on the Judiciary make full report herein to the House of Representatives within five days from the reference to said committee of this resolution.

Mr. Jesse Overstreet, of Indiana, made the point of order that the resolution did not present a question of privilege.

The Speaker ¹ said:

The Chair has listened carefully to the reading of the preamble and the resolution. It seems to the Chair that if a question of privilege be presented at all by this resolution, it is presented in the communication by the Secretary of State by direction of the President to another government. It is true that a Member of the House shall not be called in question in the performance of his duty. As to what is meant by being “called in question” is a matter that the House must

¹Joseph G. Cannon, of Illinois, Speaker.

determine for itself when the matter is presented by proper resolution. The Chair takes it that a citizen might criticize the remarks of a Member of the House, from a friendly or an unfriendly standpoint, without violating the privileges of the House.

In this case neither the Secretary of State nor the President has sent any communication to the House. It has referred in answering the communication from a foreign government to the words spoken by a Member of the House. If the Secretary of State, as an individual, had made this criticism, the Chair thinks it is entirely possible that there would have been no question of privilege presented, or if in a newspaper editorial such a remark had been made touching the speech of a Member, the Chair very much doubts whether it would present a question of privilege.

There are some precedents, however, where more than one Speaker has submitted the matter to the House as to whether a question of privilege is stated in the resolution. The Chair prefers in this case not to pass upon the point of order, sustaining the same, but believes it would be better to take such action as it seems proper by overruling the point of order; and whether a question of privilege is involved, or even a shadow of a question of privilege, will be for the House to determine. Therefore, the Chair overrules the point of order.

On motion of Mr. Sereno E. Payne, of New York. the resolution was laid on the table, yeas 188, noes 121.

572. Consideration of a contested-election case presents a question of high privilege which takes precedence of a question involving the privilege of the House generally.

On May 27, 1922,¹ Mr. Royal Johnson, of South Dakota, claimed the floor for a question of privilege relating to the integrity of the procedure of the House.

Simultaneously, Mr. Robert Luce, of Massachusetts, from the Committee on Elections No. 2, asked for the consideration of the report of that committee on the contested-election case of *Campbell v. Doughton*.

The Speaker² said:

The gentleman from Massachusetts, Mr. Luce, is now claiming recognition for the purpose of presenting a contested election case.

According to endless precedents a contested-election case is the highest privilege of the House. Granting for the sake of argument that the contention of the gentleman from South Dakota is correct, it would certainly not give him the right to bring it up now in opposition to a contested-election case. Therefore, and on that account, the Chair declines to recognize the question of privilege.

573. A motion relating to the introduction of bills without authorization was entertained as a question of privilege.

On February 24, 1911,³ Mr. James A. Hamill, of New Jersey, rose to a question of the privilege of the House and moved that the bills (H. R. 27838 and H.R. 27839) and the joint resolution (H. J. Res. 244), which had been introduced under his name without his sanction or knowledge, be stricken from the files of the House.

The Speaker⁴ recognized Mr. Hamill to present the motion as a matter of privilege, and the question being taken, the motion was agreed to and the bills were stricken from the files of the House.

¹ Second session Sixty-seventh Congress, Record, p. 7808.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ Third session Sixty-first Congress, Journal, p. 361; Record, p. 3311.

⁴ Joseph G. Cannon, of Illinois, Speaker.

574. A resolution authorizing an investigation of the propriety of introducing bills in the name of more than one Member was held to involve a question of privilege.

On February 10, 1909,¹ Mr. John J. Fitzgerald, of New York, presented, as a question of privilege, the following preamble and resolution:

Whereas it appears from the Record of February 9, 1909, that House Resolutions Nos. 548 and 551 purport to have been introduced by a number of Members of the House; and

Whereas it is a question of serious doubt whether such a practice is in conformity with and is authorized under the parliamentary procedure governing the control and the conduct of the business of this House; and

Whereas it is desirable to determine whether bills or resolutions may be presented to the House in the name of more than one Member:

Resolved, That the Speaker be, and he is hereby, authorized and directed to appoint a select committee of five Members of the House to investigate and report as to the right of Members to present bills or resolutions as provided by the rules with the name of more than one Member of the House attached thereto.

The Speaker² recognized Mr. Fitzgerald to offer the resolution as privileged, and the House agreed to the resolution, on division, yeas 120, noes 6.

Whereupon, Mr. Charles L. Underhill, of Massachusetts, asked if the rule also applied to criticism on the floor of remarks made by Members of the other body outside the Chamber. The Speaker answered in the negative.³

575. A resolution proposing an investigation of improper reporting of bills by a committee of the House was entertained as raising a question of privilege.

An exceptional instance in which bills relating to the same subject and proposing the enactment of conflicting provisions of law were reported simultaneously with favorable recommendation, followed by announcement in reporting of a rule providing for their consideration that it was not to be taken as a precedent.

On April 29, 1926,⁴ Mr. Clarence Cannon, of Missouri, rising to a question of the privilege of the House, offered the following resolution:

Whereas the Committee on Agriculture has reported simultaneously, with favorable recommendation, the bills H. R. 11603, H. R. 11606, and H. R. 11618, relating to the same subject, having the same purpose, and proposing the enactment of conflicting provisions of law; and

Whereas such action is without precedent, is not in conformity with the practice of this House, and is not authorized under the parliamentary procedure governing the control and conduct of the business of this House; and

Whereas a far-reaching question of parliamentary procedure is involved, and a precedent of this importance should not lightly be established, and it is therefore desirable to determine whether standing committees may report simultaneously for the consideration of the House more than one bill dealing with substantially the same subject matter:

Resolved, That the Speaker be, and he is hereby, authorized and directed to appoint a select committee of five Members of the House to investigate and report not later than April 30, 1926, as

¹ Second session Sixtieth Congress, Record, p. 2150.

² Joseph G. Cannon, of Illinois, Speaker.

³ Under the prevailing practice, it has been considered permissible to criticize on the floor statements of Members of the other body given to the press.

⁴ First session Sixty-ninth Congress, Record, p. 8455.

to the right of a committee to report with favorable recommendation, under the provisions of the rules, more than one bill on the same subject, having in view the same purpose and proposing conflicting legislative enactments.

Mr. Carl E. Mapes, of Michigan, made the point of order that the resolution was not privileged.

The Speaker¹ overruled the point of order and held that the resolution presented a question of privilege and was entitled to immediate consideration.

Subsequently² Mr. Bertrand H. Snell, of New York, in reporting from the Committee on Rules a resolution providing for the consideration of bills referred to in the resolution, said:

Mr. Speaker, the rule just read by the Clerk is somewhat different from the average rule presented by the Rules Committee. Let me say in the beginning that I do not want this rule to be considered as a precedent. The Rules Committee has gone further in trying to meet the wishes of the Agricultural Committee than it has ever done since I have been a Member of this House. We have gone further than I think the committee would do on a report from any other committee in the House. We have done it because each Member is deeply interested in agriculture; we recognize it as a basic industry, and we are willing and anxious to do everything in our power to aid in passing legislation that will be a definite benefit to the agricultural interests of the country. It was for this reason that we have gone beyond the original precedents in drafting this rule for the consideration of this legislation.

576. Charges published as newspaper advertising that “Bad bills pass without reading” and “Steals are attempted” were held so to reflect upon the integrity of the proceeding of the House as to support a question of privilege.

A telegram reprinted in a newspaper charging that a Member had been influenced in his official acts by unworthy motives was held to involve a question of personal privilege.

In debating a question of personal privilege a Member may not discuss extraneous or irrelevant matters.

On June 2, 1930³ following the administration of the oath to Mr. Thomas L. Blanton, of Texas, who had been elected to fill an unexpired term, Mr. Robert H. Clancy, of Michigan, submitted the following resolution as involving a question of the privilege of the House:

Resolved, That the paid advertisement appearing in the Abilene Daily Reporter, a newspaper of Abilene, Tex., on May 19, 1930, setting forth the following, vitally affects the rights of the House collectively, its dignity, and the integrity of its proceedings; and second, the rights, reputation, and conduct of Members, individually in their representative capacity:

“SERVICE OR SENTIMENT—VOTE MAY 20 FOR YEAR’S SERVICE—THE LAST FEW WEEKS OF EVERY SESSION
OF CONGRESS

“Toward the close of each session of Congress many Members leave Washington. Those who remain become careless, with minds preoccupied with approaching campaigns and thoughts of home. During this period waste and extravagance run rampant, and bad bills of every kind

¹Nicholas Longworth, of Ohio, Speaker.

²Record, p. 8691.

³Second session Seventy-first Congress, Record, p. 9892; Journal, p. 14.

pass without reading. Rules are suspended. Junketing trips abroad are arranged. It is at this time, more than any other, there is urgently needed on the floor at all times some Member to stand guard and watch the interests of the people.

“BLANTON ON THE FLOOR AT ALL SESSIONS

“When Governor Moody called this special election, why was it that the press reported a howl from some leaders in Washington? They believed that the people would return Blanton to Congress. They knew he would upset some of their riotous spending and their arrangements for summer junkets.

* * * * *

“BLANTON NEEDED ON GUARD IN CLOSING WEEKS OF THIS CONGRESS

“If you elect Blanton on May 20, he will be sworn in on May 22. He will take his seat immediately. He will begin functioning immediately. He knows the rules and precedents as well as any other Member. He knows how to stop and kill steals when they are attempted. And he will attend the special session contemplated by Hoover in September and the regular session from December 1, 1930, to March 4, 1931. And during this time the 500,000 people of this district will have a man of experience to attend to their business with the several hundred bureaus of Government.”

Resolved further, That the Speaker appoint a select committee of three Members of the House and that such committee be instructed to inquire into the above-mentioned charges, and for such purposes it shall have the power to send for persons and papers and enforce their appearance before said committee and to administer oaths and shall have the right to report at any time what action should be taken.

Mr. William H. Stafford, of Wisconsin, made the point of order that the resolution did not present a question of privilege.

After debate, the Speaker¹ ruled:

The question is whether these quoted statements form the basis for a question of privilege.

Rule 9 provides as follows:

“Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.”

Query. Does this statement affect the integrity of the proceedings of the House; that is, the words—

“During this period waste and extravagance run rampant and bad bills of every kind pass without reading.”

And in another place—

“He, Mr. Blanton, knows how to stop and kill steals when they are attempted?”

The only precedent of which the Chair is aware occurred on January 3, 1917, when Mr. Wood, of Indiana, rose to a question of privilege on some newspaper statements of Thomas W. Lawson, of Boston, in which, among other things, he used this phrase:

“The good old Capitol has been wallowing in Wall Street leaks for 40 years, wallowing hale and hearty.”

The gentleman from Illinois, Mr. Mann, supported it on the ground that this affected privileges of the House, and the Speaker so held.

It seems to the Chair that the statements in the advertisement reflecting on the integrity of the proceedings of the House are at least as bad as those of Mr. Lawson. The Chair therefore holds that the resolution is privileged.

¹Nicholas Longworth, Speaker.

Thereupon, Mr. Clancy requested recognition and submitted as involving a question of personal privilege a telegram from Mr. Blanton appearing in a Texas newspaper, as follows:

Until governor's commission arrives a new Member can qualify only by unanimous consent; hence any Member can object. Clancy is exercising long-existing grudge. In former Congresses I blocked several of his wasteful, extravagant measures, and he retaliates by depriving me of remuneration for enormous district business I am now performing.

The Speaker held the matter to involve a question of personal privilege and recognized Mr. Clancy to debate it.

In the course of his remarks Mr. Clancy referred to extraneous matters and Mr. John N. Garner, of Texas, raised a question of order.

The Speaker ruled:

The Chair thinks the gentleman from Michigan should confine himself to the question of privilege which pertains to himself alone.

The gentlemen from Michigan should confine himself to questions which attribute wrongful motives to himself. The other circumstances are entirely extraneous, and the gentleman from Michigan will confine himself to his own personal privilege.

577. Lack of authority to convene a committee in the absence of the chairman having prevented the consideration of legislation, a resolution directing the committee to meet at a designated time was held to involve a question of the privilege of the House.

On January 29, 1931,¹ Mr. John E. Rankin, of Mississippi, offered, as involving the privilege of the House, the following resolution:

Whereas the chairman of the Committee on World War Veterans' Legislation is unavoidably absent on account of illness and unable to be present and preside over said committee; and

Whereas there is no one else authorized to act for him in calling said committee together and presiding over its deliberations; and

Whereas there are pending before that committee various and sundry bill providing for relief for the disabled veterans of the World War, their widows, and orphans; and

Whereas it is vitally necessary that said committee meet and consider such legislation without delay: Therefore be it

Resolved, That the members of the said Committee on World War Veterans' Legislation be, and they are hereby, authorized and directed to meet in the committee room now provided for said committee on Tuesday, February 3, 1931, at 10 o'clock a. m., to elect a temporary chairman and consider the legislation pending before said committee.

Mr. Carl E. Mapes, of Michigan, questioned the privilege of the resolution.

The Speaker² ruled:

The Chair is inclined to think that inasmuch as this committee is a legislative agent of the House and the question deals with legislative procedure, it is a matter of privilege.

The Chair desires to emphasize the fact that he has said repeatedly it is always within the power of the House to call a meeting of a committee if it so desires under such circumstances as these.

¹Third session of Seventy-first Congress, Record, p. 3481.

²Nicholas Longworth, of Ohio, Speaker.

578. Charges that Members of a committee were holding secret meetings or excluding other Members from the committee conferences were held not to involve a question of privilege.

A question of the privilege of the House may not be presented except by resolution.

On July 2, 1913,¹ Mr. Charles A Lindbergh, of Minnesota, claimed the floor for a question of personal privilege on the ground that the majority members of the Committee on Banking and Currency, of which he was a member, were holding meetings from day to day from which he was excluded.

A point of order by Mr. Thomas W. Hardwick, of Georgia, that no question of privilege was involved, was sustained by the Speaker.²

Mr. Lindbergh then submitted that the holding of secret meetings of a committee from which other members of the committee were excluded infringed upon the privilege of the House.

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

Mr. Speaker, I make the point of order that no matter is before the House at the present time. A matter of personal privilege can be brought before the House without a preliminary resolution, but a matter involving the privileges of the House, a matter of high privilege, must be brought before the House in the form of a resolution, not in the form of a statement.

The Speaker sustained the point of order.

Thereupon Mr. Lindbergh sent to the desk a preamble and resolution providing for the appointment of a committee to investigate and report if such meetings were being held.

Mr. John J. Fitzgerald made the point of order that the resolution did not present a question of privilege.

The Speaker said:

And the Chair rules that there is no question of privilege of any character in it whatsoever.

579. An alleged violation of the rule relating to admission to the floor presents a question of privilege.

The privileges of the floor do not extend to departmental employees assisting committees in the preparation of bills.

On December 10, 1924,³ when the House concluded the consideration of the bill (H. R. 2688) reported by the Committee on Naval Affairs and providing for sundry matters affecting the naval service, Mr. Tom Connally, of Texas, claiming the floor for a question of privilege, said:

I have just been informed that this afternoon in the course of the deliberation on this bill the Naval Committee has had an admiral of the Navy here on the floor of the House advising, helping, and directing this legislation, and I want to inquire if that is true if the rules do not—

The Speaker⁴ said:

The Chair is responsible for it. The Naval Committee asked the Chair if they could bring—the Chair did not know it was an officer of the Navy, but a civilian—somebody familiar with the

¹First session, Sixty-third Congress, Record, p. 2307.

²Champ Clark, of Missouri, Speaker.

³Second session Sixty-eighth Congress, Record, p. 433.

⁴Frederick H. Gillett, of Massachusetts, Speaker.

bill on the floor. The Chair said they could. The Chair think it is the custom of a committee to bring somebody who is familiar—

Mr. CONNALLY interposed:

I was not talking about a civilian, but an admiral of the Navy and my understanding is the Judge Advocate of the Navy has been here this afternoon.

Mr. Fred. A. Britten, of Illinois, from the Committee on Naval Affairs, explained:

By direction of the committee on yesterday I asked the Speaker of the House if that committee might have the services of a civilian employee of the Navy Department to help us in the consideration and passage of the reserve bill, which is a very complicated bill, and the Speaker said that if we did not have a clerk on the floor we were entitled to bring in a Government employee.

The following colloquy was had:

Mr. CONNALLY of Texas. I ask the gentleman if he knows whether or not Admiral Latimer has not been here on the floor during the progress of this naval bill this afternoon?

Mr. BRITTEN. He has not.

Mr. CONNALLY of Texas. He was in the cloakroom?

Mr. BRITTEN. Yes; he was called up twice on my account.

Mr. CONNALLY of Texas. That is part of the floor of the House.

Mr. BRITTEN. A gentleman on that side asked if an amendment he had prepared would be acceptable to me. I said I thought the language of the bill was best but that I would ask the Judge Advocate General of the Navy, Admiral Latimer.

Mr. CONNALLY of Texas. He is not a civilian?

Mr. BRITTEN. No.

Mr. CONNALLY of Texas. That is not the man to whom the Speaker referred. I am not objecting to a civilian, but I am talking about admirals being on the floor of the House. My information is that one of the employees of this House said he was on the floor and in the cloakroom—

Mr. BRITTEN. He was in the cloakroom, but not on the floor or the aisles of the floor.

Mr. CONNALLY of Texas. The cloakroom is generally recognized as part of the Chamber.

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

Mr. Speaker, of course it was a violation of the rules of the House for anyone to be in the cloakroom as much as to be upon the floor, because the rule applies to the cloakroom just as it applies to the floor of the House.

The Speaker said:

The Chair was asked yesterday by one of the members of the committee if they could have on the floor a civilian employee of the Navy who had aided them in drafting the bill. The Chair, not remembering that that was contrary to the rules and knowing that it had often been done, said it could be done here. But hereafter, if it is the desire of the House, the Chair will undertake to enforce that rule strictly.

580. A resolution charging conspiracy to influence Members of Congress improperly was considered as a matter of privilege.

In presenting a question of the privilege of the House, a Member is required to submit a resolution and may not proceed in debate until the resolution has been read at the desk.

A decision by the Speaker defining the term "representative capacity."

Mere criticism of a Member, even though in his representative capacity, does not present a question of privilege.

On March 1, 1910,¹ Mr. Halvor Steenerson, of Minnesota, claiming the floor for a question of privilege, sent to the desk a newspaper article, saying:

I think it will be necessary, in order to understand the charge made, to read the part of the article that I have marked. I have marked some parts, and other parts I have marked out. For instance, there is a table of wages. I have marked that out. Of course I can insert the whole thing in the Record, and I will refer to each charge in my remarks, but I think it has already appeared unquestionably that this attacks me in my capacity as a Member of Congress and as a member of the Committee on the Post Office and Post Roads, and my official fidelity and honesty is questioned.

Mr. Sereno E. Payne, of New York, made the point of order that a question of privilege was not involved. On suggestion of Mr. Payne, the matter was deferred until March 3,² when the Speaker³ rendered the following decision:

On Tuesday last the gentleman from Minnesota, Mr. Steenerson, arose to a question of personal privilege, and after some discussion, by unanimous consent, the matters involved in the alleged question of personal privilege were printed in the Record of Tuesday. The gentleman from New York, Mr. Payne, interposed the point of order that the matter therein contained does not constitute a question of personal privilege. In the meantime the Chair has very carefully examined in the Record the statements or allegations covering the alleged question of personal privilege, and the Chair is ready to rule upon that question.

The rule of the House defines questions of personal privilege as those affecting—"the rights, reputation, and conduct of Members, individually, in their representative capacity only."

The meaning of the words "representative capacity" involves the whole question at issue. Is a letter, written by a Member to a private individual to explain acts of the Member in his "representative capacity," itself an act in that capacity? If it is, then any other act of his in explanation outside the House, as a campaign speech in his district, is an act in the "representative capacity." It seems to the Chair that to extend the right to occupy the floor of the House as to so wide a range of controversy as that between the Member and the newspapers or between the Member and the public generally as to his letters or his addresses outside the House would vastly encumber the proceedings of the House.

As to the portions of the article in question referring to acts of the gentleman from Minnesota, Mr. Steenerson, in his "representative capacity"—that is, in relation to his acts on the floor or in a committee—it seems to the Chair that there is nothing which goes further than a mere criticism of such acts. There is no charge, so far as the Chair finds, which amuses the gentleman from Minnesota of corrupt acts or any other conduct implying more than error of judgment.

The precedent of 1890, to which the gentleman from Minnesota referred the Chair, appears, on examination, to have been a case wherein a Member read in Committee of the Whole a letter from a citizen assailing other Members for words spoken in debate. The Chair held that one of the assailed Members was entitled to the floor on a question of privilege. That case was therefore very different from that presented by the gentleman from Minnesota.

The Chair now holds that the gentleman from Minnesota does not present a question of personal privilege.

Whereupon Mr. Steenerson charged that an organization was attempting to influence Members of Congress improperly in favor of ship subsidies.

The Speaker said:

So far as the gentleman has proceeded he is stating a question that might affect the House generally, but a question of general privilege is not a question of personal privilege. And in such

¹ Second session Sixty-first Congress, Record, p. 2555.

² Journal, p. 871; Record, p. 2681.

³ Joseph U. Cannon, of Illinois, Speaker.

cases the practice of the House has been that the gentleman should present to the House a written proposition for action.

Mr. Steenerson stated that he would submit a resolution at the close of his remarks and was proceeding in debate.

The Speaker interposed:

And the Chair will suggest that the gentleman would withhold until he is prepared to so present the matter.

Mr. Steenerson said:

The gentleman is prepared to submit a resolution at the end of his remarks. This not only affects the House generally but it affects me individually as a Member of this House and my action upon legislation pending herein.

The Speaker ruled:

The gentleman, under rules of the House, in the opinion of the Chair, before he makes his remarks touching a question of general privilege should send to the Clerk's desk and have read the foundation therefor. The gentleman will at once on mere suggestion see the propriety of that well-established practice.

Thereupon Mr. Steenerson submitted a preamble and resolution thereon.

Mr. James R. Mann, of Illinois, made the point of order that the resolution did not present a question of privilege.

The Speaker held:

While the written statement which has been read at the Clerk's desk is exceedingly general, upon allegation, "it is alleged," and so forth, amounting, perhaps, to common rumor, yet there is one allegation in this statement, as follows:

"And whereas it is charged in the publications purporting to be issued by said Merchant Marine League, and also in the Texas Farmer, a newspaper published at Dallas, in the State of Texas, that large sums of money and corruption funds have been raised by foreign shipowners and ship companies, for the purpose of corrupting and influencing Members of Congress against said ship-subsidy legislation, and which sums and funds are now being used to improperly influence Members of Congress on said subjects"—

And so forth. Then follows the proposed resolution. It may be true, as suggested by the gentleman from Wisconsin, Mr. Cooper, that if there be a conspiracy either upon the part of foreign shipowners or the Merchant Marine League to affect legislation, if such conspiracy in fact existed, the courts of law would have jurisdiction to proceed against parties who had formed the conspiracy, yet the allegation here is that these actions, on the one hand by the foreign shipowners for one purpose, and the Merchant Marine League for another purpose, as indicated in the statement. The most specific allegation is touching the foreign shipowners.

In a later practice the Chair has made a preliminary decision, and then the House, upon that decision, has taken such action touching further inquiry or investigation as it deemed proper, and therefore the Chair overrules the point of order.

581. A resolution for the investigation of an organization alleged to have raised money to influence legislation was considered as a matter of privilege.

On December 22, 1913,¹ Mr. S. F. Prouty, of Iowa, submitted, as presenting a question of privilege, the following preamble and resolution:

Whereas on Saturday, December 20, 1913, there appeared in the Washington Times, a paper published in the city of Washington and having a very large circulation throughout the United States, an article headed in large type clear across the front page, the following:

“NATION-WIDE FIGHT ON CRISP-BILL BACKERS—DISTRICT CHAMPIONS UNITE IN EFFORT TO PREVENT
REELECTION.

“Plans for a concerted fight against the reelection of the Members who voted for the measure are already under way. Their respective districts will be flooded with letters protesting against their unpatriotic stand toward the National Capital. Voters throughout the country will be appealed to in the hope that Congressmen will be urged to take the welfare of this District at heart and aid in making the capital city of the United States the queen metropolis of the world. Members of the executive committee of the joint committee of Chamber of Commerce, the Board of Trade, and the Retail Merchants’ Association have been notified by Chairman William H. Singleton of the committee that they must be ready at a moment’s notice to answer a call to meet and determine on some concerted action immediately;” and

Whereas said alleged threat, if carried into effect, would menace the freedom of action of the Members of this body in the discharge of their legislative duties: Therefore be it

Resolved by the House of Representatives, That the Committee on the District of Columbia, or a subcommittee thereof appointed by the chairman, be instructed and empowered to make a full and thorough investigation of the truth of the facts set out and alleged in said article.

That said committee or subcommittee be instructed and empowered to ascertain whether there is now or at any time in the past has been any organization in the District of Columbia or elsewhere that has or has had as its purpose or object the securing or preventing of legislation affecting the relation between the Federal Government and the District of Columbia or the citizens or institutions thereof;

That said committee or subcommittee be instructed and empowered to ascertain whether there is now being raised or whether at any time in the past there has been raised any money by the citizens, residents, property owners, corporations, or organizations of Washington or the District of Columbia for the purpose of influencing, either directly or indirectly, legislation; and if such money has been raised in the past, to ascertain for what purpose and in what manner it has been used; and if any money is now being raised for that purpose the committee or subcommittee shall ascertain in what manner it is proposed to use the same;

The said committee or subcommittee be instructed and empowered to ascertain whether there is now or in the past has been maintained a lobby in the city of Washington for the purpose of influencing or affecting legislation or appropriation for and on behalf of the District of Columbia or the people, corporations, or institutions thereof, and said committee or subcommittee will ascertain methods and agencies employed for the purpose of affecting said legislation;

That said committee or subcommittee be, and is hereby, authorized to issue subpoenas and call for books, papers, and records; that the chairman of said committee, or any member thereof in his absence, is hereby authorized to administer oaths and to compel the attendance upon the committee of any person or persons whom said committee may wish to interrogate relative to the matters set out in this resolution;

That said committee or subcommittee in conducting this investigation is authorized to use the official committee stenographers.

Upon the conclusion of its investigation the said committee shall report fully to this House the results of its investigation and findings thereon.

Mr. James R. Mann, of Illinois, made the point of order that the resolution did not involve a question of privilege.

¹Second session Sixty-third Congress, Record, p. 1370.

The Speaker¹ overruled the point of order.

On motion of Mr. John J. Fitzgerald, of New York, the resolution was referred to the Committee on Rules, yeas 171, noes 86.

582. A resolution charging that a Member's action in his representative capacity had been influenced by support received in his election to the House was presented as a question of privilege.

A resolution reflecting on the official conduct of a Member of the House was expunged from the Record.

Proceedings expunged from the Record by order of the House are not journalized.

On August 24, 1922,² Mr. George Holden Tinkham, of Massachusetts, submitted, as involving the privilege of the House, a resolution and preamble charging Mr. Andrew J. Volstead, of Minnesota, with having received support in his campaign for election to the House from the Anti-Saloon League and having in return supported legislation in which that organization was interested. The resolution requested Mr. Volstead's resignation as chairman of the Committee on the Judiciary, and provided that in event of his failure to resign within 10 days the chairmanship should be considered vacant.

During the reading of the resolution by the Clerk, Mr. Leonidas C. Dyer, of Missouri, made the point of order that the resolution was not privileged. The reading was continued and was completed, and Mr. Dyer moved to expunge the resolution from the Record.

Mr. James R. Mann, of Illinois, inquired if an order expunging proceedings from the Congressional Record operated to expunge such proceedings from the Journal of the House.

The Speaker³ said:

The Chair is informed by the Journal clerk that when the House has ordered anything to be expunged from the Record it is not carried in the Journal.

The question being taken on the motion of Mr. Dyer to expunge the resolution from the Record, on division, it was decided in the affirmative, yeas 141, noes 3.

583. Charges that Members do not vote in accordance with their personal views do not present a question of privilege.

A motion to strike from the Record remarks made in order is not privileged.

On July 15, 1919,⁴ Mr. Thomas L. Blanton, of Texas, rising to a question of privilege of the House, said:

Mr. Speaker, I rise to a question of privilege, the highest privilege of the House. During the debate yesterday on the prohibition enforcement bill, the gentleman from Massachusetts, Mr. Gallivan, used the following language:

"I am opposed to this amendment unless the gentleman from Kentucky will provide that the inspector and agents visit the House Office Building. I shall ask that every Member of

¹ Champ Clark, of Missouri, Speaker.

² Second session Sixty-seventh Congress, Journal, p. 515; Record, p. 11758.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ First session Sixty-sixth Congress, Record, p. 2637.

Congress who votes dry on this proposition be honest to his country and his conscience and that he place in the Congressional Record the amount of liquor that he has saved up for himself either in his home or in his office. * * * I have heard, Mr. Chairman, of Members of this House who have said that they have in their private wine cellars enough liquor to take care of them and their friends for 20 years.”

Mr. Speaker, this is a reflection upon the integrity and the standing of every Member of this Congress. I submit that it is an unwarranted aspersion upon the standing and the integrity and dignity of this House, whose Members are as strictly sober as any 435 men with whom I have ever been associated before.

The Speaker¹ held that a question of privilege was not involved.

Thereupon Mr. Blanton proposed a motion to strike the language quoted from the Record.

The Speaker held the motion was not privileged and declined to recognize Mr. Blanton to offer it.

584. A Senator in debate in the Senate having assailed the Speaker, a resolution declaring the language of the Senator a breach of the privilege of the House was treated as a matter of privilege.

A Member assailed outside the House may reply outside the House without limitation and may reply from the floor of the House if personalities are avoided.

On March 24, 1924,² Mr. Allen T. Treadway, of Massachusetts, rose to a question of privilege and said:

Mr. Speaker, I rise to a question of privilege. The question of privilege is one affecting the rights of the House in its safety, dignity, and integrity, under Rule IX.

In response to a request of the Speaker that the resolution be withdrawn, Mr. Treadway said:

I realize the attitude of the Speaker, and at the same time I do not feel that the membership of the House should yield to his personal wishes. It affects the dignity of the House rather than the individuality of the Speaker, and I claim the right to present the resolution. I regret I can not accept the Speaker's request.

The Speaker³ announced:

The Chair has requested the gentleman to withdraw his question of privilege. The gentleman refuses and the Chair lays the resolution before the House.

After debate, Mr. Treadway withdrew the resolution, and the Speaker, calling a Member to the chair, addressed the House.

At the conclusion of his remarks, in response to a parliamentary inquiry from Mr. John E. Rankin, of Mississippi, the Speaker said:

Well, the Chair thinks, no matter what a person says outside, a Member attacked has a right outside to say what he pleases and has a right also on the floor of the House to answer any argument or attack, provided he does not violate the rule as to personalities. As to them the Chair thinks the rules apply, no matter what the provocation may be.

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² First session Sixty-eighth Congress, Record, p. 4813.

³ Frederick H. Gillett, of Massachusetts, Speaker.

585. Instance wherein permission was given the clerk of a committee and the Clerk of the House, to respond to subpoena or subpoena duces tecum. and to make deposition with proviso that they should take with them none of the files.

On August 23, 1921,¹ Mr. Bertrand H. Snell, of New York, from the Committee on Rules, by direction of that committee, reported, as privileged, the following preamble and resolution:

Resolved, That immediately upon the adoption of this resolution the House shall proceed to the consideration of the following resolution, to wit:

“Whereas in a case of libel now pending in the Circuit Court of Putnam County, Tenn., at Cookeville, styled Cordell Hull against Oscar Clark and Wynne F. Clouse, in which among other questions, the vote of the said Cordell Hull, who was a Member of the Sixty-sixth and prior Congresses, with respect to proposed bonus legislation for the benefit of certain American ex-soldiers and sailors of the World War is involved; and in which also it is the contention of defendants that the vote or votes of said Cordell Hull as a member of the Ways and Means Committee of said House during the second session of the Sixty-sixth Congress in the executive sessions of said committee with respect to the said proposed soldier and sailor bonus legislation, and particularly with reference to the consideration and reporting out by said committee of H. R. 14089, is material to the issues raised in the above-styled case; and in which it is the contention of the plaintiff that if testimony as to his said votes in the executive sessions of said committee is offered it then becomes material for the entire context to be shown in evidence, viz, the various motions, bills considered, questions arising on each, and votes of each member of said committee thereon with respect to all of the amid proposed soldier and sailor bonus legislation and tax measures to pay for same pending before the said committee during the said Sixty-sixth Congress: Now, therefore be it

“*Resolved*, That the clerk of the Ways and Means Committee of the House of Representatives of the Sixty-sixth and Sixty-seventh Congresses of the United States and the Clerk of the House of Representatives be authorized to respond to any subpoena or subpoena duces tecum, or to appear before any person authorized by law to take depositions, at the instance of either party to the above-styled case, but neither of said clerks shall take with him any book, document, or paper on file in his office or under his control or in his possession as such clerk;

“That either of the parties to the above-styled lawsuit have full permission to take the depositions of either or both of the said clerks in respect to any and all phases of the executive and other proceedings of the said Ways and Means Committee in connection with its consideration of each and all the proposed soldier and sailor bonus measures referred to said committee under H. Res. 470 during the Sixty-sixth Congress, including evidence as to all motions made, questions arising, measures considered, and votes of each member thereon, the purpose and effect of each, and to this end permission to either party to the lawsuit aforesaid is given to take copies of any documents or papers in possession or control of either of said clerks so as, however, the possession of said documents and papers by the said clerk or clerks shall not be disturbed, or the same shall not be removed from their place of custody under said clerk or clerks.”

And the previous question shall be considered as ordered on the resolution to final adoption.

Mr. Snell said:

There are several precedents for action of this kind in the House. I shall not take the time to call attention to more than one. This one seems to be exactly the same as what is desired to do at this time. That was in the Forty-second Congress, and it ran as follows:

“*Resolved*, That the clerk of the Committee on the Public Lands be authorized to attach to any deposition he may be required to give in the case of Hovey *v.* Valentine, now pending in the district court at San Francisco, Calif., a copy of the minutes of the proceedings of the Committee on the Public Lands on House bill 1024 (Forty-second Congress), for the relief of Thomas B. Valentine.”

¹First session sixty-seventh Congress, Journal, p. 452; Record, p. 5572.

Therefore the committee thought it was entirely proper to present this resolution at this time.

After discussing the precedent created, the resolution was agreed to—yeas 151, noes 45.

586. A Member, being summoned before a Federal grand jury, presented the matter to the House as a question of personal privilege, expressing readiness to respond in event formal permission was granted by the House.

On May 3, 1926,¹ Mr. Fiorello H. LaGuardia, of New York, rose to a question of personal privilege and said:

Mr. Speaker, on March 24 of this year, during the present session of Congress, I made certain statements on the floor of this House in reference to the enforcement of law in the State of Ohio and in the State of Indiana. Since then there have been some informal statements made to the press, and on my return to my office this morning I found what purports to be a subpoena duces tecum addressed to me calling on me to respond on the 5th of May, 1926, before the United States court in the city of Indianapolis, in violation of my privileges as a Member of this House and in violation of the protection of the House guaranteed under the Constitution of the United States.

This is what I found on my desk to-day, and I ask the Clerk to read it.
There being no objection, the Clerk read:

SUBPOENA TICKET—DUCES TECUM, DISTRICT OF COLUMBIA

TO FIORELLA H. LAGUARDIA,

Room 150, House Office Building.

By virtue of a subpoena issued out of the United States court you are required to be and appear before the said court at Indianapolis at 9 o'clock a.m. on the 5th day of May, 1926, then and there to testify on behalf of the United States in the case of United States grand jury and not to depart without leave.

If you fail to obey such subpoena, you may be fined and imprisoned, as the court may direct.

E. C. SNYDER, *United States Marshal.*

Mr. LaGuardia continued:

I can not obey that subpoena without the permission of this House. I will say that there is not a person in the Department of Justice here in Washington from the Attorney General down who will say I have information which is not in the possession of the authorities in Indianapolis, and from which they can obtain primary evidence, or that my presence in Indianapolis is required. If any Member of the House introduces a resolution granting me permission to go, I will not resist it.

No resolution was offered and no further record appears.

587. No officer or employee of the House may produce before a court, either voluntarily or in obedience to a subpoena duces tecum, any paper from the files without permission of the House first obtained.

The Clerk of the House having been subpoenaed to produce before the Supreme Court of the District of Columbia certain papers from the files, reported to the House, and failing to receive permission disregarded the order of the court.

A resolution authorizing the Clerk of the House to produce papers requested in a subpoena duces tecum is presented as a matter of privilege,

¹First session Sixty-ninth Congress, Record, p. 8606.

but such privilege is destroyed by incorporation in the resolution of extra-neous and unprivileged matter.

A motion may be withdrawn pending action thereon.

On February 17, 1927,¹ the Speaker laid before the House the following communication:

HOUSE OF REPRESENTATIVES,
CLERK'S OFFICE
Washington, D.C., February 16, 1927.

HON. NICHOLAS LONGWORTH.

House of Representatives.

My DEAR MR. SPEAKER: I beg to inform you that I have received from the Supreme Court of the District of Columbia subpoenas duces tecum directed to me as Clerk of the House of Representatives commanding me to appear before Circuit Court, Division No. 1, on the 15th and 16th days of February, 1927, at 10 o'clock a.m., as a witness in the case of Charles B. Brewer *v.* A. S. Abell Co. (No. 70158 at Law), and to bring with me certain and sundry papers, documents, books, and testimony, therein described, in the files of the House of Representatives.

The papers, documents, books, and testimony in question were adduced in evidence before the select committee appointed under House Resolution 231, Sixty-eighth Congress, to investigate the preparation, distribution, sale, payment, retirement, surrender, cancellation, and destruction of Government bonds and other securities, and are now in possession of the House of Representatives in the custody of the Clerk.

Your attention and that of the House is respectfully invited to a resolution of the House adopted in the Forty-sixth Congress, first session (Congressional Record, p. 680), upon the recommendation of the Committee on the Judiciary, as follows:

Resolved, That no officer or employee of the House of Representatives has the right, either voluntarily or in obedience to a subpoena duces tecum, to produce any document, paper, or book belonging to the files of the House before any court or officer, nor to furnish any copy of any testimony given or paper filed in any investigation before the House or any of its committees, or of any other paper belonging to the files of the House except such as may be authorized by statute to be copied, and such as the House itself may have made public, to be taken without the consent of the House first obtained."

And a resolution adopted by the House in the Forty-ninth Congress, first session (Congressional Record, p. 1295), from which the following is quoted:

Resolved, That by the privilege of this House no evidence of a documentary character under the control and in possession of the House of Representatives can, by the mandate or process of the ordinary courts of justice, be taken from such control or possession but by its permission.

"That when it appears by the order of a court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice or before any judge or such legal officer for the promotion of justice, this House will take such order thereon as will promote the ends of justice consistently with the privileges and rights of this House."

These resolutions resulted from the issuance of subpoenas duces tecum. upon the Clerk of the House to produce certain original papers in the files of the House.

Permission to remove from their place of file or custody any documents or papers was denied by the House, but the court was afforded facilities for making certified copies. This seems to have been the uniform practice in respect to subpoenas duces tecum issued by a court upon the Clerk of the House to produce in court original papers from the files of the House.

¹ Second session Sixty-ninth Congress, Record, p. 4031.

The subpoenas in question are herewith attached and the matter is presented for such action as the House in its wisdom may see fit to take.

Very respectfully,

WM. TYLER PAGE,
Clerk of the House of Representatives.

Thereupon, Mr. John Q. Tilson, of Connecticut, offered as privileged the following resolution:

Whereas in the case of Charles B. Brewer *v.* A. S. Abell Co. (No. 70158 at Law) pending in circuit court, division No. 1, Supreme Court of the District of Columbia subpoenas duces tecum. were issued by the Chief Justice of the Supreme Court of the District of Columbia and addressed to William Tyler Page, Clerk of the House of Representatives, directing him to appear as a witness before circuit court, division No. 1, on the 15th and 16th days of February, 1927, and to bring with him certain and sundry original papers, documents, books, and testimony in the possession and under the control of the House of Representatives: Therefore,

Resolved, That by the privilege of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate or process of the ordinary courts of justice, be taken from such control or possession but by its permission.

Resolved, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice or before any judge or such legal officer, for the promotion of justice, this House will take such order thereon as will promote the ends of justice consistently with the privileges and rights of this House.

Resolved, That William Tyler Page, Clerk of the House, be authorized to appear at the place and before the officer named in the subpoenas duces tecum before mentioned, but shall not take with him any paper or document on file in his office or under his control or in his possession as Clerk of the House.

Resolved, That the said court, through any of its officers or agents, have full permission to attend with all proper parties to the proceeding, and then always at any place under the orders and control of this House, and take copies of any documents or papers in possession or control of said Clerk, and any evidence of witnesses in respect thereto which the court or other proper officer thereof shall desire, so as, however, the possession of said documents and papers by the said Clerk shall not be disturbed, or the same shall not be removed from their place of file or custody under said Clerk.

Resolved, That a copy of these resolutions be transmitted to the said court as a respectful answer to the subpoenas aforementioned.

Resolved, That when the court before mentioned shall have disposed of the aforesaid case of Charles B. Brewer against A. S. Abell Co., the Clerk of the House of Representatives is hereby directed to return to the Treasury Department, taking receipt therefor, the original records, documents, books, and papers, inventoried, which were adduced as evidence before the select committee appointed under House Resolution No. 231, Sixty-eighth Congress, and by that committee turned over to the files of the House to accompany its report.

Mr. Thomas L. Blanton, of Texas, submitted that the last paragraph was subject to a point of order for the reason that it was not privileged for consideration at the time.

The Speaker¹ acquiesced and stated that if the point of order was pressed it would be sustained and would carry with it the entire resolution.

Mr. Blanton suggested that the resolution be reoffered without the concluding paragraph and insisted on the point of order. Whereupon, Mr. Tilson withdrew the resolution and no further action appears of record until the Seventy-first

¹Longworth, of Ohio, Speaker.

Congress,¹ when the last paragraph was offered as an independent resolution and agreed to by the House.

588. The constitutional privilege of Members in the matter of arrest has been construed to exempt from subpoena, during sessions of Congress.

A Senator being subpoenaed to appear before the grand jury of the District of Columbia, announced in the Senate that he would disregard it.

A Senator declining to heed a summons to appear and testify before a Federal grand jury, the court held that if he failed to obey the subpoena voluntarily the court was without power to compel his attendance.

On December 5, 1929² Mr. Coleman L. Blease, of South Carolina, exhibited in the Senate and caused to be printed in the Record a subpoena issued by the Supreme Court of the District of Columbia directing him to attend and testify before a session of the grand jury.

Mr. Blease announced that he would disregard the summons, and on the same day the grand jury of the District of Columbia reported:

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:

The grand jury of the Supreme Court of the District of Columbia for the October term, A. D. 1929, begs to report to the Court as follows:

"Upon information coming to the attention of the grand jury of the District of Columbia that Ron. Coleman L. Blease, United States Senator from the State of South Carolina, had certain knowledge with regard to the facts and circumstances relating to the death of Detective Sergeant Arthur B. Scrivener on October 13, 1926, the grand jury directed the issuance of a subpoena on December 4, 1929, commanding the Said Ron. Coleman L. Blease to appear before the grand jury at 10 a. In. on December 5, 1929.

"That said subpoena was issued in due course and served personally upon the said Ron. Coleman L. Blease in the city of Washington on December 4, 1929, by Deputy Marshal J. J. Clarkson.

"That the said Ron. Coleman L. Blease did not appear before the grand jury of the District of Columbia on December 5, 1929, at 10 a. In. as commanded by such subpoena and has not up to the time of the filing of this report so appeared."

Wherefore, the grand jury of the District of Columbia for the October term, A. D. 1929, reports the facts aforesaid to the honorable court for such action as the court may deem lawful and proper in the premises.

For the grand jury:

(Signed) JAMES N. FITZPATRICK, JR.,
Foreman of the Grand Jury.

On receipt of the report Justice Peyton Gordon, of the court, addressed the grand jury and said:

The Congress of the United States is now in session, and until yesterday I never heard of a precedent to this procedure in an instance of this kind.

Section 6, Article I, of the Constitution of the United States, gives immunity to arrest to the Members of Congress while that body is in session. It does not say that they are privileged from subpoena, but if they do not obey, the only step the court could take would be to issue an attachment for their arrest. Since the Constitution provides immunity from arrest, in my opinion they are not subject to such action.

¹ Second session Seventy-first Congress, Record, p. 11639.

² Second session Seventy-first Congress, Record, p. 109.

Justice Gordon then reviews a Pennsylvania case decided in 1800, holding that the court knew of no exception to the immunity of Members of Congress from the service of subpoenas, and concluded:

Unless the gentlemen see fit to obey the subpoenas, this court at the present time has no power to compel them to do so.