

## Chapter VI.

### THE OFFICERS OF THE HOUSE AND THEIR ELECTION.

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1. Provisions of Constitution and rule. Sections 186, 187.
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**186. The Speaker and other officers are chosen by the House.**—The Constitution of the United States, in Article I, section 2, provides that “the House of Representatives shall choose their Speaker and other officers.”

**187. The elective officers of the House, in addition to the Speaker, are the Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain.**

A rule, which, however, is not in force at the time of organization, provides that all the elective officers except the Speaker shall be chosen by viva voce vote.

The Speaker, who was at first chosen by ballot, has been chosen by viva voce vote since 1839.

The elective officers other than the Speaker continue in office until their successors are chosen and qualified.

The elective officers of the House are sworn to support the Constitution and discharge their duties faithfully.

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<sup>1</sup> Clerk preserves order during. Section 64 of this volume. As to general duties of the Speaker. Chapter XLIV, sections 1307–1376 of Vol. II of this work. Contests over election of, in 1855 and 1859. Sections 6647–6650 of Vol. V.

<sup>2</sup> See also section 1356 of Vol. II.

<sup>3</sup> Presiding officer during organization. Chapter III, sections 64–80 of this volume.

<sup>4</sup> See also section 292 of this volume.

**Origin of an obsolete requirement that the officers of the House shall be sworn to keep its secrets.**

**Each of the elected officers of the House appoints the employees of his department provided by law.**

**The attempt to establish the theory that one House might prescribe rules for its successor, and the end thereof.**

**The House formerly provided by special rule that the Clerk should continue in office until another should be appointed.**

Rule II provides:

There shall be elected by a viva voce vote, at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, Sergeant-at-Arms, Doorkeeper,<sup>1</sup> Postmaster, and Chaplain, each of whom shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House; and each shall appoint all of the employees of his department provided for by law.

This rule is the result of many changes in the relations of the House and its elected officers. It is, of course, of advisory force only, as it has not been the custom of the House to adopt rules until it has organized by the choice of some, at least, of its officers; but at the time this rule was framed into its present form—in 1880—there existed and was continued another rule which provided: “These rules shall be the rules of the House of Representatives of the present and succeeding Congresses unless otherwise ordered.” This attempt to enable one House to dictate rules to its successor was often challenged and was finally brought to an end in 1890, after having continued from 1860.<sup>2</sup> It is evident, then, that this rule as to the election of officers is never in existence at the time at which a large portion of it would be expected to apply.

The portion of the rule providing for election by viva voce vote is the embodiment in the form of the result of a long contest in the House. The first Speaker was elected by ballot, and such continued to be the practice both as to the Speaker and other officers for many years. As early as March 1, 1826,<sup>3</sup> Mr. James Buchanan, of Pennsylvania, proposed a rule that the Speaker be elected by viva voce vote, but no action was taken. On January 16 and 17, 1829,<sup>4</sup> a proposition that the officers of the House be elected by viva voce vote was debated at length, and finally laid on the table by a vote of 97 to 92. And election by ballot continued up to and including the election of James K. Polk as Speaker in 1837, although in 1835<sup>5</sup> the proposition for viva voce election had been advanced again. In 1839<sup>6</sup> there was a long contest over the choice of Speaker, and by determination of the House all the votes were taken viva voce, although there was much opposition to the method.

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<sup>1</sup> An Assistant Doorkeeper was, in 1821, an elective officer of the House (first session Seventeenth Congress, Journal, p. 49); but the office was abolished many years ago.

<sup>2</sup> See sections 6743–6745 of Vol. V of this work.

<sup>3</sup> First session Nineteenth Congress, Journal, pp. 296, 305.

<sup>4</sup> Second session Twentieth Congress, Journal, pp. 165, 171.

<sup>5</sup> Second session Twenty-third Congress, Journal, p. 283; Debates, pp. 879, 1051, 1070

<sup>6</sup> First session Twenty-sixth Congress, Journal, pp. 59–79; Globe, pp. 69–74.

The contest of 1839<sup>1</sup> left the House with this rule: "In all cases of election by the House of its officers, the vote shall be taken viva voce." And this rule was continued until 1880,<sup>2</sup> when the Committee on Rules, in framing the present form of rule, omitted the Speaker from the list of officers who should be elected viva voce. At that time Mr. J. Warren Keifer, of Ohio, proposed that the Speaker should be included among the officers elected viva voce, as had been the practice for forty years by the old rule; but it seems to have been the intention that the House on each occasion should determine how it would elect its Speaker. The Speakers are always elected viva voce, and in recent years sometimes without even the preliminary vote to proceed to the election of a Speaker.<sup>3</sup> In fact, as stated above, the rule is not in existence when the Speaker and other officers are usually elected, and the House may determine for itself at the time what method shall be used. It elects the Speaker viva voce and the other officers usually by resolution.

The portion of the rule specifying the officers who shall be elected is, like the portion relating to viva voce voting, a summary of the practice of the House in the past.

On April 1, 1789,<sup>4</sup> a quorum appeared for the first time in the first House of Representatives, and at once the House proceeded to elect the only officer of the House specifically mentioned in the Constitution—the Speaker. And next it proceeded "to the appointment of a Clerk."

On April 2, 1789,<sup>4</sup> the House—

*Resolved*, That a Doorkeeper and Assistant Doorkeeper be appointed for the service of this House.

On April 13, 1789,<sup>5</sup> among the supplemental rules adopted was this:

The Clerk of the House shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities.

And on March 1, 1791,<sup>6</sup> just at the close of the First Congress, this rule was agreed to:

*Resolved*, That the Clerk of the House of Representatives shall be deemed to continue in office until another be appointed.

This rule was in existence in 1859,<sup>7</sup> but seems to have dropped out in the revision of 1860.<sup>8</sup> But the Clerk continues, by ancient usage, and by the implied authority from the Statutes, to act until his successor is chosen.<sup>9</sup> The first rule of the House specifying the Clerk as an officer of the House dates from March 16, 1860,<sup>10</sup> and before that it was commented on as a curious fact that there was no rule, resolution, order, or law directing the appointment of a Clerk.<sup>11</sup>

<sup>1</sup> First session Twenty-sixth Congress, Journal, p. 1517.

<sup>2</sup> Second session Forty-sixth Congress, Record, pp. 199, 553, 554.

<sup>3</sup> First session Fifty-first Congress, Record, p. 80; first session Fifty-fifth Congress, Record, p. 15.

<sup>4</sup> First session First Congress, Journal, p. 6.

<sup>5</sup> First session First Congress, Journal, p. 13.

<sup>6</sup> Third session First Congress, Journal, p. 396.

<sup>7</sup> Second session Thirty-fifth Congress, Journal, p. 629; Rule 21.

<sup>8</sup> Second session Thirty-sixth Congress, Journal, pp. 492, 493.

<sup>9</sup> Section 31 of the Revised Statutes imposes on the Clerk of the preceding House duties as to the organization of the new House.

<sup>10</sup> First session Thirty-sixth Congress, Journal, p. 528.

<sup>11</sup> Third session Twenty-seventh Congress, Journal, p. 733.

On December 23, 1811,<sup>1</sup> at the time when the war with Great Britain was coming on and secret sessions were frequent, a rule was adopted providing that the Doorkeeper and Sergeant-at-Arms should keep the secrets of the House. On December 25, 1825,<sup>2</sup> in a Congress where there was one secret session, the Sergeant-at-Arms and Doorkeeper took that oath. In the combinations of old rules made in the revisions of 1860<sup>3</sup> and 1880,<sup>4</sup> the provision requiring the oath of secrecy was placed in such position as to apply to all the officers of the House; but inasmuch as no secret session has been held for about seventy years, the observance of this portion of the rule is naturally neglected. The portion of the rule requiring an oath to support the Constitution of the United States dates from the revision of 1880.

On March 15, 1860, a rule was adopted that the appointees of the Doorkeeper and Postmaster should be approved by the Speaker,<sup>5</sup> but this did not continue beyond the revision of 1880, having become obsolete.<sup>6</sup>

After the election of the Speaker the other elective officers are usually chosen by the adoption of resolutions.<sup>7</sup>

The Speaker is always a Member of the House; the other elective officers never are.

**188. The House formerly proceeded to the election of an officer on a motion so to do.**

**Discussion as to whether or not the Clerk of the former House continues until his successor is elected.**

On December 7, 1829,<sup>8</sup> after the Speaker had administered the oath to the Members and Delegates, Mr. William Ramsey, of Pennsylvania, offered this resolution:

*Resolved*, That this House do now proceed to the election of a Clerk.

Mr. Richard M. Johnson, of Kentucky, moved to amend by striking out the words "do now" and inserting "will, on Wednesday next, at 12 o'clock meridian."

A question at once arose as to whether or not the Clerk of the former House would continue in service until the election of his successor. There was a divergence of opinion, the Speaker<sup>9</sup> informally expressing the opinion that the Clerk of the preceding House would continue to act.

The House by a large majority decided the amendment in the negative, and the resolution was then agreed to.

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<sup>1</sup> First session Twelfth Congress, Report No. 38.

<sup>2</sup> First session Nineteenth Congress, Journal, pp. 9, 645.

<sup>3</sup> First session Thirty-sixth Congress, Journal, p. 492.

<sup>4</sup> Second session Forty-sixth Congress, Record, pp. 199, 554.

<sup>5</sup> First session Thirty-sixth Congress, Globe, p. 1178.

<sup>6</sup> Second session Forty-sixth Congress, Record, p. 199.

<sup>7</sup> See section 81 of this work.

<sup>8</sup> First Session Twenty-first Congress, Journal, p. 9; Debates, p. 471.

<sup>9</sup> Andrew Stevenson, of Virginia, Speaker.

**189. A resolution that the House proceed to the election of an officer presents a question of privilege.**—On April 5, 1878,<sup>1</sup> there being a vacancy in the office of Doorkeeper, which the House had provided for temporarily by ordering the Sergeant-at-Arms to perform the duties, Mr. Benjamin F. Butler, of Massachusetts, submitted as a question of privilege the following:

*Resolved*, That the House proceed to the election of a Doorkeeper, and that the true Union maimed soldier, Brigadier James Shields, of Missouri, be chosen to that place.

Mr. Samuel S. Cox, of New York, made the point of order that the resolution did not present a question of privilege.

The Speaker<sup>2</sup> said:

The Chair finds himself without an example to follow in the past. In this case, therefore, the House will establish a precedent for the future. In the judgment of the Chair, under the resolution adopted yesterday, an officer was appointed to discharge temporarily the duties of Doorkeeper. It is stated in the Manual that when a proposition is submitted which related to the privileges of the House, it is the duty of the Speaker to entertain it, at least to the extent of submitting the question to the House as to whether or not it presents a question of privilege. The Chair now proposes, in this instance, to allow the question to be determined by the House as to whether or not it presents a question of privilege.

After debate, on April 8, the House, by a vote of yeas 220, nays 4, decided that the resolution presented a question of privilege.<sup>3</sup>

**190. The House often proceeds to the election of its officers as a matter of course, without motion to that effect.**—On December 8, 1863,<sup>4</sup> after the election of a Speaker, and after the Senate and President had been informed of the organization of the House, we find the Speaker announcing that the business next in order was the election of Clerk, without waiting for the order of the House to proceed to the election of Clerk. The House also proceeded to the election of other officers as a matter of course, and without order.

An exception is found in the vote for Chaplain, which was taken on motion made and carried.<sup>5</sup>

**191. An election by resolution is not a compliance with the rule requiring election of officers viva voce.**—On January 9, 1850,<sup>6</sup> while the House was voting viva voce for Clerk in accordance with the rules of the House, Mr. Robert C. Schenck, of Ohio, offered the following resolution, contending that the resolution came within the rule:

*Resolved*, That—be, and he is hereby, elected Clerk of this House for the present session.

Mr. Schenck proposed to move to insert in the blank the name of Solomon Foot, holding that thus, when the yeas and nays were called on filling the blank, a viva voce vote would be obtained.

<sup>1</sup> Second session Forty-fifth Congress, Journal, pp. 801, 809; Record, pp. 2310, 2341.

<sup>2</sup> Samuel J. Randall, of Pennsylvania, Speaker.

<sup>3</sup> The point that the resolution involved besides the order to proceed to the election, also the choice of a particular candidate, does not seem to have occurred to those considering the matter. The rules required the election of officers viva voce, and therefore this resolution contained a change of rule. It is now a principle that the presence of a nonprivileged provision destroys the privilege of a proposition. In this case the House declined to elect in this way, and proceeded to a choice viva voce.

<sup>4</sup> First session Thirty-eighth Congress, Journal, pp. 14, 15, 16, etc.; Globe, pp. 11, etc.

<sup>5</sup> Journal, p. 35.

<sup>6</sup> First session Thirty-first Congress, Journal, p. 265; Globe, p. 125.

The Speaker <sup>1</sup> decided the resolution out of order.

Mr. Schenck having appealed, the decision of the Speaker was affirmed.

Again, on January 16, the Speaker affirmed this decision, saying <sup>2</sup> that election by resolution was not a compliance with the rule requiring the election of the officers of the House viva voce. It was true that they had sometimes been elected by resolution, but he had no recollection of such an election where objection had been made.

Mr. Alexander Evans, of Maryland, having appealed, the decision of the Chair was sustained, yeas 133, nays 64. <sup>3</sup>

**192.** On December 6, 1856, <sup>4</sup> rules having been adopted and the organization of the House having been perfected as far as the election of the Public Printer, <sup>5</sup> Mr. John A. Bingham, of Ohio, offered the following resolution:

*Resolved*, That Oram Follett, of Columbus, Ohio, be, and he is hereby, elected Public Printer for the House of Representatives of the Thirty-fourth Congress.

Mr. Thomas L. Clingman, of North Carolina, submitted as a question of order that it was not competent, under the rules, to elect a Printer, except after a previous nomination and upon a viva voce vote, and that the resolution was out of order.

The Speaker <sup>6</sup> sustained the point of order.

This decision was acquiesced in by the House.

**193. A resolution declaring certain persons elected officers of the House is at variance with the standing rule of the House.**

**Instance wherein the House failed to elect a Doorkeeper and Postmaster, the officers of the preceding House continuing to serve.**

On January 19, 1850, <sup>7</sup> the House had not elected a Doorkeeper or Postmaster, and postponed the election of those officers until the first day of March, 1851. The Doorkeeper and Postmaster of the former House continued to discharge the duties of their positions.

On April 18, 1850, <sup>8</sup> Mr. Nathaniel S. Littlefield, of Maine, submitted the following resolution:

*Resolved*, That Robert E. Horner, of New Jersey, be, and he hereby is, declared elected Doorkeeper of this House; and John M. Johnson, of Virginia, be, and he hereby is, declared duly elected Postmaster of this House; to hold their respective offices until others are chosen in their stead.

Mr. Horner was Doorkeeper of the preceding House and Mr. Johnson the Postmaster. They were acting in those offices at this session, by the acquiescence of the House.

<sup>1</sup> Howell Cobb, of Georgia, Speaker.

<sup>2</sup> Journal, pp. 333, 334; Globe, p. 162.

<sup>3</sup> It is to be noticed that the conditions under which this ruling was made differs from the conditions at the organization before the rules, including the rule prescribing viva voce voting, have been adopted.

<sup>4</sup> First session Thirty-fourth Congress, Journal, pp. 464, 466; Globe, p. 372.

<sup>5</sup> The Public Printer is no longer an officer of the House.

<sup>6</sup> Nathaniel P. Banks, Jr., of Massachusetts, Speaker.

<sup>7</sup> First session Thirty-first Congress, Journal, p. 363.

<sup>8</sup> Journal, p. 806; Globe, pp. 764, 765.

The Speaker<sup>1</sup> declared that the resolution, as a question of privilege, was out of order, on the ground that the House, on a former occasion, had so decided against the opinion of the Chair when a similar proposition was submitted, and also for the reason that it proposed a mode of election at variance with a standing rule of the House.<sup>2</sup>

Mr. Littlefield having appealed, the appeal was laid on the table on motion of Mr. Thaddeus Stevens, of Pennsylvania.

**194. The election of officers by resolution is subject to objection, but is often permitted by unanimous consent.**

**In recent years all the officers have been elected before the President and Senate have been informed of the organization.**

At the organization of the House on December 4, 1865, after the election of Speaker, but before the adoption of rules, Mr. James F. Wilson; of Iowa, offered a resolution for the election of the other officers of the House.

Mr. Samuel J. Randall, of Pennsylvania, objected on the ground that some Members wanted to vote for candidates not named in the resolution.

Thereupon a motion was made to suspend the rules so as to offer the resolution, and this being done the resolution was agreed to.

At that time Rule 147 provided that the rules of the preceding House should govern this until superseded.<sup>3</sup> But whether this could actually be so was a disputed question, and so it is doubtful whether the motion to suspend the rules applied to the rules of the last House or to the long custom of the House as to its elections.<sup>4</sup>

**195.** On December 4, 1865,<sup>5</sup> the subordinate officers of the House were elected by one resolution, and not by separate roll calls. So the resolution notifying the Senate and the one notifying the President were not offered and agreed to until all the officers had been elected.

**196.** On December 2, 1873,<sup>6</sup> the officers of the House, except the Speaker, were elected by resolution, the minority offering a substitute containing the names of their nominees. The officers having been elected, a message was sent to the Senate informing that body that the House had organized, and that James G. Blaine had been chosen Speaker. But no reference was made to any other of the officers.

**197. Although a former rule of the House required a nomination before voting for certain officers, yet the Speaker refrained from ruling that votes might not be cast for persons not nominated.**—It was a former rule of the House that where others than Members of the House were eligible to election as officers of the House, there should be a nomination. Mr. Speaker Cobb refrained, however, from deciding that under this rule Members were prohibited from voting for anyone not nominated.<sup>7</sup>

<sup>1</sup> Howell Cobb, of Georgia, Speaker.

<sup>2</sup> The rule requiring viva voce election. See section 187 of this volume. It will be observed that this ruling was made not at the beginning of the Congress, but after the House had adopted rules.

<sup>3</sup> The theory that the rules of the preceding House controlled until the adoption of new rules prevailed at this time, but has since been abandoned. See sections 6743–6745 of Vol. V of this work.

<sup>4</sup> First session Thirty-ninth Congress, *Globe*, p. 5; *Journal*, p. 1217, for the rule.

<sup>5</sup> First session Thirty-ninth Congress, *Journal*, pp. 8, 10; *Globe*, pp. 5, 6.

<sup>6</sup> First session Forty-third Congress, *Journal*, pp. 11, 12; *Record*, pp. 6, 7.

<sup>7</sup> January 3, 1850. First session Thirty-first Congress, *Globe*, p. 94.

**198. The Senate and President are informed of the presence of a quorum and the organization of the House.**

**In the earlier practice the messages announcing the organization were sent immediately after the election of Speaker, and did not refer to the election of Clerk.**

On December 7, 1790,<sup>1</sup> after the House had appointed its committee to join with a Senate committee to wait on the President and inform him that a quorum of the two Houses had assembled, a message was received from the Senate stating that they had agreed to a resolution for the appointment of a committee, jointly with the committee to be appointed by the House, to wait on the President, etc. The House disagreed to the resolution of the Senate. Later a message from the Senate announced that they had appointed a committee to act jointly with the House committee.

**199.** On December 1, 1845,<sup>2</sup> the House informed the Senate that a quorum had assembled, and that John W. Davis had been elected Speaker, while the Clerk was not elected until the following day.

**200.** At the organization of the Twenty-seventh Congress, in 1841,<sup>3</sup> the Speaker and Clerk were elected on May 31, the first day of the session, and the usual messages were sent to the Senate and to the President, informing them that the House was organized and ready for business. But the election of Sergeant-at-Arms, Doorkeeper, Assistant Doorkeeper (not now an elective officer), Postmaster, and Chaplain were not ordered by the House until June 8, after rules had been adopted and the committees appointed. The message to the Senate announcing the presence of a quorum announced that John White had been elected Speaker, but did not mention the election of the Clerk.

**201.** On December 5, 1853,<sup>4</sup> at the organization of the House, as soon as the Speaker was elected the usual messages were sent to the Senate and President, notifying them of the organization of the House. This was in accordance with the practice of the early years of the House's existence. Then rules were adopted, and after that a motion was made and carried to proceed to the election of a Clerk. This was done *viva voce*. Then the Sergeant-at-Arms, Doorkeeper, and Postmaster were elected together by a resolution.

**202.** On December 8, 1863,<sup>5</sup> the Senate and President were informed of the organization of the House before the election of a Clerk and other subordinate officers of the House.

**203.** On December 6, 1875,<sup>6</sup> the usual resolution notifying the Senate that a quorum of the House was present and had elected Hon. Michael C. Kerr, Speaker, was presented by Mr. William S. Holman, of Indiana. Thereupon Mr. James A. Garfield, of Ohio, proposed an amendment to include also the name of the Clerk. Mr. Holman stated that such was not the usual form, but made no objection to the amendment, which was agreed to.

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<sup>1</sup>Third session First Congress, Journal, p. 4.

<sup>2</sup>First session Twenty-ninth Congress, Journal, pp. 9, 13.

<sup>3</sup>First session Twenty-seventh Congress, Journal, pp. 11, 18, 19, 52.

<sup>4</sup>First session Thirty-third Congress, Journal, pp. 10-14; Globe, p. 4.

<sup>5</sup>First session Thirty-eighth Congress, Journal, p. 14; Globe, p. 10.

<sup>6</sup>First session Forty-fourth Congress, Journal, p. 14; Record, p. 173.

**204. Although always at liberty to choose its manner of electing a Speaker, the House has declined in later years to substitute balloting for viva voce choice.**—On May 31, 1841,<sup>1</sup> at the first day of the first session of the Congress the roll of Members-elect was called by the Clerk of the last House, and the presence of a quorum ascertained.

Thereupon, Mr. Hiram P. Hunt, of New York, moved this resolution:

*Resolved*, That the Members will now proceed to the organization of the House by the election of a Speaker, viva voce.

A motion was made by Mr. Lewis Williams, of North Carolina, that the words “viva voce” be stricken out and that the words “by ballot” be inserted.

The question on the amendment being taken by yeas and nays, there were 66 yeas and 154 nays. So the amendment was disagreed to.

Mr. Henry A. Wise, of Virginia, then moved to amend the resolution by adding thereto the following:

And after the Speaker shall have sworn the Members they will proceed to the election of a Clerk in like manner.

This motion was disagreed to, and then the original resolution was agreed to.<sup>2</sup>

**205.** On December 4, 1843,<sup>3</sup> at the organization of the House, the Clerk (Matthew St. Clair Clarke) called the roll and announced the presence of a quorum. Thereupon he reminded the House that, as no rules had been adopted, there was no form prescribed for the election of the Speaker.

Thereupon, a motion was made and carried that the House do proceed to the election of a Speaker viva voce.

The rule at that time (i.e., the code of rules adopted by the House in this and several preceding Congresses), provided that all elections of officers of the House should be viva voce. The rule at present does not include the Speaker among those to be elected viva voce.

**206.** The Thirty-first Congress assembled on December 3, 1849,<sup>4</sup> but the House was unable to elect a Speaker until December 23. While this voting was going on a motion was generally made at the beginning of each legislative day that the House proceed viva voce to elect a Speaker. Then the votings would proceed as a matter of course through the day. As time went on motions were offered and entertained proposing election by ballot, by lot, and by resolution. These were not adopted, and the House would resume the viva voce voting by motion made and carried, or as a matter of course. Rules had not been adopted at this time, and consequently the rule providing for viva voce election was not in operation.

<sup>1</sup>First session Twenty-seventh Congress, Journal, pp. 8, 9; Globe, pp. 2, 3.

<sup>2</sup>The rules had before this been amended to provide for the election of the Speaker by viva voce vote; but as rules had not been adopted yet in this Congress there was no rule applying. The usage of voting viva voce has become so strong in later years that the method has not been questioned for a long time.

<sup>3</sup>First session Twenty-eighth Congress, Journal, p. 7; Globe, p. 3.

<sup>4</sup>First session Thirty-first Congress, Journal, pp. 2–165; Globe, pp. 1–67.

**207.** On December 3, 1855,<sup>1</sup> at the organization of the House, after the Clerk of the preceding House had called the roll and announced the presence of a quorum, Mr. George W. Jones, of Tennessee, moved that the House proceed to the election, viva voce, of a Speaker for the Thirty-fourth Congress.

The question being put, the motion was agreed to.

Thereafter, on each day, the House proceeded to the voting without special vote, unless propositions in regard to the organization intervened. And as soon as they were disposed of the voting was resumed as a matter of course.

**208.** On December 19, 1855,<sup>2</sup> after sixty-five ineffectual attempts to elect a Speaker viva voce, a motion was made that the House proceed to election by ballot. This motion was disagreed to—yeas 214, nays 7.

**209. As late as 1837 the House maintained the old usage of electing the Speaker by ballot.**—On September 4, 1837,<sup>3</sup> the roll of Members by States having been called, and the presence of a quorum having been announced, it was, on motion of Mr. David Petrikin, of Pennsylvania,

*Resolved*, That the Members present now proceed to the organization of the House by the choice of a Speaker.

The House then proceeded by ballot to the election of a Speaker; and upon an examination of the first ballot it appeared that James K. Polk, one of the Representatives from the State of Tennessee, was duly elected, having received a majority of all the votes given in.

**210. The House and not the hold-over Clerk decides by what method it shall proceed to elect a Speaker.**

**Why the House in a new Congress meets at 12 m.**

**Discussion as to whether or not the rules of one House remain the rules of the next House until changed.**<sup>4</sup>

On December 7, 1835,<sup>5</sup> at the beginning of the first session of the Congress, the Members-elect were called to order by the Clerk of the last House, and the roll having been called, and the presence of a quorum having been ascertained and announced, the Members were about to proceed by ballot to the election of a Speaker, the Clerk having announced that the next business in order was the election of a Speaker by ballot.

At this point Mr. John M. Patton, of Virginia, raised a question as to the authority by which the Clerk announced that the House would proceed by ballot to the election of a Speaker. The House, if it was competent to elect, was also competent to prescribe the method of election. He preferred the method of election by viva voce voting. They were not bound by the rules of the last House and might proceed as they pleased. Mr. Samuel Beardsley, of New York, argued that the House might proceed to the election by ballot or viva voce, as it might please. Custom alone had sanctioned the practice that the Clerk of the House should, on

<sup>1</sup>First session Thirty-fourth Congress, Journal, pp. 8, 18, 43, etc.; Globe, pp. 4, 6.

<sup>2</sup>First session Thirty-fourth Congress, Journal, p. 153; Globe, p. 53.

<sup>3</sup>First session Twenty-fifth Congress, Journal, p. 9; Globe, p. 3.

<sup>4</sup>See sections 6743–6745 of Volume V of this work.

<sup>5</sup>First session Twenty-fourth Congress, Journal, p. 8; Debates, pp. 1943–1945.

the first day of the session, at 12 o'clock, call over the names of the Members; and custom also had sanctioned the practice of the Clerk calling for the Members to vote and putting the question for Speaker. Mr. James Parker, of New Jersey, urged that the House should not depart from the old usage of fifty years and more, which had come to have the force of common law, and in accordance with which the Clerk called the House to order at 12 o'clock, and at no other hour, ascertained the presence of a quorum by a call of the roll; and then the House, in accordance with the same custom, proceeded to choice of a Speaker by ballot.

The Clerk read the rule of the last House providing the method of electing the Speaker by ballot,<sup>1</sup> and Mr. Abijah Mann, jr., of New York, contended that the rules of the last House were the laws of the present until changed, and that the Clerk did not hold his position and perform the functions at this time by mere custom.

Mr. Patton moved that the Speaker be elected *viva voce*.

On motion of Mr. George Evans, of Maine, this motion was laid on the table. Then, on motion of Mr. Beardsley, it was

*Resolved*, That the House do now proceed to the election of a Speaker by ballot.

**211. Procedure for electing the Speaker by *viva voce* vote.**—On December 7, 1857,<sup>2</sup> 226 Members having answered to their names, the Clerk announced that a quorum was present. Then, on motion of Mr. John Smith Phelps, of Missouri, it was ordered that the House do now proceed *viva voce* to the election of a Speaker for the Thirty-fifth Congress.

The Clerk having appointed tellers, and nominations having been made, the Members then proceeded to vote *viva voce* for Speaker.<sup>3</sup>

**212. At the organization of the House the motion to proceed to the election of a Speaker is of the highest privilege.**—On March 4, 1869,<sup>4</sup> at the organization of the House, after the Clerk had called the roll of Members-elect and announced the presence of a quorum, Mr. George W. Woodward, of Pennsylvania, submitted the following resolution:

*Resolved*, That the roll of Members of the Forty-first Congress be amended by the addition of the name of Henry D. Foster, as the Representative of the Twenty-first Congressional district of Pennsylvania, and that said Foster be called and admitted as the sitting Member *prima facie* entitled to represent said district.

Mr. Ellihu B. Washburne, of Illinois, moved that the House proceed to the election of a Speaker, claiming precedence for the motion as involving a question of privilege.

Mr. John A. Logan, of Illinois, made the point of order that the law gave to the Clerk the making of the roll of members to be called prior to the organization.

<sup>1</sup> See section 187 of this work for rule for election by ballot as it existed at that time. The rule was then classified among those rules relating to the Speaker.

<sup>2</sup> First session Thirty-fifth Congress, Journal, p. 8.

<sup>3</sup> In recent years the House has often proceeded at once to election *viva voce* without the formality of a motion.

<sup>4</sup> First session Forty-first Congress, Globe, p. 3.

The Clerk <sup>1</sup> said:

The gentleman from Illinois, Mr. Washburne, rose to a question of privilege which has precedence of that of the gentleman from Pennsylvania, and therefore the question before the House is on the motion to proceed to the election of a Speaker. \* \* \* The duty of the House to organize itself is a duty devolved upon it by law, and any matter looking to the performance of that duty takes precedence in all parliamentary bodies of all minor questions.

**213. The motion that the House proceed to elect a Speaker is debatable unless the previous question is ordered.**—On March 4, 1867,<sup>2</sup> at the organization of the House, the Congress having assembled in accordance with the act of January 22, 1867, the Clerk had called the names of the Members-elect and had announced that a quorum was present.

Thereupon Mr. James F. Wilson, of Iowa, moved that the House proceed to the election of a Speaker *viva voce*.

Mr. James Brooks, of New York, having the floor, was proceeding to debate, when Mr. John F. Farnsworth, of Illinois, made the point of order that no debate was in order until after the House had proceeded to the election of its officers.

The Clerk <sup>1</sup> said:

The Chair overrules the point of order, the previous question not having been called.

After further debate the previous question was moved and ordered, and under the operation thereof the motion of Mr. Wilson was agreed to.

**214. A resolution to proceed to the election of a Speaker presents a question of privilege, and pending the decision another question of privilege may not be presented.**—On December 4, 1876,<sup>3</sup> at the opening of the session, 250 Members having answered to their names, the Clerk announced that a quorum was present.

Mr. William S. Holman, of Indiana, submitted the following preamble and resolution:

Whereas the House being informed that since its last adjournment Hon. Michael C. Kerr, who at the commencement of the present Congress was elected Speaker of the House, has departed this life, creating a vacancy in the office of Speaker: Therefore,

*Resolved*, That the House do now proceed to the election of a Speaker *viva voce*.

Mr. Nathaniel P. Banks, of Massachusetts, as a question of privilege, presented the credentials of James B. Belford as Representative from the State of Colorado, and moved that the oath of office be administered to the said Belford.

Mr. Holman demanded the previous question on the adoption of the said resolution, when Mr. Banks made the point of order that the right of a Member to participate in the election of a Speaker was a question of higher privilege than the election of a Speaker.

This question of order was debated at considerable length, it being urged that the election of Speaker was secondary to the determination of what Members should be on the roll to participate in that election. The distinction was also drawn between this election and one at the beginning of a Congress when, under the law,

<sup>1</sup> Edward McPherson, of Pennsylvania, Clerk.

<sup>2</sup> First session Fortieth Congress, *Globe*, p. 2.

<sup>3</sup> Second session Forty-fourth Congress, *Journal*, p. 8; *Record*, p. 5.

the Clerk judges what names are to go onto the roll. Not only Mr. Belford was waiting to be sworn in, but also Mr. Edwin Flye, of Maine, successor of Mr. James G. Blaine.

The Clerk<sup>1</sup> overruled the point of order, on the ground that the resolution submitted by Mr. Holman presented a question of privilege, and that pending the decision of such question another question of privilege could not be submitted.

From this decision of the Clerk Mr. Banks appealed. Mr. Cox moved that the appeal be laid on the table, which was done by a vote of 165 yeas to 84 nays.

**215. In 1809 the House held that a Speaker should be elected by a majority of all present.**—On May 27, 1809,<sup>2</sup> at the organization of the House, the ballot for Speaker showed the following result:

For Joseph B. Varnum .....	60
For Nathaniel Macon .....	36
For Timothy Pitkin, jr .....	20
For Roger Nelson .....	1
For C. W. Goldsborough .....	1
Blank ballots .....	2
<hr/>	
Total .....	120

The tellers submitting the question as to whether Mr. Varnum was elected or not, Mr. Nathaniel Macon, of North Carolina, the rival candidate, expressed the opinion that Mr. Varnum was elected; but Mr. John Randolph, of Virginia, opposed this view strenuously, insisting that the House should elect its Speaker more majorum, after the manner of their ancestors. And on motion of Mr. Randolph the House proceeded to ballot again, which motion was carried-ayes 67, noes 43. On the next ballot Mr. Varnum was elected by 65 votes out of 119.

On the succeeding day the Journal was found to state that a majority of the votes were for Mr. Varnum, whereupon, on motion of Mr. Randolph, it was amended to read: "Sixty-five votes, being a majority of the whole number of Members present, were found in favor of Joseph B. Varnum." The call of the roll by States just preceding Mr. Varnum's election showed 126 responding. The 65 voting for Mr. Varnum were a majority of this number.

**216. In 1879 it was held that a Speaker might be elected by a majority of those present, a quorum voting, a majority of all the members not being required.**

**Discussion as to the size of a valid vote when a quorum is present.**

On March 18, 1879,<sup>3</sup> at the organization of the House, on the viva voce vote for Speaker, the following result was announced by the tellers:

For Samuel J. Randall .....	144
For James A. Garfield .....	125
For Hendrick B. Wright .....	13
For William D. Kelley .....	1
<hr/>	
Total .....	283

<sup>1</sup> George M. Adams, of Kentucky, Clerk.

<sup>2</sup> First session Eleventh Congress, Journal, p. 5; Annals, pp. 54-56.

<sup>3</sup> First session Forty-sixth Congress, Record, p. 5.

The total membership of the House, however, under the existing apportionment, was 293, and the vote for Mr. Randall fell short of a majority of that number.

Mr. Omar D. Conger, of Michigan, asked if it did not require a majority of all the Members elected to the House to elect a Speaker.

The Clerk<sup>1</sup> replied:

It requires a majority of those voting to elect a Speaker, as it does to pass a bill. The rule requires that a quorum shall vote.<sup>2</sup> That is the opinion of the Clerk.

Thereupon Mr. Randall was declared elected Speaker.

**217. Tellers of the vote on the election of a Speaker are appointed by the Clerk.**—On December 5, 1859,<sup>3</sup> the House having voted to proceed viva voce to elect a Speaker, the Clerk appointed Mr. George S. Houston, of Alabama, Thomas Corwin, of Ohio, Garnett B. Adrian, of New Jersey, and George Briggs, of New York, tellers. The Clerk made the appointment of these tellers without suggestion or vote from the floor, and the Journal records the appointment.

**218. The House has in one instance asked the candidates for Speaker to state their-views before proceeding to election.**—On January 11, 1856,<sup>4</sup> before the election of a Speaker or the adoption of rules, Mr. Felix K. Zollicoffer, of Tennessee, offered the following:

*Resolved*, That in conformity with the principles of a great popular Government, such as that of the United States, it is the duty of all candidates for political position frankly and fully to state their opinions upon important political questions involved in their election, and especially when they are interrogated by the body of electors whose votes they are seeking.

<sup>1</sup> George M. Adams, of Kentucky, Clerk.

<sup>2</sup> Since 1890 the requirement has been the quorum present, rather than the quorum voting. See section 2895 of Vol. IV of this work. In the decision of the Supreme Court sustaining the ruling of Mr. Speaker Reed, the court had used this language: "And here the general rule of all parliamentary bodies is that when a quorum is present, the act of a majority of the quorum is the act of the body itself." On January 10, 1896 (First session Fifty-fourth Congress, Record, pp. 579-581) a question arose on this feature of the subject, Mr. Joseph W. Bailey, of Texas, contending that for lawful action there must be the vote of a majority of a quorum. In other words, the quorum of the existing House was 179. Granted that this number should be present, yet by reason of some not voting, there might be on the passage of a bill yeas 76, nays 74. So a majority of those present would not vote affirmatively, and Mr. Bailey contended that the bill would not be lawfully passed.

The Speaker (Mr. Reed) intervened to ask: "Does the gentleman from Texas hold that it is necessary that 89 persons at least [the Speaker must have meant 90 instead of 89, since 90 is a majority of 179] should vote for every proposition that passes the House?"

Mr. Bailey contended that on a recorded vote it would be necessary.

The Speaker replied, with the concurrence of Mr. Bailey, that many bills had been passed without fulfilling the requirement, and continued:

"The Chair \* \* \* having examined the matter somewhat carefully at various times, he finds that the court in making that decision perhaps decided that it was within the most extreme contention of the opponents, some people having contended that it is necessary to have a majority of a quorum voting. The court pointed it out in this case; but it was not necessary to discuss that question. They might have decided, had they come to the plain question of the body being constituted of the persons who participated in the presence of the rest of the body, they were controlled by their votes, because the rest of the body, being present, could have intervened and overruled them if they had so chosen; but not having chosen to do so it [they] allowed 88 [90] or any less number to pass a measure practically by their assent, because declining to participate was assent."

<sup>3</sup> First session Thirty-sixth Congress, Journal, p. 8; Globe, p. 2.

<sup>4</sup> First session Thirty-fourth Congress, Journal, p. 302; Globe, pp. 213, 222.

Although objection was made that this resolution constituted business which the House in its disorganized condition was not competent to transact, it passed in the affirmative. Later, on January 12, the candidates for Speaker answered interrogatories in accordance with the requirements of the resolution.

**219. After the election of a Speaker and before he has been conducted to the chair no debate or business is in order.**—On February 1, 1860,<sup>1</sup> the Clerk had announced the election of William Pennington, of New Jersey, as Speaker, when Mr. Thomas C. Hindman, of Arkansas, sought recognition and began to speak.

Mr. Galusha A. Grow, of Pennsylvania, made the point of order that a Speaker had just been elected by the House, and that nothing could be in order until he had been conducted to the chair.

Clerk<sup>2</sup> said:

The Clerk begs leave respectfully to suggest to the gentleman from Arkansas that this House has just declared a Speaker-elect, and that the first thing in order is to conduct that Speaker to the chair. The Clerk has no power further to preserve order. Until the Speaker has been conducted to the chair, the House is without an organ or any person having authority to entertain motions or questions of order.

The Clerk then appointed a committee of two to conduct the Speaker-elect to the chair.

**220. The Clerk appoints the committee to escort the newly elected Speaker to the chair.**

**It has long been the usage that the oldest Member in continuous service shall administer the oath to the Speaker.**

After a Speaker has been elected the Clerk appoints the committee to escort him to the chair. On February 2, 1856,<sup>3</sup> after Mr. Speaker Banks had finally been elected after a long struggle, Mr. John Wheeler, of New York, proposed to designate the committee by resolution, but desisted because of the remonstrances of Mr. Joshua R. Giddings, of Ohio, who as “the oldest consecutive Member” was about to administer the oath to the Speaker. Mr. Giddings said that the Clerk always appointed the committee, and to arrange it otherwise would be an “innovation on the whole past practice of the House.”

**221. The contest over the organization of the House in 1849.<sup>4</sup>**

**The House declined to determine the choice of a Speaker by lot.**

**The House by special rule chose a Speaker by a plurality of votes, but confirmed the choice by a majority vote.**

**The question as to whether or not the House, before its organization, may adjourn over for more than one day.**

On December 22, 1849,<sup>5</sup> the House had been in session nineteen days<sup>5</sup> without being able to elect a Speaker, no candidate having received a majority of the votes cast. The voting was viva voce, each Member when called naming the candidate

<sup>1</sup> First session Thirty-sixth Congress, Globe, pp. 654, 655.

<sup>2</sup> James C. Allen, of Illinois, Clerk.

<sup>3</sup> First session Thirty-fourth Congress, Globe, p. 342.

<sup>4</sup> There had also been a prolonged contest over the organization of the House in 1840 (see sec. 103 of this work), but it was not occasioned by a difficulty over the election of Speaker.

<sup>5</sup> First session Thirty-first Congress, Journal pp. 156, 163, 164.

for whom he voted. After the thirteenth ballot Mr. Andrew Johnson, of Tennessee, offered a resolution providing that if, on the next ballot, no individual should receive a majority of the votes cast, the individual receiving a plurality of votes should be the Speaker for the present session. An amendment was proposed, to provide that the vote be taken by ballot. Both the resolution and amendment were laid on the table by a vote of 210 to 11.<sup>1</sup> A resolution proposed by Mr. Frederick P. Stanton, of Tennessee, to restrict the voting to the four highest candidates, and in the event of no choice to the two highest, was also laid on the table.<sup>2</sup>

On December 6, after the fourteenth ballot, Mr. John A. McClernand, of Illinois, offered a resolution to adopt the rules of the last House and appoint Mr. Linn Boyd, of Kentucky, chairman until a Speaker should be elected. After an amendment had been proposed to alternate Mr. Samuel F. Vinton, of Ohio, with Mr. Boyd, and after Mr. McClernand had modified his proposition so as to permit the proposed chairman merely to keep order during the proceedings on the election of Speaker, the whole proposition was laid on the table by a vote of 116 to 105.

After the thirtieth ballot Mr. Lewis C. Levin, of South Carolina, offered a resolution that each of the five parties, or factions, in the House should put the name of its candidate in a box and that the Clerk should draw one therefrom, thus determining the Speakership by lottery. This resolution was promptly laid upon the table. After the thirty-first ballot it was proposed that lots be drawn between Mr. Howell Cobb and Mr. Robert C. Winthrop to determine who should be Speaker. This was not approved. A motion that the vote be taken by ballot was also defeated by a vote of 162 to 62.

After the forty-first ballot Mr. George Ashmun, of Massachusetts, proposed a plan for electing by plurality of votes, but it did not meet with favor.

On motion of Mr. Milo M. Dimimick, of Pennsylvania, it was ordered that the House should proceed with the election of a Speaker and that there should be no debate until such an election should be effected.

Various solutions of the difficulty were offered as the balloting proceeded, such as modifications of the plurality plan, proposals to raise a committee to devise a plan for organization, to elect a Speaker pro tempore, etc.

Finally, after the fifty-ninth ballot, Mr. Frederick P. Stanton offered and the House adopted, after attempts to amend and protests from the minority at the prohibition of debate, the following resolution by a vote of 113 yeas to 106 nays:

*Resolved*, That the House will proceed immediately to the election of a Speaker, viva voce; and if, after the roll shall have been called three times, no Member shall have received a majority of the whole number of votes, the roll shall again be called, and the Member who shall then receive the largest number of votes, provided it be a majority of a quorum, shall be declared to be chosen Speaker.

A strong protest<sup>3</sup> was made against the plurality resolution and against the resolution prohibiting debate. Mr. Robert Toombs, of Georgia, insisted on making his protest, although the Clerk began a roll call while he was on the floor, and there was great disorder and confusion. He denied the right of the unorganized House

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<sup>1</sup> Journal, p. 32.

<sup>2</sup> Journal, p. 34.

<sup>3</sup> First session Thirty-first Congress, Globe, p. 62.

to limit debate or adopt the plurality rule, basing his opposition on the second section of the act of 1789—

That at the first session of Congress after every general election of Representatives, the oath or affirmation aforesaid shall be administered by any one Member of the House of Representatives to the Speaker, and by him to all the Members present, and to the Clerk, previous to entering on any other business.<sup>1</sup>

A motion having been made to adjourn over to a day beyond the next day, Mr. Alexander H. Stephens, of Georgia, arose and suggested the constitutional point that the House could not, until it was organized, do otherwise than adjourn from day to day. The House decided the motion to adjourn over in the negative.<sup>2</sup>

Under the operation of the plurality, resolution, the sixty-third vote resulted as follows:

For Howell Cobb .....	102
For Robert C. Winthrop .....	100
For David Wilmot .....	8
For Charles S. Morehead .....	4
For William Strong .....	3
For Alexander H. Stephens .....	1
For William F. Colcock .....	1
For Charles Durkee .....	1
For Emery D. Potter .....	1
For Linn Boyd .....	1
	—
Whole number of votes given .....	222

Of which number, Mr. Howell Cobb, of Georgia, having received 102 votes, being the largest number cast for any one Member, under the resolution adopted by the House, and being a majority of a quorum of the House, Mr. Stanly thereupon offered the following resolution:

*Resolved*, That Howell Cobb, a Representative from the State of Georgia, be declared duly elected Speaker of the House of Representatives for the Thirty-first Congress.

This resolution having been adopted, Mr. Cobb was conducted to the chair by Mr. Robert C. Winthrop, of Massachusetts, and Mr. James McDowell, of Virginia.

### **222. The contest over the organization of the House in 1855 and 1856.**

**The House by special rule chose a Speaker by plurality of votes, but confirmed the choice by a majority vote on a resolution declarative of the result.**

<sup>1</sup>This now section 30, Revised Statutes. (See also sec. 128 of this work.)

<sup>2</sup>See also Section 89 of this volume. During the prolonged contest in the first session Thirty-fourth Congress, which resulted in the election of Speaker Banks, the House voted, on December 24, 1855, to adjourn over. (Journal, p. 172; Globe, pp. 78, 79.) Mr. Joshua R. Giddings, of Ohio, suggested that they had no power to adjourn over, and that a majority of the Members might come the next day and elect a Speaker, notwithstanding the adjournment over; but the point was not further insisted on. Mr. Alexander H. Stephens, of Georgia, who had suggested it in the Thirty-first Congress, participated in the debate, but said nothing on this point. Previous to this (Journal, p. 18) the Doorkeeper had been directed to enforce so much of the rules of the last Congress as related to the admission of persons within the hall of the House.

**The House declined to permit any announcement but its own declaration in a case wherein a Speaker was chosen by plurality of votes.**

**Use of the motion to rescind in proceedings for organization of the House.**

**Instance of thanks to the Clerk for presiding during a prolonged contest over the organization.**

On February 2, 1856,<sup>1</sup> the House was in the midst of a struggle over the election of a Speaker. One hundred and twenty-nine ballots had been taken without any candidate receiving the majority of the votes cast. Various devices, including attempts to elect Members by means of adopting resolutions declaring such a one to be Speaker, had been tried without success. On this day the proposition to elect by a plurality of votes was revived, and Mr. Samuel A. Smith, of Tennessee, submitted the following resolution, viz:

*Resolved*, That the House will proceed immediately to the election of a Speaker viva voce. If, after the roll shall have been called three times, no Member shall have received a majority of all the votes cast, the roll shall again be called, and the Member who shall then receive the largest number of votes, provided it be a majority of a quorum, shall be declared duly elected Speaker of the House of Representatives for the Thirty-fourth Congress.

This resolution was adopted by a vote of 113 yeas and 104 nays. After its adoption a motion was made<sup>2</sup> to rescind it, and was laid on the table by a vote of 117 to 110. After a motion to adjourn had been voted on, the motion to rescind was again made, but, the question being submitted to the House, the House decided that the motion to rescind was not again in order.

After the one hundred and thirty-third vote the following result was reached:

For Nathaniel P. Banks, jr .....	103
For William Aiken .....	100
For Henry M. Fuller .....	6
For Lewis D. Campbell .....	4
For Daniel Wells, jr .....	1
	—
Whole number of votes .....	214

Of which number Nathaniel P. Banks, jr., of Massachusetts, having received 103 votes, being the largest number cast for any one Member, and a majority of a quorum of the House, was declared by the tellers to have been duly elected Speaker of the House of Representatives for the Thirty-fourth Congress.

Mr. Samuel P. Benson, of Maine, taking the roll, announced the vote, concluding with the declaration that Mr. Banks "is declared Speaker of the House of Representatives for the Thirty-fourth Congress."<sup>3</sup> Immediately there was a question of the right of the gentleman from Maine to make such a declaration. It was declared that only the House could make such a declaration, and the precedent of 1849 was recalled, when a resolution was adopted declaring Mr. Howell Cobb, of Georgia, duly elected Speaker. Mr. Cobb, in reply, said that he had not believed the declaratory

<sup>1</sup> First session Thirty-fourth Congress, Journal, pp. 429, 430, 444.

<sup>2</sup> Congressional Globe, first session Thirty-fourth Congress, p. 336.

<sup>3</sup> Congressional Globe, first session Thirty-fourth Congress, p. 339.

resolution necessary in 1849 and he did not believe it necessary now. If a majority of the House adopted the plurality rule, when a plurality vote was cast for a Member he was elected by virtue of the resolution originally adopted by a majority of the House. On the other hand, it was urged by Mr. William W. Boyd, of South Carolina, that the majority could not empower a minority to designate a Speaker, because delegated power could not be delegated.

Mr. Thomas L. Clingman, of North Carolina, submitted the following resolution:

*Resolved*, That, by reason of the adoption of the proposition known as the plurality resolution, and the votes taken under it, the Hon. N. P. Banks, of Massachusetts, has been duly chosen Speaker, and is hereby so declared.

This resolution having been agreed to by a vote of 156 yeas to 40 nays, Mr. Banks was conducted to the chair by Mr. William Aiken, of South Carolina, Mr. Henry M. Fuller, of Pennsylvania, and Mr. Lewis D. Campbell, of Ohio, and addressed the House.

Mr. Stanton submitted the following resolution; which was unanimously agreed to, viz:

*Resolved*, That the thanks of this House are eminently due, and are hereby tendered, to John W. Forney, esq., for the distinguished ability, fidelity, and impartiality with which he has presided over the deliberations of the House of Representatives during the arduous and protracted contest for Speaker which has just closed.

**223. In 1860 the election of a Speaker proceeded slowly, the voting being interspersed with debate which the Clerk did not prevent.**—At the first session of the Thirty-sixth Congress, which began on December 5, 1859, there was a prolonged delay over the election of Speaker, a result being reached on February 1, 1860, after fifty-four ballots. On the first day of the session it was ordered that the House proceed *viva voce* to the election of a Speaker.

Thereupon a ballot was taken without result. Debate then began; and as the Clerk declined to decide any questions of order, the voting for Speaker proceeded very slowly. All questions of order were submitted to the House and were debated, so it became practically impossible to hasten proceedings. Sometimes only one vote would be taken during a day, the remainder of the time being consumed in debate. It was urged by Mr. Israel Washburn, jr., of Maine, and by others that the order to proceed to the election of a Speaker was a standing order and that debate and other matters were not in order.<sup>1</sup> He also contended that the House should each day proceed to vote without a special order so to do each time. But it was impossible to arrive at a determination of the question raised, and we find the House, at the last of the proceedings, adopting, under operation of the previous question, an order to proceed to the election of Speaker before each vote. Questions of personal privilege were raised by Members, and a resolution relating to the qualifications of the candidates for Speaker<sup>2</sup> was presented and debated, but no decision was reached on the point of order that it was not in order or on the reso-

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<sup>1</sup> Thus, on January 18 (Journal, p. 130; Globe, p. 499), the Clerk declined to carry out the order, as he did not feel at liberty to arrest the remarks of a Member.

<sup>2</sup> On January 5, 1860, during the contest over the election of a Speaker, a proposition to elect a Speaker *pro tempore* was presented and discussed somewhat, but not adopted. (First session Thirty-sixth Congress, Globe, pp. 341–343.)

lution itself, the Clerk declining to decide and the House being unable to reach a decision. A resolution for a plurality rule was proposed, but was not acted on. Finally a Speaker was elected by majority vote.<sup>1</sup>

**224. A new Speaker being elected at the beginning of a second session of Congress, Members-elect present and unsworn participated in that election.**—On November 13, 1820,<sup>2</sup> at the beginning of the second session of the Congress, the Clerk called the House to order, and the roll of Members was called by States to ascertain the presence of a quorum.

At the conclusion of the roll call several new Members appeared, produced their credentials, and took their seats.

Then, a quorum being present (the new Members were not, however, necessary to produce this quorum, and there is no evidence as to whether or not they were counted as part of it) the Clerk laid before the House the resignation of the Speaker, and the House proceeded to elect a Speaker, a choice being effected on November 15. The new Speaker, Mr. John W. Taylor, of New York, having taken his seat and addressed the House, and a message announcing his election having been sent to the Senate, he proceeded to administer the oath to the new Members who appeared on the 13th instant.

It seems evident, from a comparison of the Journal and Annals, that the new unsworn Members voted for Speaker. They were 7 in number, and the Journal records only 131 old members as appearing on the first day. Yet the total votes in the first day's ballotings range from 132 to 138. On the second day the Journal records the appearance of enough more old Members to bring the total of old Members up to 142, yet during this day the total of votes reached as high as 148; and on the third day, with 147 old Members recorded, the totals of ballots ranged from 141 to 148. If the appearance of Members was recorded with care, as it seems to have been, it is evident that the unsworn new Members voted for Speaker.<sup>3</sup>

**225. A Speaker elected after the organization of the House takes the oath, although he may have taken it already as a Member.**

**Mr. Speaker Colfax, having been elected Vice-President, resigned his Speakership on the last day of the Congress.**

**The Speaker called a Member to the chair and, taking the floor, tendered his resignation verbally.**

On March 3, 1869,<sup>4</sup> the Speaker<sup>5</sup> called Mr. James F. Wilson, of Iowa, to the chair and, having been recognized on the floor, offered his resignation as Speaker, to take effect upon the election of his successor.

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<sup>1</sup>First session Thirty-sixth Congress, Journal, pp. 8, 12, 130, 151, 154, 164; Globe, pp. 187, 233, 483, 499, 637.

<sup>2</sup>Second session Sixteenth Congress, Journal, pp. 5–7 (Gales and Seaton ed.); Annals, pp. 434–438.

<sup>3</sup>At the beginning of the Fifty-fifth Congress (March 15, 1897, first session Fifty-fifth Congress, Record, p. 15) several Members present without credentials in due form, and whose names were not on the Clerk's roll, asked to be allowed to vote for Speaker. The Clerk (Alexander McDowell, of Pennsylvania) declined to permit them to do so. Had they presented credentials in due form, the situation would evidently have been different.

<sup>4</sup>Third session Fortieth Congress, Journal, pp. 511–513; Globe, pp. 1867, 1868.

<sup>5</sup>Schuyler Colfax, of Indiana, Speaker. He had been elected Vice-President, and this resignation was tendered at the beginning of the last legislative day of the Congress.

A resolution expressing regret at his retirement and a high appreciation of his services having been adopted by the House, Mr. Henry L. Dawes, of Massachusetts, moved that Hon. Theodore M. Pomeroy, of New York, "be declared duly elected Speaker in place of Hon. Schuyler Colfax, resigned, for the remaining term of this Congress."

This resolution was agreed to unanimously.

A committee was appointed to escort the Speaker-elect to the chair, and the Speaker pro tempore designated Mr. Dawes to administer the oath to the Speaker-elect.

The Speaker-elect having addressed the House briefly, the oath was administered to him.

Resolutions were then adopted directing that the Senate be informed of the election and that a committee of three be appointed to inform the President.

**226.** On December 4, 1876,<sup>1</sup> at the second session of the Congress, Mr. Samuel J. Randall, of Pennsylvania, was elected Speaker in place of Michael C. Kerr, of Indiana. The oath was administered to Mr. Randall after his election, no question being raised on the point. Of course he had already taken the oath as Member at the first session.

**227. When the Speaker is absent at the beginning of a session the House may adjourn or elect a Speaker pro tempore.**—On December 6, 1830, at the opening of the second session,<sup>2</sup> the Clerk<sup>3</sup> called the House to order, and the presence of a quorum having been ascertained, Mr. William S. Archer, of Virginia, arose and announced that the Speaker<sup>4</sup> was prevented by indisposition from attending. He had looked into the records and found that in such cases the practice had been twofold. In some cases the House adjourned from day to day; and in two other cases, occurring in 1798, the House had elected a Speaker pro tempore. Then, on motion of Mr. James K. Polk, of Tennessee, the House adjourned.

**228. The Speaker pro tempore, whom the House had just elected, not being present, the Clerk held that the motion to adjourn was not business, and under the circumstances was the only motion in order.**—On June 24, 1876<sup>5</sup> the Clerk, in the absence of the Speaker<sup>6</sup> and the Speaker pro tempore, called the House to order, when Mr. Samuel J. Randall, of Pennsylvania, at 12 o'clock and 5 minutes p. m., moved that the House adjourn.

This motion being disagreed to, Mr. William S. Holman, of Indiana, submitted the following resolution; which was read, considered, and agreed to:

*Resolved,* That Hon. Milton Saylor, a Representative from the State of Ohio, be, and he is hereby, appointed Speaker pro tempore during the present absence of the Speaker.

The Speaker pro tempore elect not being present, Mr. Holman, at 12 o'clock and 25 minutes, moved that the House adjourn.

<sup>1</sup> Second session Forty-fourth Congress, Journal, p. 12; Record, p. 7.

<sup>2</sup> Second session Twenty-first Congress. Debates, pp. 347–350.

<sup>3</sup> Matthew St. Clair Clarke, of Pennsylvania.

<sup>4</sup> Andrew Stevenson, of Virginia.

<sup>5</sup> First session Forty-fourth Congress, Journal, p. 1153; Record, p. 4132.

<sup>6</sup> Michael C. Kerr, of Indiana.

Mr. Omar D. Conger, of Michigan, made the point of order that the House having elected a Speaker pro tempore, the functions of the Clerk as a presiding officer thereupon ceased, and that it was not competent for him to entertain or submit any motion to the House in the nature of business.

The Clerk<sup>1</sup> overruled the point of order, holding that a motion to adjourn was not business, and in the absence of the Speaker or Speaker pro tempore was the only motion in order.

In this decision of the Clerk the House acquiesced. And then the motion of Mr. Holman was agreed to, and the House accordingly adjourned.

**229. A Speaker pro tempore elected by the House is not sworn.**

**Discussion of the nature and functions of the office of Speaker pro tempore.**

On February 17, 1876,<sup>2</sup> Mr. Samuel J. Randall, of Pennsylvania, offered the following resolution, which was agreed to:

*Resolved*, That Hon. Samuel S. Cox, a Representative from the State of New York, be, and he is hereby, appointed Speaker pro tempore during the present temporary absence of the Speaker.

Mr. James A. Garfield, of Ohio, moved that the oath of office prescribed by the act of July, 1862, be administered to the Speaker pro tempore before he should enter upon the duties of the office to which he had just been appointed.

After debate the motion of Mr. Garfield was decided in the negative, yeas 73, nays 171.

A resolution informing the Senate of the election of Mr. Cox as Speaker pro tempore was then agreed to.

The motion of Mr. Garfield was debated at length. He urged it on the ground that the act of 1862 made it incumbent on all officers except the President to take the oath before entering on the duties of the office, and contended that the precedents cited of Speakers pro tempore who had taken no additional oath were all before 1862, while the case of Mr. Pomeroy, who took the additional oath, was after the enactment of the test oath. On the other hand, it was stated that Mr. Pomeroy, although chosen only for a day, was in fact a Speaker, since Speaker Colfax had resigned. The discussion also embraced a consideration of the relations of the offices of Speaker, Speaker pro tempore by election of the House, and Speaker pro tempore by designation of the Chair under the rules. The idea was advanced that the latter was merely a presiding officer, without the power to sign bills or do other things devolving on a Speaker. As to the distinction between an elected Speaker and an elected Speaker pro tempore there was a diversity of opinion. It was contended that the Speaker pro tempore was as different from the Speaker as a President pro tempore of the Senate from Vice-President, and the idea was opposed on the ground that the House might at any time remove its Speaker and choose one pro tempore, who would have all the attributes of his predecessor. It was also contended that when the Speaker was sworn at the organization of the House he, in fact, took two oaths at the same time, one as Member and the other as Speaker. Hence it was argued that a Speaker elected after the organization, to fill a vacancy, would take an additional oath.

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<sup>1</sup> George M. Adams, of Kentucky.

<sup>2</sup> First session Forty-fourth Congress, Journal, pp. 412-413; Record, pp. 1146-1153.

**230. A Member being elected Speaker after the organization of the House, it is assumed that his committee places are thereby vacated.**—On December 11, 1876,<sup>1</sup> Mr. Speaker Randall announced the appointment of Mr. Hiester Clymer, of Pennsylvania, on the Committee on Appropriations in place of himself, who had retired by reason of being elected Speaker. It does not appear that any request was made of the House to relieve Mr. Randall of this committee service.

**231. Rising in his place, Mr. Speaker Clay addressed the House, announcing his resignation.**

**The Speaker having resigned, the chair remained vacant, and the Clerk presided until a successor was elected.**

**The Speaker having resigned in 1814, his successor, when elected, took the oath.**

**A Speaker being elected to fill a vacancy caused by resignation, the Senate, but not the President, was notified of the fact.**

**A resolution of thanks to a Speaker who had resigned was agreed to before the election of a successor.**

On January 19, 1814,<sup>2</sup> after the business of the House had proceeded some time, the Speaker, rising in his place, addressed the House briefly, announcing his resignation as Speaker.

He then left the chair, which remained vacant.

Then, on motion of Mr. William Findley, of Pennsylvania, the Clerk putting the motion:

*Resolved*, That the thanks of this House be presented to Henry Clay, in testimony of their approbation of his conduct in the arduous and important duties assigned to him as Speaker of this House.

A motion to adjourn having been decided in the negative, the House proceeded by ballot to the choice of a Speaker, in place of Henry Clay, resigned; and, upon the examination of the ballots, it appeared that Langdon Cheves, one of the Representatives from the State of South Carolina, was duly elected.

Mr. Cheves, having been conducted to the chair, addressed the House. Then the oath was administered to him by Mr. Findley.

On the next day:

*Resolved*, That the Clerk of this House inform the Senate that, Henry Clay having yesterday resigned his seat as Speaker, the House of Representatives have made choice of Langdon Cheves, one of the Representatives from the State of South Carolina, as their Speaker.

No message seems to have been sent to the President.

**232. In 1820, at the beginning of a second session, the Clerk called the House to order, and after ascertaining the presence of a quorum presented a letter of resignation from the Speaker.**

**The Speaker having resigned, no action of the House excusing him from service is taken.**

**The Speaker having resigned in 1820, it does not appear that his successor took the oath.**

<sup>1</sup> Second session Forty-fourth Congress, Journal, p. 56, Record, p. 129.

<sup>2</sup> Second session Thirteenth Congress, Journal, pp. 240–242 (Gales & Seaton, ed.); Annals, p. 1057.

**A Speaker being elected to fill a vacancy caused by resignation, the Senate, but not the President, was notified of the fact.**

**In the earlier practice when a series of ballots were taken, the Journal recorded only the bare result of the decisive ballot.**

On November 13, 1820,<sup>1</sup> the House was called together at the opening of the second session of the Congress by the Clerk, and the roll of Members was called by States. A quorum appearing, the Clerk stated that fact, and then announced to the House a letter<sup>2</sup> addressed to him by Henry Clay, Speaker of the House, in which Mr. Clay requested the Clerk to communicate to the House the fact of his inability to attend—

and to respectfully ask it to allow me to resign the office of its Speaker, which I have the honor to hold, and to consider this as the act of my resignation.

This letter being read, no motion was made to permit the Speaker to be excused from serving, but the House proceeded at once to ballot<sup>3</sup> to elect a Speaker. Messrs. Thomas Newton, of Virginia, and Jonathan O. Moseley, of Connecticut, were appointed a committee to count the ballots. After 7 ballots, in which no one had a majority of the votes given, as required by the rule<sup>4</sup> the House adjourned. On the succeeding day, also, the balloting was fruitless, but on November 15, on the twenty-second ballot, the result was announced as follows: The whole number of votes were 148, 75 necessary to a choice. The votes were: For Mr. Taylor, 76; for Mr. Lowndes, 44; for Mr. Smith, 27; scattering, 1.<sup>5</sup>

So John W. Taylor, a Representative from the State of New York, was elected Speaker.

Mr. Taylor addressed the House, but the Journal does not indicate that the oath was administered.

On motion of Mr. Nelson, of Virginia:

*Ordered,* That a message be sent to the Senate, to inform them that a quorum of this House is assembled; that they have elected John W. Taylor, one of the Representatives from the State of New York, their Speaker, in the room of Henry Clay, resigned, and are now ready to proceed to business; and that the Clerk go with the said message.

There is nothing to indicate that a notice of the election of the new Speaker was sent to the President.

**233. In 1834 the Speaker, intending to resign, arose in his place and informed the House, setting a future day for the act.**

**The Speaker having announced his resignation, made a farewell address and left the chair.**

**The farewell address of the Speaker appears in full in the Journal.**

**The Speaker having resigned in 1834, his successor took the oath.**

<sup>1</sup>Second session Sixteenth Congress, Journal, pp. 5–7 (Gales & Seaton ed.); Annals, pp. 434–438.

<sup>2</sup>This letter appears in full in the Journal.

<sup>3</sup>The Journal makes no mention of a motion to proceed to the election of a Speaker; but the Annals states that such a motion was made by Mr. Thomas Newton, of Virginia.

<sup>4</sup>See section 6003, Volume V, of this work for the rule at that time.

<sup>5</sup>The Journal does not record these ballotings in detail, but announces merely that “upon an examination of the twenty-second ballot, it appeared that John W. Taylor, etc., was duly elected.”

On May 30, 1834,<sup>1</sup> the Journal has this entry:

Mr. Speaker Stevenson rose, and informed the House that he had taken the chair this morning, though still laboring under severe and continued indisposition, for the purpose of opening the House, and preventing any delay in its business, and likewise for the purpose of announcing his determination of resigning the Speaker's chair and his seat in Congress. This he proposed doing on Monday next at 11 o'clock. He had formed this resolution under a deep sense of duty, and because his state of health rendered it impossible for him (as must be apparent to the House) to discharge, in person, the laborious duties of the Chair, and he had therefore deemed it respectful and proper to give this early notice of his intention to retire.

On Monday, June 2,<sup>2</sup> immediately after the reading of the Journal, the Speaker arose and addressed the House. He said he had attended for the purpose of resigning the office of Speaker, and of announcing the fact that he had communicated to the executive of Virginia his resignation as one of the Representatives of that State. Mr. Speaker then addressed farewell remarks to the House. These appear in full in the Journal.

Having completed his remarks, Mr. Stevenson then descended from the chair and withdrew.

Mr. Charles F. Mercer, of Virginia, then moved that the House proceed to the election of a Speaker.

The Clerk put this motion, which was agreed to; and then nominated 6 tellers to collect and count the ballots. Of this proceeding, however, the Journal has only this entry.

The House, on motion, proceeded by ballot to the choice of a Speaker in the place of Andrew Stevenson, resigned, and, upon an examination of the tenth ballot, it appeared that John Bell, one of the Representatives from the State of Tennessee, was duly elected; upon which, Mr. Bell was conducted to the Speaker's chair by Mr. John Quincy Adams and Mr. Richard M. Johnson, from whence he addressed the House as follows: [Address follows in full.]

The oath of office to support the Constitution of the United States was then administered to the Speaker-elect by Mr. Williams, one of the Representatives from the State of North Carolina.

**234. The Speaker having died during the recess of Congress, the Clerk called the House to order, ascertained the presence of a quorum, and entertained a motion to proceed to election of a Speaker.**—On December 4, 1876,<sup>3</sup> on the first day of the session, the Clerk of the House, having called the House to order at 12 m., announced the death of Hon. Michael C. Kerr, late Speaker; and then proceeded to call the roll of Members by States.

A quorum having been disclosed, and its presence announced by the Clerk, Mr. William S. Holman, of Indiana, presented this resolution:

Whereas the House being informed that since its last adjournment Hon. Michael C. Kerr, who at the commencement of the present Congress was elected Speaker of the House, has departed this life, creating a vacancy in the office of Speaker; therefore

*Resolved*, That the House do now proceed to the election of a Speaker viva voce.

This resolution, which was held to be of high privilege, was agreed to.

<sup>1</sup>First session Twenty-third Congress, Journal, p. 672; Debates, p. 4335. The Speaker addressed the House immediately after the reading of the Journal.

<sup>2</sup>Journal, pp. 689–691; Debates, pp. 4368–4373.

<sup>3</sup>Second session Forty-fourth Congress, Journal, pp. 3–10; Record, pp. 3–6.

**235. The House, in a rule continuing the Clerk in office until the election of his successor, assumed to perpetuate its authority beyond its own existence.**—On March 1, 1791,<sup>1</sup> at the close of the first Congress, it was

*Resolved*, That the Clerk of the House of Representatives of the United States shall be deemed to continue in office until another be appointed.

Again, on March 2, 1793,<sup>2</sup> at the close of the Second Congress, a similar resolution was agreed to.

**236. The Clerk having died in the recess of Congress, the House was informed as soon as a quorum had been ascertained and new Members sworn in.**

**The Clerk having died, the House at once elected a successor, declining to have the chief clerk fill the vacancy temporarily.**

On December 3, 1838,<sup>3</sup> the Speaker laid before the House the following communication:

OFFICE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,  
WASHINGTON, DECEMBER 3, 1838.

SIR: The painful duty is devolved upon me of informing you, and, through you, the House of Representatives of the United States, of the death of Walter S. Franklin, esq., Clerk of the House. He died on the 20th of September last, at Lancaster, in Pennsylvania.

In making this communication, I can not omit to embrace the opportunity publicly to express the deep regret of every officer of the House at the loss the public and themselves have sustained in the death of Mr. Franklin.

With much respect, Sir, your obedient servant,

S. BURCH,

*Chief Clerk of the Office, and Acting Clerk House of Representatives.*

HON. J. K. POLK,

*Speaker House of Representatives.*

The House disagreed to a proposition that the principal assistant clerk act as Clerk until the House should fill the vacancy, and entertained and agreed to a motion that—

the House do forthwith proceed to the election of a Clerk.

Accordingly the House proceeded to the election of a Clerk.

These proceedings took place after the roll had been called by States to ascertain the presence of a quorum, and after the new Members had been sworn in, but before the Senate or the President had been informed that a quorum of the House was in attendance.

It does not appear that any message was sent to the Senate informing them that the House had elected a Clerk.

**237. The election of the Clerk of the House presents a question of privilege.**

**The office of Clerk becoming vacant it was held that the House would not be organized for business until a Clerk should be elected.**

**The preparation and reading of the Journal is not prevented by the death of the officer having it in charge.**

<sup>1</sup>Third session First Congress, Journal, p. 396 (Gales & Seaton, ed.).

<sup>2</sup>Second session Second Congress, Journal, p. 731 (Gales & Seaton, ed.).

<sup>3</sup>Third session Twenty-fifth Congress, Journal, p. 8; Globe, p. 1.

On April 16, 1850,<sup>1</sup> Mr. Thomas L. Harris, of Illinois, moved that the House proceed to the election of a Clerk, to supply the vacancy occasioned by the death of Thomas J. Campbell.

Pending the consideration of this motion, Mr. Albert G. Brown, of Mississippi, submitted the following resolution:

*Resolved*, That the order heretofore passed by the House postponing the election of a Doorkeeper be, and the same is hereby, rescinded; and that the House of Representatives will proceed at once to the election of a Clerk and Doorkeeper for the Thirty-first Congress.

The Speaker<sup>2</sup> decided that the resolution was out of order, on the ground that the House could take no action upon or transact other business than the election of Clerk until such election is effected. Until a Clerk should be elected the House would not be organized.

From this decision of the Chair Mr. A. G. Brown appealed, and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

The record of the debate<sup>3</sup> shows that the Speaker expressed the opinion that the House was not organized until a Clerk was elected.<sup>4</sup> In this case the Clerk had died, and the Journal on this morning was read by one of the subordinate officers of the late Clerk. Question as to this proceeding having been raised by Mr. Willard P. Hall, of Virginia, the Speaker said that the Journal had been prepared as usual under the direction of the Speaker. The Chair did not think that the death of the Clerk should prevent the reading or preparation of the Journal.<sup>5</sup>

**238. The Clerk having resigned, the House elected his successor.**

**In the early days of the House two oaths were administered to the Clerk.**

On December 9, 1800,<sup>6</sup> the Clerk having resigned, the House elected John Holt Oswald his successor. The oath to support the Constitution of the United States, together with the oath of office as prescribed by the act entitled "An act to regulate the time and manner of administering certain oaths," were then administered by Mr. Speaker to the Clerk.<sup>7</sup>

**239. The Clerk having resigned, the House, after some intervening business, elected his successor.**—On Saturday, January 28, 1815,<sup>8</sup> the Speaker laid before the House a letter, addressed to the Speaker by the Clerk of the House, resigning the office of Clerk.

The letter was ordered to lie on the table.

<sup>1</sup>First session Thirty-first Congress, Journal, p. 789.

<sup>2</sup>Howell Cobb, of Georgia, Speaker.

<sup>3</sup>Globe, p. 741.

<sup>4</sup>On December 2, 1833, Walter S. Franklin, of Pennsylvania, was elected Clerk of the House. On December 3 he appeared and qualified. (First session Twenty-third Congress, Journal, pp. 9, 10.)

<sup>5</sup>The Journal is now prepared, not by the Clerk, but by the Journal Clerk, and is read by one of the reading clerks.

<sup>6</sup>Second session Sixth Congress, Journal, p. 736. (Gales & Seaton, ed.)

<sup>7</sup>By the act of 1789 (1 Stat. L., p. 23) two oaths were required of the Clerk. This has since been changed.

<sup>8</sup>Third session Thirteenth Congress, Journal, pp. 694, 697–699 (Gales & Seaton, ed.); Annals, pp. 1107, 1113.

On Monday, January 30, after business had proceeded for a time, it was

*Resolved*, That this House will proceed, on this day at 2 o'clock, to the appointment of a Clerk, in the room of Patrick Magruder, who has resigned that office.

Accordingly at 2 o'clock a ballot was taken, and it appears that Thomas Dougherty was duly elected.

On January 31 he gave his attendance and took the oath of office.

**240. In 1860 the House decided that it might inform the Senate and President of its organization and election of a Speaker before it had elected a Clerk.**—On February 1, 1860,<sup>1</sup> a Speaker had been elected, the oath had been administered to the Members and Delegates, and rules had been adopted. Thereupon Mr. Reuben E. Fenton, of New York, offered this resolution:

*Resolved*, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled, and that William Pennington, one of the Representatives from the State of New Jersey, has been chosen Speaker, and that the House is now ready to proceed to business.

Mr. William Smith, of Virginia, questioned the propriety of the resolution before the election of a Clerk.

After debate, in which it was stated that it had been the custom of the House to agree to similar resolutions before the election of Clerk, the Speaker<sup>2</sup> held that the practice of the House had been in accordance with the proposed action, and that there was no necessity that the notice should be delayed until the election of a Clerk. The present Clerk could communicate the message.

The resolution was accordingly agreed to. Then, also, a resolution of notification to the President was agreed to before the election of Clerk. After that the House proceeded to the election of Clerk.

**241. By unanimous consent, in 1867, the House elected its Clerk by resolution.**

**In 1867 the law of 1789 was considered as binding the House to elect a Clerk before proceeding to business.**

On March 4, 1867,<sup>3</sup> at the organization of the House, after the Speaker had been elected, and the oath had been administered to him and by him to the Members, resolutions were adopted for notifying the President and the Senate of the organization of the House. Then rules were adopted.

After this Mr. Henry L. Dawes, of Massachusetts, presented a resolution that Edward McPherson, of Pennsylvania, be, and hereby is, elected Clerk.

The Speaker asked unanimous consent to the procedure of electing a Clerk by resolution, when Mr. Robert C. Schenck, of Ohio, objected to the election of a Clerk at this time, on the ground that it had been understood that no other officers than the Speaker were to be elected this day.

Mr. Thaddeus Stevens, of Pennsylvania, said that such had been the understanding, but a reference had shown that under the law no business could be transacted until the election of both a Speaker and Clerk.

<sup>1</sup> First session Thirty-sixth Congress, Journal, pp. 167, 170; Globe, pp. 656, 661, 662.

<sup>2</sup> William Pennington, of New Jersey, Speaker.

<sup>3</sup> First session Fortieth Congress, Globe, pp. 5, 7, Journal, pp. 9, 10.

The Speaker<sup>1</sup> said:

The Chair has ascertained that there are precedents on this subject. In the thirty-first Congress, when the Clerk died, the Speaker said that no business could be transacted until another Clerk was elected, because there was no officer to carry messages to the Senate.

Accordingly, there being no objection, the resolution was acted on and Mr. McPherson was elected.

On the succeeding day, and after business had intervened, the remaining officers were elected.

**242. It has been decided that notwithstanding the requirements of the act of 1789, the House may proceed to business before the election of a Clerk.**—On December 31, 1849,<sup>2</sup> after the election of Speaker, the House agreed to this resolution:

*Resolved,* That the House will proceed to the election of a Clerk and other officers on Thursday, the 3d day of January, 1850.

No choice of Clerk being effected on January 3, the Speaker held the order unfinished business on the 4th. On that day the further execution of the order was postponed until the 7th.

Then the House proceeded to the regular order of business provided in the rules, when Mr. Samuel W. Inge, of Alabama, rose to a question of privilege. The provisions of the act of 1789 required the Clerk of the House to be sworn before it was competent for the House to proceed to other business. He therefore moved that the House proceed to the election of a Clerk in compliance with the provisions of the said act.

The Speaker<sup>3</sup> decided that the House having by resolution fixed a day for the election of Clerk and other officers, the motion of Mr. Inge was out of order. The House had put its own construction on the point raised.

Mr. John L. Robinson, of Indiana, appealed, but Mr. Inge withdrew his motion, and the matter fell.

**243. A question has arisen as to whether or not the House, in the face of the provision of law, may proceed to business before the election of a Clerk.**—On February 1, 1860,<sup>4</sup> the House had elected a Speaker and adopted rules, but had not chosen a Clerk, when Mr. John S. Phelps, of Missouri, proposed to introduce a bill making appropriations to defray certain deficiencies in the appropriations for the Post-Office Department.

Mr. Thaddeus Stevens, of Pennsylvania, made the point of order that the bill could not be introduced at this time.

The Speaker<sup>5</sup> said:

The opinion of the Chair is that such business can not be transacted until after the election of a Clerk.<sup>6</sup>

<sup>1</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>2</sup> First session Thirty-first Congress, Journal, pp. 190, 228; Globe, p. 102.

<sup>3</sup> Howell Cobb, of Georgia, Speaker.

<sup>4</sup> First session Thirty-sixth Congress, Globe, p. 656.

<sup>5</sup> William Pennington, of New Jersey, Speaker.

<sup>6</sup> Mr. Phelps, who was the oldest Member of the House in the years of consecutive service, said, after the decision of the Speaker, that as the House had elected a Speaker, and under the provisions of the Constitution allowing it to make rules had adopted rules, and as among those rules was one continuing the present Clerk until another should be elected, it seemed clear to him that the House might proceed to business. He cared not what the law might be. The House might make rules overriding the law. (Globe, p. 656.)

**244. A Speaker having been elected, the House has proceeded to legislative and other business before the election of a Clerk.**

**The Clerk of the former House continues to act as Clerk of the new House until his successor is elected.**

**An instance wherein certain officers of the former House continued to act through the new Congress, no successor being elected.**

On December 22, 1849, the House, after a long contest, elected Mr. Howell Cobb, of Georgia, Speaker.

On the next legislative day, December 24, the oath was administered to the Members of the House. Then, before any suggestion was made as to the election of other officers, a message was sent to the Senate informing that body that a quorum of the House had assembled, that Howell Cobb had been chosen Speaker, and that the House was ready to proceed to business. Then the appointment of the usual committee to join the Senate committee in notifying the President of the United States that a quorum had assembled and that Congress was ready to receive any communication was authorized.

A proposition was then made to adopt rules, but postponed. Seats were drawn and the hour of daily meeting was fixed. Then the message of the President was received and ordered printed.

On December 27 the rules of the preceding House were adopted temporarily, the President's message was read, and the committees were appointed.

Before the appointment of committees George W. Jones, of Tennessee, urged that under the act of 1789 the committees should not be appointed until a Clerk had been elected and sworn. And soon after Mr. James Thompson, of Pennsylvania, offered this resolution:

*Resolved*, That the House will proceed to the election of Clerk and other officers on Thursday, the 3d of January, 1850.

On December 31 this resolution was agreed to. On this day, also, the House passed House bill No. 1, and ordered the Clerk (the Clerk of the last House, of course) to request the concurrence of the Senate.

Voting for Clerk began on January 3, and on January 4 was postponed until January 7, although a point of order was made that it was not competent for the House to proceed to other business until the Clerk had been elected. Then, on January 7, the House proceeded to vote for Clerk, and continued to do so until January 11, when Thomas J. Campbell was elected.

The House then proceeded to the election of a Sergeant-at-Arms, but on January 14 suspended the voting by postponing the further execution of the order until the next day. Thereupon the House proceeded to the consideration of the report of the Committee on Rules.

On January 15 a Sergeant-at-Arms was elected and the House next proceeded to the election of Doorkeeper. No choice resulting, after many trials, the House voted to postpone the further execution of the order for the election of officers until March 1, 1851, or until within two days of the end of the Congress. This motion was agreed to, and the Doorkeeper and Postmaster of the previous House continued in their positions by the acquiescence of the House.<sup>1</sup>

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<sup>1</sup>First session Thirty-first Congress, Journal, pp. 164, 167, 168, 184, 186, 190, 202, 225, 291, 308, 366; Globe, pp. 66, 84, 88, 89, 102, 141, 188.

On March 3, 1851,<sup>1</sup> the last day of the session, the election of Doorkeeper was postponed indefinitely.

**245. The House has held, notwithstanding the law of 1789, that it may adopt rules before electing a Clerk.**—On February 1, 1860,<sup>2</sup> the Speaker was elected, and after he had taken the oath and had in turn administered the oath to the Members and Delegates, Mr. Israel Washburn, jr., of Maine, submitted the following resolution:

*Resolved*, That the rules of the House of Representatives of the Thirty-fifth Congress shall be the rules of the House of Representatives until otherwise ordered.

Mr. William G. Whiteley, of Delaware, made the point of order that after the election of Speaker nothing was in order but the election of Clerk. He quoted that passage of the law of 1789 which provides that the oath shall be administered “to the Clerk previous to entering on any other business.”

The Speaker<sup>3</sup> overruled the point of order, stating that it had been the custom of the House to adopt its rules previous to the election of a Clerk.

**246. The Clerk desiring to be away, the House gave him leave of absence.**—On April 28, 1834,<sup>4</sup> a Member stated that the Clerk of the House had received news of the death of a member of his family, whereupon

*Ordered*, That the Clerk have leave to be absent from the service of this House for four or five days.

**247.** On November 20, 1800,<sup>5</sup>

*Ordered*, That the Clerk of this House have leave to be absent from the service of the House for three weeks.

**248. In the temporary absence of the Clerk the House has chosen a Clerk pro tempore.**—On December 9, 1813,<sup>6</sup> Patrick Magruder, the Clerk to the House, being absent from indisposition, the House proceeded to the choice of a Clerk pro tempore, and George Magruder was unanimously chosen.

**249. The House declined to interfere with the Clerk’s power of removing his subordinates.**—On December 31, 1833,<sup>7</sup> Mr. John Davis, of Massachusetts, called attention of the House to the removal from office by the Clerk of the House of Noah Fletcher, who had been an employee of the office since 1819. He presented a memorial from Fletcher, in which the latter said that he had been removed without cause, and appealed to the House to rectify the injustice. Mr. Davis offered this resolution:

*Resolved*, That Noah Fletcher was removed from his office of Assistant Clerk in this House without any sufficient cause, and ought to be immediately reinstated.

After debate, in the course of which it was urged that the Clerk, being responsible to the House, had the right to select his own assistants, the House, on January 13, 1834, laid the resolution on the table—yeas, 120; nays, 83.

<sup>1</sup> Second session Thirty-first Congress, Journal, p. 406.

<sup>2</sup> First session Thirty-sixth Congress, Journal, p. 167; Globe, p. 655.

<sup>3</sup> William Pennington, of New Jersey, Speaker.

<sup>4</sup> First session Twenty-third Congress, Journal, p. 566; Debates, p. 3821.

<sup>5</sup> Second session Sixth Congress, Journal, p. 722 (Gales and Seaton, ad.); Annals, p. 783.

<sup>6</sup> Second session Thirteenth Congress, Journal, p. 169 (Gales and Seaton, ad.); Annals, p. 787.

<sup>7</sup> First session Twenty-third Congress, Journal, pp. 140, 183; Debates, pp. 2290, 2368.

**250. There being a conflict of authority between the Clerk and another officer, the House investigated.**—In 1841<sup>1</sup> a controversy occurred between the Clerk of the House and the Printer as to the power of the Clerk to control the binding of certain documents. The letter of the Clerk was presented to the House by the Speaker, and referred to a select committee, who investigated the subject.

**251. The Clerk is required to note all questions of order and the decisions thereon, and print the record thereof as an appendix to the Journal.**

**It is the duty of the Clerk to print and distribute the Journal.**

**The Clerk attests and affixes the seal of the House to all writs, warrants, and subpoenas issued by order of the House.**

**The Clerk is required to certify to the passage of all bills and joint resolutions.**

**The Clerk makes or approves all contracts, etc., for labor, materials, etc., for the House.**

**The Clerk keeps account of disbursement of the contingent fund and the stationery accounts of Members.**

**The Clerk is required to pay the officers and employees of the House on the last secular day of each month.**

**Present form and history of section 3 of Rule III.**

Section 3 of Rule III provides:

He [the Clerk] shall note all questions of order, with the decisions thereon the record of which shall be printed as an appendix to the Journal of each session; and complete, as soon after the close of the session as possible, the printing and distribution to Members and Delegates of the Journal of the House, together with an accurate and complete index; retain in the library at his office, for the use of the Members and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State and Territory; preserve for and deliver or mail to each Member and Delegate an extra copy, in good binding, of all documents printed by order of either House of the Congress to which he belonged; attest and affix the seal<sup>2</sup> of the House to all writs, warrants, and subpoenas issued by order of the House; certify to the passage of all bills and joint resolutions; make or approve all contracts, bargains, or agreements relative to furnishing any matter or thing, or for the performance of any labor for the House of Representatives, in pursuance of law or order of the House; keep full and accurate accounts of the disbursements out of the contingent fund of the House; keep the stationery account of Members and Delegates, and pay them as provided by law. He shall pay to the officers and employees of the House of Representatives, the last day of each month, the amount of their salaries that shall be due them; and when the last day of the month falls on Sunday he shall pay them on the day next preceding.

This rule, except the last sentence, is as agreed on by the House at the time of the revision of 1880.<sup>3</sup> It was composed of seven of the former rules: Rule 14,

<sup>1</sup>Second session Twenty-sixth Congress, Journal, pp. 128, 193, 279.

<sup>2</sup>This provision relating to the seal is from former Rule 8, providing that “all writs, warrants, and subpoenas issued by order of the House shall be under his [the Speaker’s] hand and seal,” and which dated from November 13, 1794 (Journal Third and Fourth Congresses, p. 229), and existed until the adoption of the present form in 1880.

<sup>3</sup>Second session Forty-sixth Congress, Record, p. 555.

dating from November 13, 1794,<sup>1</sup> and providing for distributing the Journals to the States; Rule 15, dating from December 23, 1811,<sup>2</sup> providing for noting decisions of order; Rule 16, dating from June 18, 1832,<sup>3</sup> and providing for sending the Journal to Members and Delegates; Rule 17, dating from December 22, 1826,<sup>4</sup> and providing for retaining books and documents in the Library; Rule 18, dating from February 9, 1831,<sup>5</sup> providing for sending bound volumes of documents to Members; Rule 20, dated June 18, 1832<sup>3</sup> providing for an index to the acts of Congress; and Rule 21, dated January 30, 1846,<sup>6</sup> providing for the making and approval of contracts. The last sentence, relating to payment of officers and employees, dates from January 28, 1892.<sup>7</sup>

**252. It is the duty of the Clerk to have printed and delivered to each Member a list of the reports required to be made to Congress.**

**Present form and history of section 2 of Rule III.**

Section 2 of Rule III provides:

He [the Clerk] shall make and cause to be printed and delivered to each Member, or mailed to his address at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

This rule dates from March 13, 1822.<sup>8</sup> On April 21, 1836,<sup>9</sup> a provision was added requiring the Clerk to make a weekly statement of business on the Speaker's table; but this was stricken out in the revision of 1890, when the change in the order of business had prevented an accumulation of business on the Speaker's table.

**253. The statutes prescribe certain duties for the Clerk as to the organization of the House and the administration of its affairs.**—Before the meeting of each Congress the Clerk makes up a roll of such Members as are shown by their credentials to be regularly elected.<sup>10</sup> If circumstances are such that the Clerk may not perform this duty, it devolves in succession upon the Sergeant-at-Arms, and then upon the Doorkeeper.<sup>11</sup>

Except when Congress is in session the Clerk certifies the pay certificates of Members.<sup>12</sup>

Reports of committees are preserved, bound, and indexed, and distributed under direction of the Clerk.<sup>13</sup> The Clerk is entitled to 10 cents for each 100 words of certified extracts from the Journal, except where such transcripts are required

<sup>1</sup>Third and Fourth Congresses, Journal, p. 229. (Gales & Seaton ed.)

<sup>2</sup>First session Twelfth Congress, Reports, No. 38.

<sup>3</sup>First session Twenty-second Congress, Journal, p. 899.

<sup>4</sup>Second session Nineteenth Congress, Journal, p. 87.

<sup>5</sup>Second session Twenty-first Congress, Journal, p. 284.

<sup>6</sup>First session Twenty-ninth Congress, Globe, p. 279.

<sup>7</sup>First session Fifty-second Congress, Cong. Record, p. 652.

<sup>8</sup>First session Seventeenth Congress, Journal, p. 351.

<sup>9</sup>First session Twenty-fourth Congress, Cong. Globe, p. 320.

<sup>10</sup>Revised Statutes, section 31.

<sup>11</sup>Revised Statutes, sections 32, 33.

<sup>12</sup>Revised Statutes, section 38; Laws, second session Forty-third Congress, p. 389; 19 Stat. L., p. 145.

<sup>13</sup>24 Stat. L., p. 346; vol. 28, p. 622.

in connection with the duties of a Government office.<sup>1</sup> Printing and binding and the furnishing of blank books for the House are subject to the written order of the Clerk.<sup>2</sup> The distribution of certain documents to various homes for soldiers and sailors is made by the Clerk.<sup>3</sup>

On the first day of each session of Congress the Clerk submits to the House certain statements and reports the names, compensations, etc., of clerks and messengers of the House, and whether any of them may be dispensed with; an itemized statement of the expenditure of the contingent fund;<sup>4</sup> an exhibit of the sums drawn from the Treasury, and the balance remaining;<sup>5</sup> all the expenditures of the House at the end of each fiscal year;<sup>6</sup> a full and complete statement of his receipts and expenditures as Clerk<sup>7</sup> and an account of all property of the United States in his possession.<sup>8</sup>

The Clerk requires of the disbursing officers acting under him precise and analytical returns of the moneys expended, as a basis for an annual return to Congress.<sup>9</sup>

The Clerk, after advertisement for bids, contracts for the stationery for supplying the House, giving preference to domestic articles over foreign, providing such can be had on as satisfactory terms as imported articles.<sup>10</sup>

The Clerk may, with permission of the Joint Committee on the Library, have the use of the Library under the regulations that apply to Members.<sup>11</sup>

The Clerk disburses the pay of half of the Capitol Police.<sup>12</sup>

The Clerk is required to make contracts with the lowest bidder for packing boxes for use of the House.<sup>13</sup>

The Clerk gives a bond of \$20,000.<sup>14</sup>

**254. The custody and use of the seal is with the Clerk, under direction of the House.**—On July 18, 1892,<sup>15</sup> Mr. Benton McMillin, of Tennessee, presented the following order, which was agreed to by the House:

*Ordered*, That the Clerk of the House of Representatives be, and he is hereby, authorized and directed to affix the seal of the House of Representatives to the document entitled "The administration of the United States Government at the beginning of the four hundredth anniversary of the discovery of America."

At the same time the House passed a joint resolution allowing the Secretary of State to affix the seal of the United States to the document, and also a concurrent resolution authorizing the President to accept the document for preservation among the archives.

<sup>1</sup> Revised Statutes, section 71.

<sup>2</sup> Revised Statutes, section 3789.

<sup>3</sup> Revised Statutes, section 4837; 28 Stat. L., p. 159.

<sup>4</sup> Revised Statutes, section 60.

<sup>5</sup> Revised Statutes, section 61.

<sup>6</sup> Revised Statutes, section 63.

<sup>7</sup> Revised Statutes, section 70.

<sup>8</sup> Revised Statutes, section 72.

<sup>9</sup> Revised Statutes, section 62.

<sup>10</sup> Revised Statutes, sections 66–49; Laws, second session Forty-third Congress, p. 316.

<sup>11</sup> Revised Statutes, section 94.

<sup>12</sup> 31 Stat. L., p. 963.

<sup>13</sup> 31 Stat. L., p. 967.

<sup>14</sup> Revised Statutes, sections 58 and 59.

<sup>15</sup> First session Fifty-second Congress, Record, p. 6342.

**255.** On January 19, 1886,<sup>1</sup> the Committee on Rules of the Senate reported on the subject of the seal of the Senate. They found nothing in the Journals or archives of the Senate to throw any light on the history of the seal, although from private letters recently published it had been learned when and by whom it was made. The committee found that there was no authority on the subject of its use, and recommended the adoption of the following rule:

*Resolved,* That the Secretary shall have the custody of the great seal, and shall use the same for the authentication of process, transcripts, copies, and certificates whenever directed by the Senate.

**256. The seal of the House is in the control of the House rather than of the Speaker.**—On January 17, 1901,<sup>2</sup> the Speaker laid before the House a letter from the Acting Secretary of State requesting that an impression of the seal of the House of Representatives be furnished for the files of the State Department for purposes of reference for authentication.

The letter having been read, the Speaker<sup>3</sup> said:

The Chair thinks that this is a matter which should properly be done by order of the House, and therefore submits the draft of an order to be adopted by the House, in pursuance of the request of the State Department.

The order was then submitted by unanimous consent and agreed to, as follows:

*Ordered,* That the Clerk be directed to furnish to the Department of State, in accordance with the request transmitted to the House from that Department, an impression of the seal of the House of Representatives.

**257. The Sergeant-at-Arms attends the sittings and under direction of the Speaker or Chairman of the Committee of the Whole maintains order.**

**By a rule, which is not adopted usually until a Speaker is elected, the Sergeant-at-Arms is directed to preserve order under the direction of the Clerk pending the election of a Speaker or Speaker pro tempore.**

**The Sergeant-at-Arms executes the commands of the House and all of its processes directed to him by the Speaker.**

**The Sergeant-at-Arms disburses the pay and mileage of Members and Delegates.**

**Present form and history of section 1 of Rule IV.**

Section I of Rule IV provides:

It shall be the duty of the Sergeant-at-Arms to attend the House and the Committee of the Whole, during their sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk, execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker, keep the accounts for the pay and mileage of Members and Delegates, and pay them as provided by law.

In the First Congress, on April 14, 1789,<sup>4</sup> this rule was adopted:

A Sergeant-at-Arms shall be appointed to hold office during the pleasure of the House, whose duty it shall be to attend the House during its sitting, to execute the commands of the House from time to

<sup>1</sup> Senate Report, first session Forty-ninth Congress, No. 48.

<sup>2</sup> Second session Fifty-sixth Congress, Record, p. 1134.

<sup>3</sup> David B. Henderson, of Iowa, Speaker.<sup>4</sup> First session First Congress, Journal, p. 14.

time, and all such process, issued by authority thereof, as shall be directed to him by the Speaker. A proper symbol of office shall be provided for the Sergeant-at-Arms, of such form and device as the Speaker shall direct, which shall be borne by the Sergeant when in the execution of his office.

On April 4, 1838,<sup>1</sup> a rule was adopted providing that the Sergeant-at-Arms should keep the accounts of the pay and mileage and pay over the same to Members.

On March 3, 1877,<sup>2</sup> in order to meet difficulties that might occur at the organization of the House, a rule was adopted providing that the Sergeant-at-Arms should maintain order under direction of the Clerk when the latter should be presiding. There was much debate over this rule, Mr. James A. Garfield urging that the existing House might not make a rule binding on the next House; but at that time the House, by continuing an old rule of 1860, was perpetuating the theory that the rules of one House might bind the next.<sup>3</sup> At the time of the organization of a House this rule has not been adopted, and therefore its effect at that time is extremely doubtful.<sup>4</sup>

In the revision of 1880<sup>5</sup> the substance of the rule was retained, in somewhat different form. Only one change has been made since 1880. In the revision of 1890<sup>6</sup> the new provision was added that the Sergeant-at-Arms should attend the Committee of the Whole also, and maintain order under direction of the Chairman. This was stricken out in the Fifty-second and Fifty-third Congresses, but restored in the Fifty-fourth and has continued since as part of the rule.

**258. The statutes as well as the rule define the duties of the Sergeant-at-Arms, especially with reference to the disbursements made by him.**

**The statutes place on the Sergeants-at-Arms of the two Houses the duty of preserving the peace and security of the Capitol and the appointment and control of the Capitol police.**

The act of October 1, 1890,<sup>7</sup> after enacting the provisions of House Rule IV in relation to the Sergeant-at-Arms, provides that the pay and mileage of Members and Delegates shall be paid at the Treasury on requisitions drawn by the Sergeant-at-Arms, and shall be disbursed by him; that he shall give bond to the United States in the sum of \$50,000, no Member of Congress to be a surety on this bond; that he shall continue in office until his successor is elected and qualified; that at the commencement of each regular session he shall submit a statement of the sums drawn and disbursed by him; that there shall be employed by him in his office a deputy, a cashier, a paying teller, a bookkeeper, a messenger, a page, and a laborer, at certain fixed salaries; and that in the adjustment of his accounts the fiscal year shall extend to and include July 3.

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<sup>1</sup> Second session Twenty-fifth Congress, Globe, pp. 278, 281.

<sup>2</sup> Second session Forty-fourth Congress, Journal, pp. 635, 669; Record, pp. 2133, 2232-2235.

<sup>3</sup> This theory was finally abandoned in 1890. (See sec. 6743-6745 of Vol. V of this work.)

<sup>4</sup> See section 81 of this work.

<sup>5</sup> Second session Forty-sixth Congress, Record, p. 204.

<sup>6</sup> House Report No. 23, first session Fifty-first Congress.

<sup>7</sup> 26 Stat. L., pp. 645, 646.

On the first day of each regular session, and at the expiration of his term, he makes out a full and complete account of the Government property in his possession.<sup>1</sup>

In addition to his regular salary he receives no fees<sup>2</sup> or other emolument.

In case of a vacancy in the office of the Clerk, or absence or disability of the Clerk, the duties of that official in connection with the organization of a new House devolve on the Sergeant-at-Arms.<sup>3</sup>

In conjunction with the Sergeant-at-Arms of the Senate he makes regulations to preserve the peace and security of the Capitol from defacement and to protect the public property therein, and in connection with this authority is vested the power of arrest.<sup>4</sup>

With the Sergeant-at-Arms of the Senate he attends to the uniforming and equipping of the Capitol police.<sup>5</sup>

The captain and lieutenants of the Capitol police are selected jointly by the Sergeants-at-Arms of the two Houses, and privates and watchmen are selected one-half by each of the two officials. The Clerk of the House disburses pay of one-half.<sup>6</sup>

**259. The Sergeant-at-Arms receives no fees; and the Clerk receives them only for certified extracts of the Journal.**—The statutes provide that the Sergeant-at-Arms shall receive no fees or other emoluments in addition to his regular salary.<sup>7</sup> The Clerk receives for certified extracts from the Journal 10 cents for each sheet containing 100 words.<sup>8</sup>

**260. The Doorkeeper is required to enforce strictly the rules relating to the privileges of the Hall, and is responsible for the official conduct of his employees.**

**Present form and history of section 1 of Rule V.**

Section 1 of Rule V provides:

The Doorkeeper shall enforce strictly the rules relating to the privileges of the Hall, and be responsible to the House for the official conduct of his employees.

This is the exact form of the revision of 1880.<sup>9</sup> It was adopted from a portion of old rule No. 27, which was adopted at the suggestion of Mr. Abraham Rencher, of North Carolina, on March 1, 1838.<sup>10</sup>

**261. The Doorkeeper has the custody of all the furniture, books, and public property in the committee and other rooms under his charge.**

**At the commencement and close of each session of Congress the Doorkeeper is required to make and submit to the House for examination by the Committee on Accounts an inventory of furniture, books, etc.**

**Present form and history of section 2 of Rule V.**

<sup>1</sup> Revised Statutes, section 72.

<sup>2</sup> Revised Statutes, section 53; first session Forty-third Congress, Session Laws, p. 87.

<sup>3</sup> Revised Statutes, section 32.

<sup>4</sup> Revised Statutes, section 1820.

<sup>5</sup> Revised Statutes, sections 1821, 1823, 1824, 1825. (As to pay of suspended members of police see 18 Stat. L., p. 345.)

<sup>6</sup> 31 Stat. L., p. 963.

<sup>7</sup> Revised Statutes, section 53.

<sup>8</sup> Revised Statutes, section 71.

<sup>9</sup> Second session Forty-sixth Congress, Record, p. 204.

<sup>10</sup> Second session Twenty-fifth Congress, Globe, p. 203.

Section 2 of Rule V provides:

At the commencement and close of each session of Congress he shall take an inventory of all the furniture, books, and other public property in the several committee and other rooms under his charge, and report the same to the House, which report shall be referred to the Committee on Accounts to ascertain and determine the amount for which he shall be held liable for missing articles.

This is the form of rule adopted on January 27, 1880,<sup>1</sup> on the suggestion of Mr. Joseph R. Hawley, of Connecticut. The Committee on Rules had presented a slightly different form, derived from former Rule 27, which dated from March 2, 1865.<sup>2</sup>

On December 13, 1841,<sup>3</sup> Mr. George N. Briggs, of Massachusetts, offered this resolution, which was agreed to by the House:

*Resolved*, That the office of Assistant Doorkeeper is not necessary for the service of this House, and that the same is hereby abolished.

**262. The statutes impose on the Doorkeeper various duties in addition to those prescribed by the rules.**

**The Doorkeeper is required at stated times to return inventories of the Government property in his possession.**

**The Doorkeeper appoints superintendents to have charge of the folding and document rooms.**

**The Doorkeeper has general charge during the recess of the apartments occupied by the House.**

**The Doorkeeper has control of the messengers on the soldiers' roll.**

On the first day of each regular session of Congress, and at the expiration of his term of service, the Doorkeeper makes out and returns to Congress a full account of all Government property in his possession.<sup>4</sup> During the recess he takes care, under the direction of the Clerk, of the apartments occupied by the House, and provides fuel and other accommodations for the coming session.<sup>5</sup> He also prevents the occupation of the rooms by unauthorized persons during the recess.<sup>6</sup> He sells waste paper, useless documents, and condemned furniture, covering the proceeds into the Treasury.<sup>7</sup>

In case of a vacancy in the offices of Clerk and Sergeant-at-Arms, or disability or absence of both of those officials,<sup>8</sup> the Doorkeeper performs the duties of the Clerk in relation to making up the roll of Members.<sup>9</sup>

<sup>1</sup> Second session Forty-sixth Congress, Record, p. 557.

<sup>2</sup> Second session Thirty-eighth Congress, Globe, p. 1317; Journal, p. 387.

<sup>3</sup> Second session Twenty-seventh Congress, Journal, p. 40; Globe, p. 14.

<sup>4</sup> Revised Statutes, section 72.

<sup>5</sup> Revised Statutes, section 73.

<sup>6</sup> Second session Forty-second Congress, Journal, p. 1056.

<sup>7</sup> 22 Stat. L., p. 337.

<sup>8</sup> Revised Statutes, section 33.

<sup>9</sup> The Doorkeeper (with the aid of his appointees, viz, the superintendents of the "folding room" and "document room," messengers, pages, folders, and laborers) discharges various duties which are not enumerated in the rules or laws, viz, he announces at the door of the House all messages from the President, etc.; keeps the doors of the House; folds and distributes extra documents; furnishes Members with printed copies of bills, reports, and other documents; conveys messages from Members; keeps the Hall, galleries, and committee rooms in order, etc.

There is a folding room of the House under charge of a superintendent appointed by the Doorkeeper, and each Member is notified once in every sixty days of the number and character of publications on hand assigned to him.<sup>1</sup>

The Doorkeeper may assign one folder to do clerical work under the direction of the foreman of the folding room.<sup>2</sup>

The House document room is in charge of a superintendent appointed by the Doorkeeper, who also appoints the assistant.<sup>3</sup>

Janitors of committees are under direction of the Doorkeeper.<sup>4</sup>

The statutes provide for fourteen messengers on the soldiers' roll,<sup>5</sup> under the control of the Doorkeeper, at \$1,200 salary each, and such soldiers are not subject to removal except for cause, with the approval of the House.<sup>6</sup>

On March 2, 1872, after a discussion as to disabled soldiers on the roll of the House, a resolution was adopted, on motion of Mr. Benjamin F. Butler, of Massachusetts, advising the officers of the House to retain disabled soldiers in preference to civilians.<sup>7</sup>

On June 29, 1870, the House instructed the Doorkeeper to retain in service during recess the crippled soldiers carried on the roll.<sup>8</sup>

Mr. William S. Holman, of Indiana, related the history of the soldiers' roll, it having been organized by resolution in 1867 and made permanent by law in the Forty-fourth Congress.<sup>9</sup>

**263. The House having decided to postpone the election of a Doorkeeper, the Doorkeeper of the former House was held to continue in the office until his successor should be elected.**

**The House having postponed the election of an officer until a day certain, a resolution to proceed to the election was held not in order before that date.**

**A question as to whether or not a resolution placing the duties of one officer of the House on another involves a question of privilege.—Speaker overruled.**

On January 19, 1850,<sup>10</sup> before a Doorkeeper had been elected, the House postponed until the 1st day of March, 1851, the further execution of the order of the House providing for the election of officers.

Thereupon Mr. John H. Savage, of Tennessee, rising to a question of privilege, made the point that Robert E. Horner, Doorkeeper of the last House, who continued to act in that capacity, was not Doorkeeper, and objected to his continuing in that capacity.

<sup>1</sup>28 Stat. L., p. 612.

<sup>2</sup>31 Stat. L., p. 968.

<sup>3</sup>28 Stat. L., p. 610.

<sup>4</sup>34 Stat. L., p. 394.

<sup>5</sup>See Record, second session Forty-eighth Congress, p. 1697, for a brief debate relative to the law as to the soldiers' roll.

<sup>6</sup>23 Stat. L., pp. 164, 393; second session Forty-second Congress, Journal, p. 952.

<sup>7</sup>First session Forty-third Congress, Journal, p. 545; Record, pp. 1905–1907.

<sup>8</sup>Second session Forty-first Congress, Journal, p. 1110.

<sup>9</sup>See Debate, second session Forty-eighth Congress, Record, p. 1698.

<sup>10</sup>First session Thirty-first Congress, Journal, pp. 374–377; Globe, pp. 188–194.

The Speaker<sup>1</sup> said:

The Chair has hitherto declined to give any opinion in relation to the effect of the motion to postpone the election of officers, and has referred the House to its own previous practice. During preceding sessions of Congress, when the elections have not been postponed to so late a day as at the present, and during the present session, the duties of Clerk, Sergeant-at-Arms, and Doorkeeper, have been performed by the old officers and the House has acquiesced. It is not for the Chair peremptorily to decide that these individuals are not officers of the House; it is a question for the decision of the House itself.

On the succeeding legislative day, January 21, Mr. Armistead Burt, of South Carolina, claiming the floor for a question of privilege, offered this resolution:

*Resolved*, That this House, having postponed until the 1st day of March, 1851, the election of Doorkeeper, the Sergeant-at-Arms of this House shall perform the duties of Doorkeeper until the Doorkeeper shall be elected.

Mr. George Ashmun, of Massachusetts, objected to this resolution, on the ground that the gentleman from South Carolina was not entitled to the floor to offer the resolution, and also that it contemplated a change in the rules of the House relating to the duties of the officers.

The Speaker said:

The House, by a vote on Saturday last, postponed the further execution of the order of the House in relation to the election of officers until the 1st of March, 1851. Until that time has arrived, in the opinion of the Chair, as expressed several times, it will not be in order to proceed to the election of officers; but it will be in order for the House to appoint temporary officers or persons who shall discharge the duties of those officers. The position occupied by the Doorkeeper and Postmaster is, in the opinion of the Chair, this: They were elected by the House of Representatives of the last Congress. Under the practice of former Congresses, from the First Congress down to the present time, the old officers of the previous Congress have continued to discharge the duties of the respective offices until their successors should have been elected. And the Chair thinks that the officers of the last House can continue to discharge the duties of these offices in the present House until their successors shall have been elected, holding their offices in the interval by the sufferance of the House.<sup>2</sup> But the House can at any time provide other persons to discharge these duties. They are not the regularly elected officers of this House and they hold their offices at the sufferance and by the will of the House. This being the state of the case, and the question being one affecting the organization of the House, the Chair decides that it is a question of privilege.

Mr. Ashmun having appealed, the appeal was debated at length, and the decision of the Chair was finally reversed, yeas 101, nays 102. So the resolution proposed by Mr. Burt was not received.

Mr. Horner continued to act as Doorkeeper.

**264. An officer of the House having resigned, the House voted to proceed to the election of his successor.**—On December 7, 1868,<sup>3</sup> the Speaker laid before the House a letter from C. E. Lippincott, resigning his position as Doorkeeper of the House, said resignation to take effect this day.

The letter having been read, Mr. William H. Kelsey, of New York, offered as a question of privilege the following:

*Resolved*, That this House now proceed to the election of a Doorkeeper in place of Charles E. Lippincott, resigned.

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<sup>1</sup> Howell Cobb, of Georgia, Speaker.

<sup>2</sup> Again, on January 24, 1850, the Speaker reaffirmed this ruling. (See Globe, p. 224.)

<sup>3</sup> Third session Fortieth Congress, Journal, p. 14; Globe, p. 12.

The resolution was agreed to, and the House proceeded to vote viva voce.

**265.** On December 4, 1832,<sup>1</sup> the House—

*Resolved*, That this House will, on Thursday next, at 12.30 o'clock, proceed to the election of a Sergeant-at-Arms to fill the vacancy occasioned by the resignation of John O. Dunn.

On the appointed day four ballots were taken without an election and the House adjourned to December 10. On that day the balloting was resumed without a vote so to do, and after five ballotings Thomas B. Randolph, of Virginia, was elected.

The oath was administered to him by the Speaker and he assumed the duties of the office.

**266. The death of the Doorkeeper being announced, the House voted to proceed to the election of his successor at a future day.**

**In 1838 the House adjourned to attend the funeral of its Doorkeeper.**

On March 22, 1838,<sup>2</sup> the Speaker laid before the House the following communication:

MARCH 22, 1838.

SIR: It becomes my duty to communicate to you, and through you to the House of Representatives, that a vacancy has occurred in the office of Doorkeeper of the House by the decease of Overton Carr, esq., which took place on Tuesday night, the 20th of March, 1838.

Your obedient servant,

J. W. HUNTER,  
*Assistant Doorkeeper.*

Hon. JAMES K. POLK,  
*Speaker of the House of Representatives.*

The communication having been read, on motion of Mr. Charles F. Mercer, of Virginia, it was—

*Resolved*, That the House will adjourn at 4 o'clock this afternoon to attend the funeral of their deceased Doorkeeper, Overton Carr; that the expenses thereof be defrayed out of the contingent fund and that his widow be paid the salary of the deceased for the present session of Congress.

On March 23, Mr. Thomas M. T. McKennan, of Pennsylvania, by leave, submitted this resolution:

*Resolved*, That this House will proceed, on Monday next, at 2 o'clock, to the election of a principal Doorkeeper to supply the vacancy occasioned by the death of Mr. Overton Carr.

After debate, this resolution was postponed until April 1, in order that the Committee on Accounts might have time to make a report on a subject already committed to them relating to the Doorkeeper's office.

On April 5 the resolution came up for consideration, and the House proceeded to the election of a Doorkeeper.

**267. The vacancy caused by the death of the Doorkeeper was, after several days, filled by the House by election.—On March 18, 1902,<sup>3</sup> Mr. Joseph G. Cannon, of Illinois, offered the following resolution, which was agreed to by the House:**

*Resolved*, That Frank B. Lyon, of the State of New York, be, and he is hereby, chosen Doorkeeper of the House of Representatives, to fill the vacancy caused by the death of the late Hon. W. J. Glenn.

<sup>1</sup>Second session Twenty-second Congress, Journal, pp. 8, 25, 26; Debates, pp. 819, 821, 822.

<sup>2</sup>Second session Twenty-fifth Congress, Journal, pp. 645, 646, 706; Globe, p. 253.

<sup>3</sup>First session Fifty-seventh Congress, Journal, p. 489; Record, p. 2964.

The death of Mr. Glenn had been announced to the House on March 12.<sup>1</sup> No temporary appointment was made, nor was any provision made for temporary discharge of the duties in the interim.

**268. The Sergeant-at-Arms having resigned, the House instructed the Doorkeeper to perform the duties of the office until the beginning of the next session of Congress.**—On June 26, 1832,<sup>2</sup> the Speaker laid before the House a letter from J. O. Dunn, Sergeant-at-Arms, resigning the office, and surrendering his books and papers.

The letter, which appears in full in the Journal, was read and referred to the Committee on Accounts.

The House then voted that the Doorkeeper perform the duties of Sergeant-at-Arms until the beginning of the next session of Congress.

**269. Creation of the office of Postmaster.**—On April 5, 1838,<sup>3</sup> it was—

*Resolved*, That William J. McCormick be appointed Postmaster to this House.

**270. The Postmaster superintends the post-office in the Capitol and is responsible for the prompt and safe delivery of mail.**

Present form and history of Rule VI.

Rule VI provides:

The Postmaster shall superintend the post-office kept in the Capitol for the accommodation of Representatives, Delegates, and officers of the House, and be held responsible for the prompt and safe delivery of their mail.

This is the form adopted in the revision of 1880.<sup>4</sup> It is similar to the old rule No. 28, which dated from April 4, 1838.<sup>5</sup> Immediately after the organization of the Government a room was set apart in the Capitol for the reception and distribution of letters and packets, without an order for that purpose, and was called a post-office.<sup>6</sup> It was superintended by the Doorkeeper and his assistants. On April 9, 1814, the Doorkeeper was authorized to appoint a Postmaster, and an allowance was made to meet the expenses of the office.<sup>7</sup> This arrangement continued until the rule of 1838.<sup>8</sup>

<sup>1</sup> Record, p. 2706.

<sup>2</sup> First session Twenty-second Congress, Journal, pp. 859, 860; Debates, p. 3783.

<sup>3</sup> Second session Twenty-fifth Congress, Journal, p. 704; Globe, p. 281.

<sup>4</sup> Second session Forty-sixth Congress, Record, p. 205.

<sup>5</sup> Second session Twenty-fifth Congress, Globe, pp. 278, 281.

<sup>6</sup> On April 30, 1802 (first session Seventh Congress, Journal, p. 229; Annals, p. 1253), the House requested the Postmaster-General to establish a post-office at or near the Capitol.

<sup>7</sup> Constitution, Manual, Rules, edition of 1859. Second session Thirteenth Congress, Journal, p. 398; third session Twenty-seventh Congress, Journal, p. 738.

<sup>8</sup> On April 4, 1838 (second session Twenty-fifth Congress, Journal, p. 703; Globe, pp. 278, 281), the House agreed to a series of resolutions reported from the Committee on Accounts. One of these resolutions related to the conduct of the post-office of the House, as follows:

“10. Resolved, That the Doorkeeper shall hire, at the lowest price for which it can be had, a suitable number of horses for the transportation and distribution of the mail of the House to and from the postoffice, and to the lodgings of the Members, and for such other necessary business as may be from time to time required; and he shall superintend the faithful performance of the duties of the messengers employed in this service, and shall report to the Clerk of the House a statement of the persons employed, and the terms of the contract, which shall be reported to the Committee of Accounts; and the Doorkeeper, or other officer of the House, shall not be directly or indirectly interested in any such contract or undertaking.”

**271. The Postmaster accounts for the Government property in his possession.**—The statutes make it the duty of the Postmaster to make out a full and complete account of all the property of the Government in his possession on the first day of each regular session and at the expiration of his term of service.<sup>1</sup>

**272. The Chaplain opens each day's sitting with prayer.**

**Present form and history of Rule VII.**

Rule VII provides:

The Chaplain shall attend at the commencement of each day's sitting of the House and open the same with prayer.<sup>2</sup>

This rule dates from the revision of 1880,<sup>3</sup> although there had been a Chaplain from the very first years of Congress, and before in the Continental Congress also.<sup>4</sup>

**273. Although in earlier years the Chaplain was not strictly an officer of the House, his election was held to constitute a question of privilege.**—On March 5, 1860.<sup>5</sup> Mr. John S. Millson, of Virginia, having proposed to submit, as a question of privilege, the following resolution:

*Resolved*, That the House will proceed to-morrow, at 1 o'clock p.m., to elect a Chaplain, who shall officiate, during the present Congress, alternately with the Chaplain already elected by the Senate.

Mr. George S. Houston, of Alabama, made the point of order that the resolution did not present a question of privilege, as the Chaplain was not an officer of the House, the Thirty-fifth Congress having been organized without one, and that neither the law nor the Constitution required the election of such an officer.

The Speaker,<sup>6</sup> in rendering his decision, said that he had looked into the precedents, and found that they were in favor of the question being considered privileged. Therefore he overruled the point of order.

Mr. Houston having appealed, the appeal was laid on the table.<sup>7</sup>

**274. The practice of electing a Chaplain was suspended during the Thirty-fifth Congress.**—On December 10, 1857,<sup>8</sup> after a parliamentary struggle of considerable intensity, the following preamble and resolutions, submitted by Mr. James F. Dowdell, of Alabama, were agreed to:

Whereas the people of these United States, from their earliest history to the present time, have been led by the hand of a kind Providence and are indebted for the countless blessings of the past and the present and dependent for continued prosperity in the future upon Almighty God; and whereas the great vital and conservative element in our system is the belief of our people in the pure doctrines and divine truths of the Gospel of Jesus Christ, it eminently becomes the representatives of a people so highly favored to acknowledge in the most public manner their reverence for God: Therefore,

*Be it resolved*, That the daily sessions of this body be opened with prayer.

<sup>1</sup> Revised Statutes, see. 72.

<sup>2</sup> The Chaplain sometimes invites another clergyman to officiate; sometimes one from another country. (Second session Fifty-fifth Congress, Record, p. 9.)

<sup>3</sup> Second session Forty-sixth Congress, Record, pp. 199, 205.

<sup>4</sup> Journal of Continental Congress, September 6, 1774.

<sup>5</sup> First session Thirty-sixth Congress, Journal, pp. 442, 443; Globe, p. 992.

<sup>6</sup> William Pennington, of New Jersey, Speaker.

<sup>7</sup> on May 26, 1876 (first session Forty-fourth Congress, Journal, p. 1521), a resolution providing for the election of a Doorkeeper was offered and received as a question of privilege.

<sup>8</sup> First session Thirty-fifth Congress, Journal, p. 58; Globe, pp. 25, 26.

*Resolved*, That the ministers of the Gospel in this city are hereby requested to attend and alternately perform this solemn duty.<sup>1</sup>

**275. The Chaplain was not originally an officer of the House; but has been such for many years.**—December 4, 1817, the House concurred in Senate resolution for appointing two chaplains of Congress, one by each House, who should interchange weekly. This was in accordance with the old custom.<sup>2</sup>

**276.** On December 10, 1845,<sup>3</sup> a question was raised as to the practice which had prevailed for many years of the House and Senate by concurrent action providing for the election of two different chaplains of two different denominations to officiate, one over the Senate and the other over the House. The usual resolution was agreed to, however.

**277.** On December 6, 1853,<sup>4</sup> a change was made in the practice of electing chaplains for a single session, and the House sent to the Senate a concurrent resolution providing for their election for the Congress. The nature of the office was not changed otherwise, the practice of authorizing two chaplains, of different denominations, one to be elected by the House and the other by the Senate, continuing. This authorization was by a concurrent resolution.

*Resolved (the Senate concurring)*, That two chaplains be elected, one by the Senate and the other by the House of Representatives; and that they officiate alternately during the present Congress.

**278.** On February 5, 1856,<sup>5</sup> in accordance with the custom of Congress from very early times, the Senate passed the usual concurrent resolution providing for two chaplains of different denominations, one to be elected by each House. The House, which had not completed its organization, did not act on this resolution at this time; but on February 21 it elected a Chaplain of its own for the session. On April 24 the concurrent resolution of the Senate was laid on the table.

**279.** On December 22, 1856,<sup>6</sup> the House proceeded to the election of a Chaplain on its own account without reference to the usual concurrent resolution from the Senate.

**280. At first the Chaplain did not take the oath prescribed for the officers of the House.**—On July 5, 1861,<sup>7</sup> the House elected its Chaplain without reference to the Senate, but the Chaplain evidently did not take the oath taken by the regularly constituted officers of the House.

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<sup>1</sup>In this Congress a considerable number of remonstrances had been received from citizens who objected to the employment of chaplains by the Government, either in the Army, the Navy, or Congress, on the ground that such employment conflicted with the spirit of the Constitution and tended to promote a union of church and state. The debate indicates that this method, while a departure from the usage of the House from the First Congress, had probably been suggested by the way in which the Washington clergy had officiated during the prolonged struggle over the organization of the previous House. In 1854 (Report No. 124, first session, Thirty-third Congress), a committee of the House examined generally the standing of chaplains in Government positions.

<sup>2</sup>First session Fifteenth Congress, Annals, p. 405.

<sup>3</sup>First session Twenty-ninth Congress, Globe, pp. 40, 41.

<sup>4</sup>First session Thirty-third Congress, Journal, p. 40; Globe, pp. 8, 16, 18.

<sup>5</sup>First session Thirty-fourth Congress, Journal, pp. 458, 500, 582, 886; Globe, p. 410.

<sup>6</sup>Third session Thirty-fourth Congress, Journal, p. 143; Globe, pp. 177, 178.

<sup>7</sup>First session Thirty-seventh Congress, Journal, p. 22; Globe, p. 12.

**281.** On December 17, 1846,<sup>1</sup> after the election of a Chaplain on the part of the House, Mr. John Pettit, of Indiana, moved that the oath to support the Constitution of the United States be administered to the Chaplain as to all other officers of the House. This motion was decided in the negative.

**282.** On December 15, 1863,<sup>2</sup> the Chaplain appears to have been sworn for the first time. He then took the new "test oath," so called, provided for by the act of July 2, 1862.

**283. The statutes provide for the defense of any person against whom an action is brought for acts done while an officer of either House in the discharge of his duty.**—In cases of action brought against any person for acts done by him while an officer of either House in the discharge of his official duty the district attorney for the district within which the action is brought shall enter appearance, and the defense shall be conducted under the direction of the Attorney-General.<sup>3</sup>

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<sup>1</sup> Second session Twenty-ninth Congress, Journal, p. 66; Globe, p. 53.

<sup>2</sup> First session Thirty-eighth Congress, Journal, p. 39.

<sup>3</sup> 18 Stat. L., p. 401.