

Chapter XLIII

DELEGATES

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1290. Each Territory sends to the House a Delegate having the right of debating but not of voting.

The statutes specify the qualifications of the electors of Delegates.

A Delegate is elected by a plurality of votes, and the governor is required to declare the election, in accordance with which a certificate is issued.

Section 1862 of the Revised Statutes says:

Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.⁴

The words “right of debating, but not of voting,” were taken from the act of March 3, 1817,⁵ but that act in turn had taken them verbatim from the “ordinance for the government of the Territory of the United States northwest of the river Ohio” passed by the Continental Congress July 13, 1787.⁶

¹ Office of Delegate created by Continental Congress. Section 421 of Volume I.

Early theory and practice in regard to. Section 400 of Volume I.

Status of, elaborately discussed, especially as to qualifications. Section 473 of Volume I. Other discussion of qualifications. Sections 421, 423, 431 of Volume I. Qualifications of Delegate from Hawaii. Section 526 of Volume I.

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² Duty of Speaker as to recognition of, after the Territory has been admitted as a State. Section 408 of Volume I.

³ As to the expulsion of a Delegate. Section 469 of Volume I.

⁴ The House in 1882 passed a bill (H. R. 4162) to define the qualifications of Territorial Delegates, but the Senate did not act on the bill. (First session Forty-seventh Congress, Record, p. 3256.)

⁵ 3 Stat. L., p. 363, second session Fourteenth Congress.

⁶ 1 Stat. L., p. 52.

1291. Delegates from the Territories have the right to make motions.—

On February 22, 1849,¹ Mr. Henry H. Sibley, of Wisconsin Territory, moved that the rules be suspended for the purpose of enabling him to move that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the bill from the Senate (No. 152) entitled "An act to establish the Territorial government of Minnesota."

This motion being decided in the affirmative, two-thirds voting in favor thereof, Mr. Sibley made the motion to discharge the committee, etc., and the House proceeded to consider the bill.

The question being upon agreeing to amendments, Mr. Sibley moved the previous question.

Mr. Nathaniel Boyden, of North Carolina, raised the point of order that a Delegate from a Territory, not having the right to vote, clearly had not the right to move the previous question.

The Speaker² stated that—

By the act of March 3, 1817, it is provided—

"That in every Territory of the United States in which a temporary government has been or hereafter shall be established, and which, by virtue of the ordinance of Congress of the 13th of July, 1787, or of any subsequent act of Congress passed or to be passed, now hath or hereafter shall have the right to send a Delegate to Congress, such Delegate shall be elected every second year, for the same term of two years for which Members of the House of Representatives of the United States are elected; and in that House each of the said Delegates shall have a seat with the right of debating, but not of voting."³

It is clear that the gentleman from Wisconsin has no right to vote. The Chair has had some doubt whether the gentleman has the right to make a motion. It has, however, been the uniform practice of the House to allow Delegates to make motions. The gentleman from Wisconsin himself made the motion to suspend the rules for the purpose of bringing the question before the House. That is a motion quite as important as the previous question, as it sets aside all the rules of the House relating to the order of business. Gentlemen from the Territories are habitually called for petitions and resolutions, under an express rule of the House, and always have been allowed to move the reference of them.⁴ The Chair believes, upon the whole, that delegates from the Territories could not subserve the purposes for which they are sent here unless they have the right to make motions; and as the law does not expressly deny them that right, the Chair is disposed to accord to them the largest liberty.

From this decision Mr. Boyden appealed. The House sustained the Chair.

1292. A Delegate may make any motion which a Member may make, except the motion to reconsider.—On August 20, 1850,⁵ Mr. Samuel R. Thurston, of Oregon Territory, by unanimous consent, presented the memorial of the legislative assembly of Oregon, praying for a donation of land to settlers, etc. Mr. Thurston moved that the said memorial be referred to the Committee on Territories. Mr. Jacob Thompson, of Mississippi, made the point of order that, under a decision of the Committee of the Whole,⁶ in affirmance of a decision of its Chairman, it was not competent for a Delegate from a Territory to make a motion, and, consequently,

¹ Journal, second session Thirtieth Congress, p. 503; Cong. Globe, p. 581.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ This law of 1817 is now section 1862, Revised Statutes, ed. 1878.

⁴ Petitions and resolutions are no longer introduced in this way.

⁵ Journal, first session Thirty-first Congress, p. 1280.

⁶ The decision in Committee of the Whole was made by Chairman Armistead Burt, of South Carolina. (See Cong. Globe, first session Thirty-first Congress, p. 1607.)

that the motion submitted by the Delegate from Oregon [Mr. Thurston] could not be entertained by the House.

The Speaker¹ stated that, if the point of order made by the gentleman from Mississippi [Mr. Thompson] was an original question, for the first time presented for consideration, he should be strongly inclined to hold, under the provisions of the Constitution and the law of 1817, that the Delegate could not make a motion. But the long-continued practice of the House, commencing with the first organization of Territorial governments, in connection with the express provisions of the rules—one of which provided that the Territories shall be called for resolutions on each alternate Monday during the session—had, in his judgment, settled this question. Unless a Delegate could offer a resolution it would be a useless provision to call his Territory for resolutions; and the Chair was unable to discriminate between motions relating to Territorial business and any others, except a motion to reconsider, which, being dependent upon the right to vote, could not be exercised by a Delegate. The Chair therefore overruled the point of order.

Mr. Armistead Burt having appealed from the decision of the Chair, the ruling was sustained by a vote of 111 yeas to 62 nays.

1293. A Delegate may not object to the consideration of a measure.—On June 6, 1866,² Mr. Henry J. Raymond, of New York, from the Committee on Appropriations, reported Senate Joint Resolution No. 69, making appropriation to negotiate treaties with certain Indian tribes.

Mr. Walter A. Burleigh, Delegate from the Territory of Dakota, insisted that the bill, making an appropriation, must have its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker³ said:

The Chair is of the opinion that a Delegate is not entitled to make such an objection as will prevent the joint resolution from being now considered. * * * The gentleman is sent here as a Delegate to discuss the merits of all questions in regard to the Territory of Dakota or elsewhere, but he is not entitled to a vote.

1294. On March 2 1901,⁴ Mr. John H. Stephens, of Texas, asked unanimous consent for the present consideration of the joint resolution (H. J. Res. 213) setting aside certain lands within the Mescalero Indian Reservation, in New Mexico, for the use of the Indians thereon, and providing for the sale of the residue of the lands therein for the benefit of said tribe of Indians.

Mr. Stephens having stated that the Delegate from New Mexico was opposed to the bill, Mr. Eugene F. Loud, of California, said that he would object, as the Delegate was not in a position to oppose.

1295. A Delegate may call a Member to order in debate.—On January 14, 1811,⁵ Mr. Josiah Quincy, of Massachusetts had the floor, and was debating the bill to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of such State into the Union.

¹ Howell Cobb, of Georgia, Speaker.

² Cong. Globe, first session Thirty-ninth Congress, p. 3007.

³ Schuyler Colfax, of Indiana, Speaker.

⁴ Second session Fifty-sixth Congress, Record, pp. 3463, 3464.

⁵ Third session Eleventh Congress, Anna], p. 526.

For words spoken, Mr. George Poindexter, Delegate from Mississippi Territory, called Mr. Quincy to order.

Mr. Joseph Lewis, Jr., of Virginia, asked for a decision as to whether or not “a Delegate, holding a seat in this House by courtesy alone,¹ without a right to vote, has a right to call any Member of the House to order.”

The Speaker² decided that the Delegate might call the Member to order.

1296. The House declined to allow a Delegate to introduce an interpreter on the floor.—On February 27, 1854,³ a proposition was made to authorize Hon. Jose M. Gallegos, Delegate from New Mexico, to introduce an interpreter on the floor. Although it was shown that Mr. Gallegos could not understand a word of English, the House did not favor the proposition, and it failed to be agreed to.

1297. Delegates are appointed as additional members of certain committees, where they possess the same powers and privileges as in the House, and may make any motion except to reconsider.

Different views of the House as to the propriety of permitting a Delegate to serve on a committee.

Form and history of section 1 of Rule XII.

Rule XII, section 1, provides:

The Speaker shall appoint from among the Delegates one additional Member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; Post-Office and Post-Roads; Public Lands; Indian Affairs; Private Land Claims; Mines and Mining, and two on Territories; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider.

This rule is in the form of the revision of 1880,⁴ except that the Committee on Private Land Claims was added on December 21, 1887,⁵ and the number of Delegates on the Committee on Territories was increased to two on February 1, 1892.⁶ The form of 1880 was taken from the old rule No. 162, which dated from December 12, 1871,⁷ when a rule was adopted giving Delegates places on the Committee on Territories and District of Columbia.⁸ The rule was regarded as an innovation, and the propriety of permitting a Delegate to have a place on a committee was questioned.⁹ On December 6, 1872,¹⁰ Mr. Jerome B. Chaffee, of Colorado, proposed that Delegates be named on the Committees of Indian Affairs, Mines and Mining, Public Lands, and Private Land Claims; but it was not until March 29, 1876,¹¹ that the enlargement was actually effected.

¹At this time the office of delegate had not been definitely established by the law of 1817. See Section 1291.

²Joseph B. Varnum, of Massachusetts, Speaker.

³First session Thirty-third Congress, Journal p. 429; Globe, p. 492.

⁴Second session Forty-sixth Congress, Record, p. 205.

⁵First session Fiftieth Congress, Record, p. 146.

⁶First session Fifty-second Congress, Record, p. 735.

⁷Second session Forty-second Congress, Journal, pp. 16, 67; Globe, pp. 11, 117.

⁸At this time the District of Columbia had a Delegate in Congress. Third session Forty-second Congress, Journal, p. 6; second session, Globe, p. 11.

⁹In earlier days, however, without any rule, a Delegate had been made chairman of an important select committee. See section 1299 of this chapter.

¹⁰Third session Forty-second Congress, Journal, p. 43; Globe, p. 61.

¹¹First session Forty-fourth Congress, Record, p. 2035.

1298. Delegates have sometimes been appointed on committees other than those mentioned in Rule XII.—On December 23, 1891,¹ at the time of the appointment of the committees of the House, Mr. Speaker Crisp named Mr. John T. Caine, of Utah, a Delegate, on the committees on Pacific Railroads and Irrigation of Arid Lands, although those were not among the committees specified by Rule XII as committees on which Delegates shall be appointed by the Speaker. On February 8, 1892,² the Speaker assigned committee places to Delegates in accordance with Rule XII, Mr. Caine being appointed to Coinage, Weights, and Measures, the Post-Office and Post-Roads, and Private Land Claims. He continued to hold these places with the two to which he was appointed December 23.³

1299. A Delegate has been appointed chairman of a select committee.—On December 21, 1811,⁴ Mr. George Poindexter, Delegate from Mississippi Territory, moved that the letter of Cowles Mead, speaker of the house of representatives of the Mississippi Territory, with the presentment of the grand jury of Baldwin County, in said Territory, against Harry Toulmin, judge of the superior court of Washington district, be referred to a select committee to consider and report thereon to the House.

The motion being agreed to, Mr. Poindexter was appointed chairman of the committee, and in due time made the report from the committee to the House.

1300. In the earlier practice Delegates appear to have voted in committees; but such is not the later rule.—On February 23, 1884,⁵ a proposition was made to allow Delegates the right to vote in committees of which they were members. It was referred to the Committee on Rules, with no result.

1301. On September 3, 1841,⁶ in a report on the qualifications of David Levy, Delegate from Florida, the Committee on Elections incidentally say in their report:

With the single exception of voting, the Delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before said committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House. He is also required to take an oath to support the Constitution of the United States.

1302. An instance wherein a Delegate was appointed a teller.—On January 13, 1904,⁷ during consideration of the legislative appropriation bill in Committee of the Whole House on the state of the Union, Mr. J. S. Wilson, Delegate from Arizona, offered an amendment relating to the salaries of certain officials in that Territory.

After debate the question was put on agreeing to the amendment, and tellers were ordered.

¹ First session Fifty-second Congress, Journal, p. 18.

² Record, p. 950.

³ See Congressional Directory, second session Fifty-second Congress (first edition), p. 137.

⁴ First session Twelfth Congress, Journal, pp. 87, 347 (Gales & Seaton ed.).

⁵ First session Forty-eighth Congress, Journal, p. 653; Record, p. 1334.

⁶ First session Twenty-seventh Congress, House Report No. 10, p. 5.

⁷ Second session Fifty-eighth Congress, Record, p. 736.

Thereupon the Chairman¹ appointed as tellers Mr. Henry H. Bingham, of Pennsylvania, the Member in charge of the bill, who had opposed the amendment, and Mr. Wilson, the Delegate, who had proposed it.

1303. Impeachment proceedings have been moved by a Delegate.

A Delegate was appointed chairman of a committee to inquire into the conduct of a judge, and was authorized by the House to cause testimony to be taken.

On April 11, 1808,² the Speaker presented to the House sundry resolutions of the legislative council and house of representatives of the Mississippi Territory, instructing George Poindexter, the Delegate in Congress from the said Territory, to impeach Peter B. Bruin, presiding judge of that Territory, on the charges of neglect of duty and drunkenness on the bench.

Thereupon Mr. Poindexter offered this resolution:

Resolved, That a committee be appointed to prepare and report articles of impeachment against Peter B. Bruin, one of the judges of the superior court of the Mississippi Territory; and that the said committee have power to send for persons, papers, and records.

Objection being made to proceeding to impeachment proceedings without further investigation, and especially to doing so on the instance not of a State but of a Territorial legislature, Mr. Poindexter, "at the suggestion of experienced gentlemen," modified his resolution by striking out the words "prepare and report" and inserting in their place "inquire into the expediency of preferring."

On April 18,³ the House considered the resolution and agreed to a substitute as follows:

Resolved, That a committee be appointed to inquire into the conduct of Peter B. Bruin, judge, etc., and report whether, in their opinion, he hath so acted, in his official capacity, as to require the interposition of the constitutional power of this House; and that the said committee have power to send for persons, papers, and records.

Mr. Poindexter was appointed chairman of this committee, and on April 21,⁴ the House by resolution authorized him to have depositions taken according to the terms of this resolution:

Resolved, That George Poindexter, chairman of said committee, be authorized to cause to be taken before a magistrate or other proper officer such depositions in relation to the official conduct of the said judge as, in his judgment, may be material to the inquiry, having first notified the said Bruin of the time and place, or places, of taking such depositions, so that he may give his attendance; and that the depositions so taken be laid before Congress at their next session.

1304. A Delegate resigns his seat in a communication addressed to the Speaker.—On February 21, 1831,⁵ Mr. John Biddle, Delegate from the Territory of Michigan, by a letter addressed to the Speaker, communicated his resignation of his seat in the House.

The letter was read, ordered to lie on the table, and appears in full in the Journal.

¹James A. Tawney, of Minnesota, chairman.

²First session Tenth Congress, Journal, p. 264 (Gales & Seaton ed.), Annals, p. 2068.

³Journal, p. 277.

⁴Journal, p. 286.

⁵Second session Twenty-first Congress, Journal, p. 338.

1305. A Delegate who had used insulting language in debate and declined to retract it was, by order of the House, arrested, brought to the bar, and censured by the Speaker.

A declaration by a Member in debate that another Member has knowingly stated that which is false is unparliamentary and censurable.

On February 4, 1869,¹ during consideration of the bill (H. R. 1738) making appropriations for the expenses of the Indian department, Mr. E. D. Holbrook, Delegate from Idaho, was called to order for the use of the following words:

And after the gentleman having charge of this bill saw fit to silence Delegates here by raising points of order and making assertions which he knew at the time he made them to be unqualifiedly false.

The words having been taken down on the demand of a Member, and the ruling of the Chair having been asked, the Speaker² said:

The Chair rules that these words are out of order, both as being unparliamentary and as being indecorous. Where a Member states that what another Member has said is not true that is not unparliamentary, because it is possible that the Member may have been mistaken. But when a gentleman states that a Member on this floor has declared that which he knew to be unqualifiedly false, that is the most insulting language that can be uttered in a parliamentary body.

Mr. Holbrook having declined to retract, Mr. James A. Garfield, of Ohio, submitted the following resolution:

Resolved, That E. D. Holbrook, Delegate from the Territory of Idaho, having uttered the following words in debate: "and after the gentlemen having charge of this bill saw fit to silence Delegates here by raising points of order and making assertions which he knew at the time he made them to be unqualifiedly false," distinctly in the presence of the House, and having refused to retract the same, be, and he is hereby, immediately arrested by the Sergeant-at-Arms to be brought to the bar of the House and severely censured by the Speaker.

During these proceedings attention was called to a former ruling of the Speaker when Mr. John A. Logan, of Illinois, used similar language, but the Speaker replied that this case must be settled by itself.

The resolution was agreed to under operation of the previous question, and Mr. Holbrook, being brought to the bar in custody of the Sergeant-at-Arms and censured, the Speaker saying:

Mr. Holbrook, oftentimes in a deliberative body, in the discussion of exciting questions, language is used which, when attention is called to it, is promptly withdrawn. We are all fallible, and hence are liable to yield sometimes to the temptation to indulge in language not seemly or proper; but when the language employed is offensive in its character, and apparently, from the construction of the sentence, intended to be insulting, and when, an opportunity being given for its withdrawal, that opportunity is not taken advantage of, thus reiterating the insult to a fellow-member, uttered upon the floor of the House, it has always been deemed by deliberative assemblies censurable by the body with which both Members are connected. This instance is, in the opinion of the House, of that character, and the House has instructed its Speaker to censure you at its bar. I therefore, by order of the House, pronounce upon you its censure for the language which you have uttered in its hearing. You will resume your seat.

1306. The rules give to the resident commissioner of Porto Rico the status of a Delegate in the House and assign to him an additional place on the Committee on Insular Affairs.

¹Third session Fortieth Congress, Journal, pp. 275, 276; Globe, pp. 882, 883.

²Schuyler Colfax, of Indiana, Speaker.

Form and history of section 2 of Rule XII.

Section 2 of Rule XII provides that:

The resident commissioner to the United States from Porto Rico shall possess the same powers and privileges as to committee service and in the House as are possessed by Delegates; and shall be competent to serve on the Committee on Insular Affairs as an additional member.

This rule dates from February 2, 1904.¹ In the preceding Congress the House had passed a bill to provide by law for a delegate from Porto Rico, but it failed of enactment.²

¹First session Fifty-eighth Congress, Journal, p. 233.

²Second session Fifty-seventh Congress, Journal, p. 333.