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Chapter CCLXXI.[1]

THE RULES.

1. House exercises its constitutional power within limits fixed by itself. Sections 3376–3381.
2. Jefferson's Manual and general parliamentary law. Sections 3382–3386.
3. Binding effect of the rules, especially in reference to conflicting statute. Section 3387.
4. Amendments to the rules, especially as to functions of Committee on Rules. Sections 3388–3396.

3376. A proposition to amend the rules is not privileged for consideration as against a demand that business proceed in the regular order.

In exercising its constitutional privilege to change its rules the House has confined itself within certain limitations.

A decision of the Speaker which was overruled by the House was subsequently reaffirmed and sustained, and embodies the established practice of the House.

On March 17, 1910,[2] Mr. George W. Norris, of Nebraska, claiming the floor for a question of constitutional privilege, offered this resolution.

Resolved, That the rules of the House be amended as follows:

The Committee on Rules shall consist of 15 members, 9 of whom shall be members of the majority party and 6 of whom shall be members of the minority party, to be selected as follows:

The States of the Union shall be divided by a committee of three, elected by the House for that purpose, into nine groups, each group containing, as near as may be, an equal number of Members belonging to the majority party. The States of the Union shall likewise be divided into six groups, each group containing, as near as may be, an equal number of Members belonging to the minority party.

At 10 o'clock a.m. of the day following the adoption of the report of said committee each of said groups shall meet and select one of its number a member of the Committee on Rules. The place of meeting for each of said groups shall be designated by the said committee of three in its report. Each of said group shall report to the House the name of the member selected for membership on the Committee on Rules.

The Committee on Rules shall select its own chairman.

The Speaker shall not be eligible to membership on said committee.

All rules or parts thereof inconsistent with the foregoing resolution are hereby repealed.

Mr. John Dalzell, of Pennsylvania, made the point of order that the resolution did not present a question of privilege, and was not then in order.

[1] Supplementary to Chapter CXLI.

[2] Second session Sixty-first Congress, Record, p. 3292.

After debate, which was continued on March 18 and 19,[1] the Speaker[2] ruled as follows:

The Chair has been somewhat criticized because in this matter he has been slow to rule. But the question which was brought so unexpectedly upon the attention of the House, in a revolutionary manner, as it seems to the Chair, is of such transcendent importance to the future procedure of the House that the fullest, even the most protracted, discussion seemed justifiable. In no other manner could the most complete information be brought to the consideration of the question, and in no other way could the largest participation of the membership of the House be assured.

The question of constitutional privilege in this House has not been reviewed, and the principles governing for the last 30 years have not, prior to this week, been questioned in this House for many years. Those principles are relatively simple. It has been held always that the ordinary legislative duties and functions of the House, exercised by authority of the Constitution, must proceed according to the order prescribed by the rules. The fact that the Constitution says that the House "shall have power to" lay taxes, regulate commerce, make naturalization laws, coin money, establish post offices, create courts, support armies and a navy, and so forth, has not given these subjects when embodied in bills any right to disturb the order of business provided by the rules. The very object of the rules is to provide an orderly way for considering those and other subjects intrusted to the House's judgment. To give all those subjects constitutional privilege would be to establish constitutional chaos in the House.

There are, however, certain functions which the Constitution enjoins on Congress to do, and also fixes the time for doing these things. Thus, the clause directing the disposition of a bill vetoed by the President says that the House "shall proceed" to consider it. This has always been understood as meaning that the House should at once proceed to some act of consideration. And therefore it has been held that no rule should prevent the House from proceeding to this constitutional duty. In like manner the Constitution specifies that the Congress shall provide for a census of population and an apportionment of Representatives, and specifies the time when it shall do it—every tenth year. Therefore, on the tenth year, bills to make the required provision have been admitted without regard to the requirements of the House rules. Whether that construction proceeded too far when the Constitution gave a year within which to perform the duty, is a matter as to which there might be doubt.

But for 30 years the practice was unvarying; and when confronted with the question this week, the Chair followed the practice of the House, as he would obey every other rule, without questioning the wisdom that originally created it.

To-day, however, the Chair is asked to permit a proposition for a new rule to come in, although the rules prescribing the order of business require us to proceed to other matters, and it is claimed that the Chair would be justified in doing this because the Constitution says that "each House may determine the rules of its proceedings." Whether the word "may" means "shall" or not, the Chair will not stop to examine. The Constitution fixes no time when the rules shall be adopted; and as the House may, and has in one notable instance, proceeded without rules, it does not seem to the Chair that there is here given any constitutional mandate which would justify the overriding of the rules. Fortunately in this crisis the Chair is not compelled to rely on his own judgment, swayed as he might be by the passions and purposes of this hour. He can look back to another hour, when in a day of calm the navigators who steered the business of this House took their latitude and longitude unembarrassed by the exigencies of tempest.

The pathway of the Chair has been blazed, not by any flushed majority in a moment of factional success, not for any ends of one political party as opposed to the wishes of another political party, not under auspices which prejudice the Chair because of memories of political affiliation of his own, but on a question of order raised by a great Democratic floor leader of this House, and decided by a great Democratic Speaker.

On December 13, 1878, this identical question arose in this House. Mr. Roger Q. Mills, of Texas, proposed a question of constitutional privilege, exactly as is proposed to-day, to offer from

[1] Record, p. 3428.

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

the floor for immediate consideration a proposition looking to the amendment of the rules. And when objection was made, as it is made to-day, Mr. Mills argued:

"It is the constitutional privilege of a House Representatives to adopt rules at any time; it is a continuing power of which the House can not divest itself."

The Members of the House did not agree with Mr. Mills, and Mr. James A Garfield objected that it was proposed "to carry the power of the House in this respect further than the Constitution justifies. If the position of the gentleman were correct, a Member could at any time interrupt our proceedings by bringing in a proposition for the amendment of the rules."

The great Democratic Speaker—and the Chair measures his words in memory of the fame of a man who was the peer of his associates, the civil war leaders who yet lingered on this floor—the great Speaker, Samuel J. Randall, heard the arguments for and against the claim of Mr. Mills, and decided that the proposition to amend the rules was not a case of constitutional privilege. There was criticism, grave criticism, of the rules in those days, as there is to-day, but no man in that House thought of appealing from a decision so consonant with reason.

Planting himself upon the law made for the House by Mr. Speaker Randall, appealing from the passion of this day to the just reason of that day, the Chair sustains the point of order and holds that the resolution is not in order.

Mr. Norris appealed from the decision, and the question being taken, Shall the decision of the Chair stand as the judgment of the House? there appeared yeas 160 and nays 182. So the decision of the Chair was overruled.

3377. On January 9, 1911,[1] Mr. Charles E. Fuller, of Illinois, claimed the floor on a question of high privilege and sent to the Clerk's desk for immediate consideration the following:

Resolved, That Rule XXVIII, paragraph 4, be, and the same is hereby, amended so that the clause which now reads, "Such motion shall have precedence over motions to suspend the rules," shall be made to read, "Such motions shall not have precedence over motions to suspend the rules."

Mr. James R. Mann, of Illinois, objected to consideration of the resolution and made the point of order that it was not privileged.

Mr. Fuller submitted that the proposal was privileged under the constitutional provision authorizing the House to determine the rules of its proceedings.

After extended debate, the Speaker[2] ruled:

The gentleman from Illinois offers this resolution as a privileged resolution under the Constitution. To this resolution the gentleman from Illinois submits a point of order that it presents no such privileged question as would supersede business prescribed by the rules regulating the order of business.

The Chair would have no difficultly in promptly ruling in harmony with all the precedents, so far as the Chair is able to ascertain, from the beginning of this House in its sittings under the Constitution, save one, and but for that one. That precedent was made during the last session of the present Congress upon a resolution precisely similar in principle to this. The Clerk will read the resolution offered on the 17th day of March, 1910, by the gentleman from Nebraska, Mr. Norris, and the proceedings thereon.

The Clerk read the decision referred to and also read excerpts from the debate on that occasion from remarks by Mr. Champ Clark, of Missouri, and Mr. Oscar W. Underwood, of Alabama.

The Speaker resumed:

If the Chair follows the construction placed by a majority of this House at the last session of the Congress, the Chair would overrule the point of order. The object sought, as announced by the

[1] Third session Sixty-first Congress, Record, p. 684.

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

gentleman from Missouri and the gentleman from Alabama in debate, was, by the adoption of rule which was adopted in the end, to remove the Speaker of the House from the Committee on Rules.

The complaint was that the rules could not be amended under the rules of the House if the Committee on Rules did not report the proposed amendment or resolution that might be submitted to it to amend the rules, and that there should be some way provided by which the House by a majority could amend the rules, whether the Committee on Rules might concur or not.

A resolution was adopted creating a new committee consisting of 10 Members, of which the Speaker was prohibited from being a member. That committee was appointed, chosen by the House, the gentleman from Pennsylvania, Mr. Dalzell, being its chairman, and the gentleman from Missouri, Mr. Clark, being at the head of the minority of this committee. Upon a unanimous report of that committee, reporting back a resolution introduced and referred to that committee by the gentleman from Missouri, the following change in the rules was made by the action of the House. The Chair will read that portion of it which is material:

"Any member may present to the Clerk a motion in writing to discharge a committee from further consideration of any public bill or joint resolution which may have been referred to such committee, etc."

The House will take notice that it says "any public bill or joint resolution." It stops there. That leaves out simple resolutions, and it is by simple resolutions referred to the Committee on Rules that that committee receives its jurisdiction to report provisions to the House for its consideration to amend the rules.

Under this rule there is still no way under the rules to amend the rules.

Now, the Chair desires to say in this connection that it is within the power of the House, acting by majority, to do anything that a majority votes for, having complete power in the premises, whether justified by the fixed law of the land, the Constitution, or otherwise. There was a way, however, without violating either the letter or the spirit of the Constitution, without violating any rule of the House, by which a majority of this House when this precedent was made might have worked its will. Jefferson's Manual, which is made a part of the rules of the House, and which but announces the spirit of the Constitution, provides that the House may choose a Speaker, and so forth, and reading from Jefferson's Manual we find:

"A Speaker may be removed at the will of the House and a Speaker pro tempore appointed."

Under that same rule, which is part of the rules of the House, former Houses have on several occasions removed officers of this House under resolutions that were privileged, and a resolution to declare vacant the Speaker's chair presents a question of high privilege, one expressly authorized by the rules of the House.

This is a Government through majorities, the people acting by a majority. Ordinarily there is no trouble about amendments of the rules through majority rule. In the whole history of the country in the main there has been a majority and a minority party, and the pendulum swinging back and forth the minority in the past frequently by the action of the people at the ballot box has become the majority, and no doubt that will happen again and again in the history of the Republic. Under normal conditions, there being a real majority, those matters are settled by the majority after consultation, and the practical settlement is by and through a caucus of the majority, the caucus action being sustained by the members of the majority. But in this Congress, the minority of the House substantially acting together, reinforced by a minority of the majority, made a new majority, and that new majority, under the leadership of the gentleman from Missouri, worked what he declared to be a revolution. Now, that could have been accomplished by a majority removing the Speaker from the Committee on Rules, declaring the place vacant and electing some Member who would work the will of the majority, but that course was not pursued.

The Speaker of the House of Representatives, as the Chair has already stated, is removable at any time as a question of privilege by the House of Representatives. In consideration of the rule which leaves the House powerless under its rules to discharge the new Committee on Rules from consideration of a resolution—a resolution being neither a bill nor a joint resolution—the Chair declines to follow the judgment of the House at the last session of this Congress under which it made the precedent. The Chair, therefore, in effect appeals to the House from a decision of that

same House made in great excitment, when the waves of partisanship were high, doing so after the wind has ceased and the billows have passed away and the sea is serenely blue.

The Chair, therefore, sustains the point of order.

Mr. Thetus, W. Sims, of Tennessee, appealed from the decision of the Chair, and the yeas and nays being ordered, the vote on the question was yeas 235, nays 53. So the decision of the Chair stood as the judgment of the House.

3378. A proposition to amend the rules is not privileged for immediate consideration.

Where enough of a proposition has been read to show that it is out of order, the question of order may be raised without waiting for the reading to be concluded.

On March 26, 1912,[1] Mr. S.A. Rodenberry, of Georgia, offered a resolution providing bills, and asked for immediate consideration on the ground that it was privileged.

The Clerk was proceeding to read the resolution when Mr. Martin D. Foster, of Illinois, interrupted and made the point of order that the resolution was not privileged.

The Speaker[2] sustained the point of order.

Mr. Roddenbery protested that the reading of the resolution had not been completed and a point of order could not be raised until it had been read in full.

The Speaker held that when enough of a proposition has been read to show that it is out of order, the question may be raised without waiting for the reading to be concluded.

3379. Propositions to change the rules in minor provisions have frequently been considered by unanimous consent.

On December 16, 1907,[3] the membership of 20 of the standing committees of the House was increased by the adoption of an order presented by Mr. John Dalzell, of Pennsylvania, and considered, on his motion, by unanimous consent.

3380. On May 27, 1913,[4] on motion of Mr. Oscar W. Underwood, of Alabama, by unanimous consent, the Committee on Expenditures in the Department of Labor was created, and the number of the members constituting various standing committees of the House was changed.

3381. On May 26, 1919,[5] on request of Mr. Claude Kitchin, of North Carolina, unanimous consent was granted permitting an additional member to be added to the Committee on Foreign Affairs.

3382. In the Senate it was held that while Jefferson's Manual was not to be regarded as a direct authority, it was to be considered as exercising an influence in Senate procedure.

On March 8, 1916,[6] the Senate was considering the bill S. 3331, the water power bill.

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[1] Second session Sixty-second Congress, Record, p. 3834.

[2] Champ Clark, of Missouri, Speaker.

[3] First session Sixieth Congress, Record, p. 356.

[4] First session Sixty-third Congress, Record, p. 1784.

[5] First session Sixty-sixth Congress, Record, p. 247.

[6] First session Sixty-fourth Congress, Record, p. 3732.

During debate, Mr. John K. Shields, of Tennessee, interrupted Mr. Francis G. Newlands, of Nevada, with a point of order and in presenting his objection inquired of the Chair if Jefferson's Manual was to be considered as an authority in the procedure and practice of the Senate.

The President pro tempore [1] replied:

It has a certain degree of influence, but is not a direct authority.

3383. Before the adoption of rules the House proceeds under general parliamentary law.

The Speaker as a Member of the House may object to a request for unanimous consent.

A proposition to elect a Speaker is in order at any time and presents a question of teh highest privilege.

The rules and orders of a previous Congress are not in effect until adopted by the sitting House.

Under general parliamentary usage a Member having the floor may yield time for debate to others and retain the right to resume debate or move the previous question.

When the House is proceeding under general parliamentary law the Speaker is constrained to recognize any Member presenting a privileged motion.

On December 2, 1907,[2] following the organization of the House, Mr. John Dalzell of Pennsylvania, offered this resolution:

Resolved, That the rules of the House of Representatives of the Fifty-ninth Congress be adopted as the rules of the House of Representatives of the Sixtieth Congress, including the standing orders of March 8 and March 14, 1900 (relating to consideration of pension and claim bills on Fridays), which are hereby continued in force during the Sixtieth Congress.

After proceeding in debate, Mr. Dalzell yielded 20 minutes to Mr. David A. De Armond, of Missouri. At the conclusion of Mr. De Armond's remarks Mr. Dalzell proposed to move the previous question.

The Speaker [3] said:

The rules as yet have not been adopted, and we are proceeding under general parliamentary usage, the gentleman from Pennsylvania having the floor. When the gentleman from Pennsylvania yields the floor, if he does yield it, then any other gentleman is entitled to the floor. Holding the floor, the gentleman indicated that he would yield 20 minutes to the gentleman from Missouri. The Chair took that to be in substance notice to the gentleman from Missouri that, yielding to him, he still holds the floor, that he might move the previous question on resuming the floor. That is the effect, as the Chair understands it, of the gentleman yielding to the gentleman from Wisconsin, and also to the gentleman from Missouri, under general parliamentary usages.

Now, the Chair may be indulged one moment further. The Chair, the Speaker of the House, is a Member of the House the same as any other Member. Unanimous consent being asked, it would not be granted should any Member object. The usage in many Congresses in the past was that the Chair would submit the request to the House; and it is an open secret to gentlemen who have served in some of the former Congresses that the Chair, keeping track of the business of the

[1] James P. Clarke, of Arkansas, President pro tempore.

[2] First session Sixtieth Congress, Record, p. 8.

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

House as the Speaker and at the same time exercising his right as a Member, would often indicate to some Member upon the floor, by messenger or otherwise, that he desired an objection to be made. The Chair has seen that frequently occur under both Democratic and Republican Speakers. The present occupant of the chair, ever since he has occupied that position, has thought the better way was to exercise his right as a Member to object to a request for unanimous consent. Therefore the practice has grown up that gentleman see the Speaker, and if he has objections then he invariably says that it is useless to recognize the Member for unanimous consent, because if nobody else objected the Chair in his capacity as a Member of the House would object.

Under the rules, if adopted, the Chair begs to call the attention of the gentleman to the fact that the right of a Member to be recognized can in most instances not be denied by the Chair. There are a large number of motions which are privileged in their nature, and a question of privilege, first, and a privileged motion, second, halts all business before the House, and the Chair has no discretion. Gentlemen who have had service in the House will recollect that those motions are many.

The Chair desires to state again that the Speaker of the House is the servant of the House, and it is in the power of the House of Representatives as a question of the highest privilege to at any time elect a successor to any Member of that body who may be holding this place. One further observation. When special orders or special rules are suggested, as they have been under all administrations, Democratic and Republican, at least for 20 years, those orders or rules can not be vitalized until a majority of the House has adopted them under the Constitution and the rules of the House.

3384. While the House is governed by general parliamentary usage prior to the adoption of rules, the Speakers have been inclined to give weight to the precedents of the House in the interpretation of that usage.

While the House was proceeding under general parliamentary law a motion to commit a pending resolution was admitted after the previous question had been ordered on the adoption of the resolution.

On April 7, 1913,[1] at the organization of the House, and while the House was proceeding under general parliamentary law, Mr. Robert L. Henry, of Texas, offered the following resolution:

Resolved, That the rules of the House of Representatives of the Sixty-second Congress be adopted as the rules of the House of Representatives of the Sixty-third Congress with the exception of Rule XXXI.

After debate, on motion of Mr. Henry, the previous question was ordered, when Mr. A. W. Lafferty, of Oregon, moved that the resolution be committed to a select committee, to be appointed by the Speaker, with instructions.

Mr. Swagar Sherley, of Kentucky, made the point of order that under general parliamentary law the motion to commit was not admissible after the previous question had been ordered.

After exhaustive discussion, the Speaker[2] held:

The Chair desires to call to the attention of the whole membership of the House the first two of three sentences in Jefferson's Manual:

"Mr. Onslow, the ablest among the speakers of the House of Commons, used to say 'It was a maxim he had often heard when he was a young man from old and experienced members that nothing tended more to throw power into the hands of administration and those who acted with the majority of the House of Commons than a neglect of or departure from the rules of proceeding; that these forms as instituted by our ancestors operated as a check and control on the actions of

[1] First session Sixty-third Congress, Record, p. 77.

[2] Champ Clark, of Missouri, Speaker.

the majority, and that they were in many instances a shelter and protection to the minority against the attempts of power.'"

Jefferson goes on to indorse that. The Chair would not feel that he is slavishly bound to follow the decisions of the Speaker, or even of all Speakers, if he were certain that he was right; but some things come to be a settled practice.

As the Chair stated awhile ago the House some years ago concluded that there ought to be a provision in the rules by which a Member by a motion to recommit could always get a vote upon his proposition. The Chair believes that is right, and he believes that all of these decisions by Mr. Speaker Carlisle, Mr. Speaker Crisp, and Mr. Speaker Reed are right. The first one is the decision by Mr. Speaker Crisp on a point of order made by Mr. O'Ferrall, afterwards Governor of Virginia. The Chair reads from Hinds' Precedents:

The Speaker then read sections 5604 and 6758 of Hinds' Precedents and continued:

It turns out that Mr. Speaker Reed's dictum, which agrees substantially with these two decisions, was made in an argument upon the floor of the House when he was not Speaker, but he took the same identical ground that these two great Speakers take, and so there are three.

The Chair overrules the point of order and recognizes the gentleman from Oregon.

3385. On March 9, 1933,[1] at the opening session of the Congress and prior to the adoption of rules, Mr. Joseph W. Byrns, of Tennessee, asked unanimous consent for the present consideration of the bill (H. R. 1491), to provide relief in the existing national emergency in banking.

Pending disposition of the request, Mr. William B. Bankhead, of Alabama, inquired as to the rules of procedure to be observed during the consideration of the bill.

The Speaker[2] held that unless objection was made, in the absence of other provision, the rules of the preceding Congress would be considered as in effect.

3386. Prior to the adoption of rules the House proceeds under general parliamentary law, but the Speaker has followed as closely as practicable the customs and practices of the House under former rules.

Before the adoption of rules the Speaker has declined to record the vote of a Member who failed to qualify as being in the Hall and listening when his name was called.

Members elect present at the organization of the House are not required to take the oath when their States are called, but may elect to wait and be sworn later.

Prior to adoption of rules, the motion for the previous question is admissible under general parliamentary law, but if ordered without prior debate the 40 minutes' debate prescribed by the rules of the previous Congress is not in order.

When the right of a Member elect to take the oath is challenged, the Speaker directs him to stand aside until the call of the roll is completed.

On December 5, 1923,[3] at the organization of the House and while the Speaker was administering the oath to Members elect, Mr. Henry T. Rainey, of Illinois,

[1] First session Seventy-third Congress, Record, p. 76.

[2] Henry T. Rainey, of Illinois, Speaker.

[3] First session Sixty-eighth Congress, Journal, p. 14; Record, p. 16.

objected to the swearing in of Mr. Edward E. Miller, of Illinois, and was proceeding to give reasons upon which he based his objections when Mr. Martin B. Madden made the point that debate was not in order.

The Speaker[1] said:

The ordinary practice is, if any objection be made to an individual, he stands to one side until all of the others have been sworn in, and then the matter can be taken up.

Mr. Madden then asked if it would be in order for other Members elect of the Illinois delegation to wait until all could be sworn in together.

The Speaker replied that it was optional with the members of the delegation.

Upon objection of Mr. Fred A. Britten, of Illinois, to the administration of the oath to Mr. James R. Buckley, of Illinois, Mr. Buckley was also requested to step aside until other Members, whose right to be sworn was unchallenged, could take the oath.

The administration of the oath to other Members and Delegates having been concluded, Mr. Madden offered the following resolution, upon which he moved the previous question:

Resolved, That the gentleman from Illinois, Edward E. Miller, be permitted to take the oath.

Mr. Garrett, of Tennessee, asked, as a parliamentary inquiry, if it was in order to move the previous question prior to the adoption of rules by the House, and Mr. Thomas L. Blanton, of Texas, also inquired if the motion was in order before debate was had on the resolution. The speaker held the motion for the previous question in order under general parliamentary law and in order without debate prior to the adoption of a rule to the contrary.

At the conclusion of the roll call, on the ordering of the previous question, Mr. Thaddeus C. Sweet, of New York, asked to have his vote recorded. The Speaker, after inquiring if the gentleman was in the Hall and listening when his name was called, and being answered in the negative, said:

Then the gentleman does not qualify. The rule, the chair will state, is that when a person did not answer on either roll call he can not vote unless he will state that he was present and listening when the roll was called and did not hear his name called, the theory being that his name probably was not called. It is meant to correct an error on the part of the Clerk not calling the gentleman's name. So the Chair always, in accordance with the precedent, asks gentlemen if they were present and listening when their names were called. If they answer that question in the affirmative, they can vote; if they can not answer it on their conscience, they can not vote.

Mr. Otis Wingo, of Arkansas, submitted that the practice indicated by the Speaker was in conformity with rules heretofore adopted by the House but under general parliamentary law any person prior to the adoption of the rules may vote at any time before the result of the vote is announced.

The Speaker said:

The Chair will state that under parliamentary law the Chair recognizes that it is best, in accordance with our knowledge of parliamentary law, to follow as far as possible the practice that has prevailed in the House of Representatives, and that has been the practice of Speakers in the past.

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[1] Frederick H. Gillett, of Massachusetts, Speaker.

General parliamentary law has been followed here because Members are familiar with it, and in that way it has become the precedent of parliamentary law at this juncture. The Chair's feeling is that it is wise as far as possible to lean in favor of the custom of the House, because that is a custom that we are all familiar with.

On motion of Mr. Nicholas Longworth, of Ohio, by unanimous consent, the vote of Mr. Sweet was recorded in the affirmative. The vote having been decided in the affirmative and the resolution being agreed to, Mr. Britten withdrew his objection to the swearing in of Mr. Buckley, and both Mr. Miller and Mr. Buckley came forward and took the oath.

3387. A rule adopted by the House is not to be interpreted as retroactive unless so provided in express terms.

On December 15, 1920,[1] it being Calendar Wednesday, when the Committee on Agriculture was reached in the call of committees, Mr. Gilbert N. Haugen, of Iowa, from that committee, called up the bill (H. R. 13402) to acquire land occupied by certain experimental vineyards of the Department of Agriculture.

After debate, the clerk read as follows:

Be it enacted, etc., That the Secretary of Agriculture be, and he is hereby, authorized to purchase and acquire the lands occupied by the department's experiment vineyards near Fresno and Oakville, Calif., now maintained under contracts with the owners of said lands: *Provided,* That the land purchased for the Fresno vineyard shall not exceed 20 acres at a cost not to exceed $12,00 and for the Oakville vineyard not to exceed 20 acres at a cost not to exceed $15,000; for the payment of which the sum of $27,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Mr. Joseph Walsh, of Massachusetts, made the point of order that the provision of the appropriation of $27,000 was in violation of the rule recently adopted inhibiting the reporting of an appropriation by a legislative committee.

Mr. Finis J. Garrett, of Tennessee, took issue with the views submitted in the point of order and pointed out that the pending bill was reported prior to the adoption of the rules referred to and that application of the rule to bills already reported would make it retroactive.

The Speaker[2] sustained Mr. Garrett's contention and ruled:

The bill under consideration was introduced in the House on April 1 and referred to the Committee on Agriculture. At the time the Committee on Agriculture had jurisdiction over appropriations for the support of the Department of Agriculture. The committee deliberated upon the bill, and on the 28th of April reported it from the committee and it went on the calendar. It remained there and was on the calendar on the 1st day of July when this rule was adopted:

"No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendment thereto may be raised at any time."

The important question is as to whether or not the appropriating clause in the bill is subject to a point of order and therefore vitiates the bill under the new rule. The rules of the House are made for the purpose of enabling the House to expedite its business and the rules should have a reasonable construction. The Commission on Agriculture had jurisdiction over appropriations at the time the bill was referred to it and reported by it and placed on the calendar.

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[1] Third session Sixty-sixty Congress, Record, p. 392.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

The jurisdiction continued. The bill might have been acted upon at any time before the 1st of July without question. Shall an amendment to clause 5 of Rule XXI, effective on the 1st of July, be so construed as to render void all the business of the House of a similar character reported by the committees of the House prior to the 1st of July? The Chair is of the opinion that that would not be a proper interpretation of the rules of the House; it would not tend to expedite the business of the House. If this point of order were to be sustained, it would set aside all that has been done and send this bill back to the Committee on Agriculture. The Chair does not think where a committee having had jurisdiction, and having properly acted upon the subject matter of a bill at the time, that a rule subsequently adopted should be so construed as to retroact on work of committees already done under the rules. The Committee of the Whole House on the state of the Union is now undertaking to complete work that was properly done by the Committee on Agriculture and reported to the House on the 28th day of April last. The Chair, therefore, overrules the point of order.

3388. The Committee on Rules may report a resolution providing for the consideration of a bill which has not yet been introduced.

On December 9, 1920,[1] Mr. Philip P. Campbell, of Kansas, by direction of the Committee on Rules, submitted the follow:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H.R. 14461, being a bill "To provide for the protection of the citizens of the United States by the temporary suspension of immigration, and for other purposes." That there shall be not to exceed four hours of general debate, the time to be controlled, one-half by the gentleman from Washington, Mr. Johnson, one-half by any member of the minority of the committee opposing the bill, or if there be no member of the minority of the committee opposing the bill, then by any member of the committee opposing the bill. That after general debate the bill shall be considered under the five-minute rule. That upon the completion of such consideration the committee shall automatically rise and report the bill to the House with all amendments thereto, if any, whereupon the previous question shall be considered as ordered on the bill and all amendments thereto to final passage without intervening motion, except one motion to recommit.

Mr. Isaac Siegel, of New York, raised the question of order that the bill to which the resolution referred had not yet been introduced and its consideration could not be provided for prior to its introduction.

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

Mr. Speaker, the point of order is made during the consideration of the rule. It is quite within the privilege of the Committee on Rules and of the House afterwards to bring in and adopt a rule providing for the consideration of a bill that has not yet been introduced. A bill does not have to be reported or even introduced. The Committee on Rules can bring in a rule and the House can adopt a rule for the consideration of a bill that is yet to be introduced if it chooses to, so that no point of order would lie against the consideration of the rule. That is the only point of order that can be made at this time.

After further debate, the Speaker[2] held the resolution in order and put the question on its adoption. The question being taken it was decided in the affirmative, ayes 151, noes 9, and the resolution was agreed to.

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[1] Third session Sixty-sixth Congress, Record, p. 127.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

3389. The Committee on Rules may originate a resolution for the consideration of a bill regardless of whether the subject matter has been referred to it by the House.

On June 28, 1922,[1] Mr. Bertrand H. Snell, of New York, from the Committee on Rules, by direction of that committee, submitted for immediate consideration the following resolution:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 3425. "An act to continue certain land offices, and for other purposes"; that there shall be not to exceed two hours of general debate, to be divided equally between those favoring and those opposing the bill. Thereupon he bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment it shall be reported back to the House, whereupon the previous question shall be considered as ordered upon the bill and all amendments, if any, without intervening motion except one motion to recommit.

Mr. Louis C. Cramton, of Michigan, made the point of order that the resolution was not privileged for the reason that the subject matter thereof had not been referred to the Committee on Rules and the committee was therefore without jurisdiction.

The Speaker[2] overruled the point of order and said:

The Chair thinks that on the ground of right and justice and convenience, to which the gentleman from Michigan appeals, even if there were no precedents, the Chair would be inclined to overrule the point of order, because the Committee on Rules is the executive organ of the majority of the House. If it were held that it could not act until the subject matter had been referred to it, then it would be impossible for it in the morning before a session to make a new decision and bring in a rule which is often necessary and desirable at the first meeting of the House.

The long practice has been for the Committee on Rules to report rules without their being referred to them. Besides this precedent or custom there are expressed decisions, where the point has been made. Mr. Speaker Crisp explicitly overruled the point of order, and the Chair thinks the decisions to which the gentleman refers, of Mr. Speaker Reed and Mr. Speaker Randall, can be distinguished from this case, and that this point there was not necessarily decided. Moreover, the Chair thinks the history of the rules before the revision of 1880 and after point to the same result. Therefore, both on the ground of policy and on the ground of precedent, the Chair overrules the point of order.

3390. The Committee on Rules may report a resolution rescinding or modifying a special order of business.

The House may by majority vote on a resolution reported from the Committee on Rules revoke a unanimous-consent agreement.

On April 3, 1908,[3] Mr. John Dalzell, of Pennsylvania, reported from the Committee on Rules the following privileged resolution:

Resolved, That immediately on the adoption of this rule the House shall, without further motion, resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H.R. 20063, a bill making appropriations for the District of Columbia; the first reading of the bill shall be dispensed with; and then, after two hours of general debate (the time to be equally divided between the majority and minority), the bill shall be considered under the five-minute rule.

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[1] Second session Sixty-seventh Congress, Record, p. 9577.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

[3] First session Sixtieth Congress, Record, p. 4349.

Mr. David A. De Armond, of Missouri, made the point of order that the resolution proposed to modify the special order agreed to by unanimous consent on the previous day under which debate on the bill was fixed at eight hours.

Mr. Dalzell conceded that the purpose of the resolution was to rescind that particular provision of the special order, and took the position that the Committee on Rules under the jurisdiction conferred on it by the rules could report a resolution to change a special order at any time.

The Speaker [1] overruled the point of order and held:

The Chair does not assent to the proposition that what the House may do to-day may not be undone to-morrow. Even to the matter of where there was a vote of 232, which has just been given in the affirmative, and none in the negative, it is quite competent for the House, if it should desire to do so in a proper way, to reverse its action. The Chair overrules the point to order.

3391. On August 1, 1919,[2] Mr. Frank W. Mondell, of Wyoming, asked ananimous consent for the immediate consideration of the following:

Resolved by the House of Representatives (the Senate concurring), That the action taken under concurrent resolution of July 28, 1919, providing for an adjournment of the House from Saturday, the 2d day of August, until 12 o'clock meridian, Tuesday, the 9th day of September, 1919, be, and the same is hereby, rescinded.

Mr. Thomas L. Blanton, of Texas, objected to the request for unanimous consent.

Whereupon, Mr. Philip P. Campbell, of Kansas, from the Committee on Rules, reported this resolution:

Resolved, That immediately upon the adoption of this resolution it shall be in order to consider House Concurrent resolution No. 26, a resolution rescinding the action of the House heretofore taken providing for an adjournment from August 2, 1919, until September 9, 1919. Said resolution shall be considered under the general rules of the House.

Mr. Blanton made the point of order that the resolution was not privileged for the reason that it contravened the resolution agreed to by the House on the previous Monday under which it was ordered that when the House adjourned on August 2 it adjourn to meet on September 9.

The Speaker [3] said:

The Chair thinks it has been well settled by precedent that the Committee on Rules have authority to bring in this resolution. In fact, it has been done in a case exactly similar to this. The Chair overrules the point of order.

3392. The Committee on Rules may report a resolution authorizing consideration of a bill on which suspension of the rules has been denied by the House.

On June 5, 1933,[4] Mr. John E. Rankin, of Mississippi, moved to suspend the rules and pass the bill (H. R. 5767) to authorize the appointment of the Governor of Hawaii without regard to his being a citizen or resident of Hawaii.

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

[2] First session Sixty-sixth Congress, Record, p. 3542.

[3] Frederick H. Gillett, of Massachusetts, Speaker.

[4] First session Seventy-third Congress, Record, p. 5023.

On a yea and nay vote, the yeas were 222, the nays were 114, and two-thirds not having voted in favor of the motion it was rejected.

Whereupon, Mr. Thomas L. Blanton, of Texas, inquired if it would be in order, notwithstanding the action of the House in refusing to suspend the rules and pass the bill, for the Committee on Rules to bring in a special order providing for its consideration under the rules of the House permitting its passage by majority vote.

The Speaker [1] replied in the affirmative.

3393. An instance of the exercise of the function of the Committee on Rules in affording the House a method of suspending the rules by majority vote.

A bill taken up as unfinished business is governed by the rules in force at the time of its consideration and not by those in force at the time it was first called up.

On April 20, 1908,[2] following prolonged obstruction, the House agreed to the resolution (H. Res. 341) reported by Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, providing that for the remainder of the session it should be in order to suspend the rules by a majority vote instead of by a two-thirds vote.

Thereafter during that session all legislation was enacted under suspension of the rules, even a resolution authorizing a general extension of remarks in the Record being passed under suspension of the rules by majority vote.

On May 26, 1908,[3] the House was considering a motion to suspend the rules and pass the bill (H. R. 17228) to promote the safe transportation in interstate commerce of explosives when Mr. Swager Sherley, of Kentucky, made the point of order that the pending bill had first been taken up for consideration prior to the adoption of the order providing for suspension of the rules by majority vote and therefore the pending motion for suspension of the rules required a two-thirds vote.

The Speaker [4] said:

The Chair will state to the gentleman from Kentucky that since the roll call began the Chair has examined the rule and the date and finds that the statement of the gentleman from Kentucky is correct; but while it took two-thirds to pass the bill, if it had been voted upon the day that it was considered, 20 minutes' debate on each side, yet since that time the House, as a matter of procedure, as it was competent for the House to do, has adopted a new rule, that during the remainder of this session the rules shall be suspended upon a majority vote.

When this motion was made and the bill was debated, it became unfinished business. Since that time the House has changed its procedure and has provided that a motion to suspend the rules shall prevail by a majority vote.

Upon this vote the yeas are 122, and nays are 68, present 16. A majority having voted in the affirmative, the rules are suspended, and the bill is passed.

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[1] Henry T. Rainey, of Illinois, Speaker.

[2] First session Sixtieth Congress, Record, p. 4505.

[3] Record, p. 7011.

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

3394. Provision in a special order conference shall be asked and the Speaker shall immediately appoint conferees without intervening motion, precludes the motion to instruct.

On August 15, 1912,[1] the House agreed to the following resolution reported by Mr. Robert L. Henry, of Texas, from the Committee on Rules:

Resolved, That immediately on the adoption of this rule it shall be in order to take from the Speaker's table H. R. 21279, a bill making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes, together with the Senate amendments thereto, and to disagree to all the Senate amendments en bloc and ask for a conference notwithstanding the general rules of the House, and the Speaker shall, on the adoption of the resolution, appoint the conferees without any intervening motion.

Following the adoption of the resolution, and before conferees had been appointed, Mr. James R. Mann, of Illinois, proposed a motion to instruct conferees.

The Speaker[2] called attention to the provisions of the special order under which conferees were to be appointed without intervening motions and declined to entertain the motion.

3395. On April 25, 1916,[3] Mr. Edward W. Pou, of North Carolina, by direction of the Committee on Rules, reported a resolution discharging the Committee on Military Affairs from further consideration of the bill (H. R. 12766) to increase the efficiency of the Military Establishment, with Senate amendments thereto. The resolution also provided for disagreement to the amendments and agreement to the conference asked by the Senate, conferees to be immediately appointed without intervening motions except one motion to recommit.

Mr. James R. Mann, of Illinois, submitted that the resolution was not in order for the reason that it did not admit a motion to instruct conferees.

The Speaker[2] overruled the point of order and said:

This particular phase of this aggravated question has been passed upon once or twice before by eminent Speakers; that is, the question as to what takes this matter in controversy away from the House. On July 27, 1886, section 6380 of Hinds' Precedents, in a comparatively long decision, a ruling was made upon it which it is not necessary to read, except as to one sentence of it. The decision was made by Mr. Speaker Carlisle. I read:

"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 instructions are in order, and the Chair will entertain them after this motion is disposed of."

The pending rule cuts out the privilege to instruct the conferees. But evidently Speaker Carlisle thought, and evidently Mr. Speaker Cannon thought, later on, because he quoted Speaker Carlisle's conclusion approvingly, making a very short decision, that the matter is not taken away from the House until the conferees are appointed.

In rendering that decision yesterday, the Chair did not guarantee to the gentleman from Illinois or anybody else a chance to offer a motion to instruct the conferees. What the Chair did decide was that the Committee on Rules could not cut out the privilege of offering the motion to recommit, with or without instructions.

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[1] Second session Sixty-second Congress, Record, p. 11039.

[2] Champ Clark, of Missouri, Speaker.

[3] First session Sixty-fourth Congress, Record, p. 6815.

If the gentleman from Illinois proposes a motion to recommit at the proper time—a motion that would be in order as an amendment—then the Chair will rule his motion in order, and if he does not do that, he will rule it out of order. The Chair overrules the point of order.

3396. A discussion of the jurisdiction and functions of the Committee on Rules.

On May 11, 1928,[1] Mr. Guy U. Hardy, of Colorado, under authority of leave to insert remarks in the Record, discussed the powers and functions of the Committees on Rules as follows:

Much power is lodged in the Rules Committee. In former days—in the days of Read and Cannon—the Speaker of the House exercised great influence over legislation—could exercise tyrannical power if so disposed. In those days the Speaker appointed committees, named committee chairman, and was chairman of the Rules Committee, which committee consisted of himself and two of his appointees.

Then can the parliamentary revolution of 1910, and changed the rules, taking the Speaker off the Rules Committee and taking from him power to appoint committees.

To-day committee assignments are made by the House through party committee on committees, and the Rules Committee is independent of the Speaker's influence, except as it is exerted diplomatically.

The Rules Committee has the authority to report to the House special at any time and when so reported such rules are privileged. That is, these special rules take precedence over anything before the House except conference reports. Such special rules providing for the consideration of a bill, limit the hours of debate, and may limit the offering of amendments to the bill, except one motion to recommit. Backed by the majority, the Rules Committee can pretty nearly say what legislation may come up and how it may or may not be amended in the House.

It is not unusual for 12,000 to 16,000 bills to be introduced during a session of Congress. A bill can not be considered in the House unless it is reported out by a committee. But even after being reported favorably by a committee a bill may linger on the calendar without being brought up in the House. Near the end of the session the calendar is full. Days are crowed with business. Appropriation bills have the right of way. Time will permit the consideration of only a few other measures. Somebody must decide what bills may be brought out in the House for consideration in that limited time. This is the function of the Rules Committee.

In the early stages of a Congress the Rules Committee does not function often. But as the Congress draws near a close, with calendars full and few days for consideration of the many bills reported out by regular committees the services of the Rules Committee is in great demand and many Members seek special rules for bills in which they are interested. The procedure is for the Rules Committee to hold meetings for discussion and sometimes hearings where proponents of bills appear and present their views. Sometimes these hearings are simple and informal and sometimes they are elaborate and extended. The committee then determines, usually in executive session, whether the circumstances warrant giving the bill in question preferred status.

However, the Rules Committee is not all powerful. It may report out rules for the consideration of measures, but a majority vote of the House is required to adopt the rule and again to pass the bill .the Rules Committee considers the merits of the bills and the sentiment of the House and the country. It listens to the wishes of the majority as expresses through the Speaker, the majority committee must pass over, and by, many measures, but it is pretty certain that the bills it does elect for presentation to the House are on the official legislative program for passage.

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[1] First session Seventieth Congress, Record, 8438.