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Chapter LXXXI.

PRIVILEGE OF THE HOUSE.[1]

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2557. Definition of questions of privilege affecting the House.—Rule IX defines questions of privilege affecting the House as "those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings."[9]

[1] For power of House to punish for contempts, see Volume II, Chapters LI to LIII, sections 1597–1724.

Propositions to impeach civil officers admitted as matters of privilege. Sections 2045, 2048, 2053, 2054, 2401, 2402, 2408, 2496, 2502, 2510 of this volume, and 7261 of Volume V. But propositions to investigate merely are not matters of privilege. Sections 2050, 2051 of this volume.

[2] House declined to define in 1795. Section 1603 of Volume II.

[3] Resolution relating to, a matter of privilege. Sections 1488, 1491, 1501 of Volume II.

Propositions relating to census and apportionment. Sections 305–308 of Volume I.

[4] Resolutions relating to prosecution of election cases matters of privilege. Sections 322, 328, 792, and 794 of Volume I, and 955, 1020, and 1062 of Volume II.

Admission of delegate from unorganized territory not matter of privilege. Section 411 of Volume I.

Presentation of credentials. Section 361 of Volume I.

Propositions to investigate conduct of members. Section 1838 of this volume.

[5] See also sections 3383, 3388 of Volume IV.

[6] Charge that a chairman of a committee had suppressed evidence. Section 1786 of this volume.

[7] Proposition to elect an officer of the House presents a question of privilege. Sections 189, 237, 263, 273, 290 of Volume I.

Correction of the Congressional Record. Sections 7013–7023 of Volume V.

[8] Proposition to remove an officer a question of privilege. Sections 284, 285 of Volume I.

[9] See section 2521 of this volume for history and full form of this rule.

2558. It being alleged that the Senate had invaded the constitutional prerogative of the House to originate appropriation bills, the Speaker entertained the matter as of privilege.—On January 23, 1885,[1] Mr. Frank H. Hurd, of Ohio, submitted the following resolution:

Whereas certain bills, appropriating money from the Treasury of the United States, originating in the Senate, have passed that body and have been sent to this House for its concurrence, which are now upon the Speaker's table, to wit, Senate bill No. 398, entitled "A bill to aid in the establishment and temporary support of common schools," and many others; and

Whereas it is asserted that these bills are in violation of the privilege of this House to exclusively originate bills for raising revenue: Therefore,

Be it resolved, That the Committee on the Judiciary be hereby directed to inquire into the power of the Senate to originate bills appropriating money from the Treasury of the United States and report to this House at as early a day as practicable. And said committee shall have leave to report at any time.

Mr. J. Frederick C. Talbott, of Maryland, made the point of order that this did not present a question of privilege.

The Speaker[2] ruled:

The Chair thinks whenever it is asserted on the floor of the House that the rights or privileges of the House have been invaded or violated by any other body, or by any individual, a question of privilege is presented, at least to the extent that the Chair is obliged to submit it to the House for its decision. Of course the Chair itself will decide all questions of order arising during legislative proceedings of the House; but when the allegation is made that the rights or privileges of the House collectively have been invaded, that is a question which does not come within the province of the Chair to decide. The House is the custodian and guardian of its own rights and privileges as a body, and must always possess the power and have the opportunity to determine what those rights and privileges are and whether or not they have been improperly interfered with.

After a long debate the motion to lay the resolution on the table was agreed to—128 yeas to 123 nays.

2559. An alleged invasion by the Senate of the House's constitutional prerogative of originating revenue legislation has been held in the later practice to present a question of privilege.—On January 29, 1842,[3] the House proceeded to the consideration of the amendments of the Senate to the bill No. 67, "An act to authorize the issue of Treasury notes."

Mr. James I. Roosevelt submitted for the decision of the Chair, as a question of privilege, the following:

Whereas the amendment made by the Senate to the bill for the issue of Treasury notes, rendering the same an addition to, instead of a partial substitution for, the twelve-million loan heretofore authorized by law, converts the said bill into a bill for raising revenue, which, by the Constitution, can only originate in the House of Representatives, and is a breach of the privileges of this House: Therefore

Resolved, That the said amendment can not be entertained by this House, and that the bill and amendments be returned to the Senate, with a respectful communication to that effect.

The Speaker[4] decided that the point raised was a question of constitutional power between the two Houses of Congress, and was not a question of privilege, which, in his opinion, it was his duty to submit to the House.

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[1] Second session Forty-eighth Congress, Journal, pp. 316, 317, 332, 333; Record, pp. 948, 962.

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

[3] Second session Twenty-seventh Congress, Journal, p. 287; Globe. pp. 195, 196.

[4] John White, of Kentucky, Speaker.

From this decision Mr. Roosevelt took an appeal to the House; and the decision of the Chair was sustained—112 to 73.

The House then agreed to the first and second amendments, when the third amendment was read, which was to strike out the following proviso:

Provided, That the amount of Treasury notes which may be issued under the authority of this act shall be deemed and taken in lieu of so much of the loan authorized by the act of July 21, 1841.

Mr. Charles G. Atherton, of New Hampshire, here submitted for the decision of the Chair, as a question of order, the following:

In the seventh section, first article of the Constitution of the United States, it is provided that "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." The bill as it went from the House was not a bill for raising revenue, but to substitute one mode of raising revenue for another in regard to an amount of revenue already authorized by law to be raised. The amendment of the Senate does not increase or diminish an amount already authorized to be raised in the bill as passed by the House, but it entirely changes the nature of the House bill, and makes it a bill for raising an original and independent amount in addition to the sum authorized to be raised by former laws, and its adoption by the Senate is in effect originating a bill for raising revenue.

The Speaker overruled the question of order raised by Mr. Atherton; and on an appeal the decision was sustained—yeas 117, nays 76.[1]

2560. On March 3, 1859,[2] Mr. Galusha A. Grow, of Pennsylvania, raised a question as to the general post-office appropriation bill, which had been returned from the Senate with an amendment raising the rate of postage, and offered this resolution:

Resolved, That House bill No. 872, making appropriations to defray the expenses of the Post-Office Department for the year ending the 30th of June, 1860, with the Senate amendments thereto, be returned to the Senate, as section 13 of said amendment is in the nature of a revenue bill.

A question of order being raised, the Speaker[3] ruled that it was in order, as it involved a question of privilege.

2561. On January 27, 1871,[4] Mr. Samuel Hooper, of Massachusetts, raised a question as to a bill originating in the Senate and sent to the House, providing for the repeal of the law as to the income tax, and presented a resolution reciting that it was exclusively the privilege of the House to originate revenue bills.

A question of order being raised, the Speaker[5] held:

In the opinion of the Chair the question presented by the gentleman from Massachusetts is one of privilege. The Chair is not left to his own judgment merely in coming to this conclusion, but would call the attention of the House to a precedent established in the Thirty-fifth Congress. On that occasion the Senate amended the post-office appropriation bill by adding a clause increasing the rates of postage. On the return of the bill to the House, Mr. Grow, of Pennsylvania, made the motion, as one of privilege, that it be returned to the Senate because it contained a revenue measure. Speaker Orr sustained the motion as privileged, and the House by a decisive majority adopted it. The bill was lost in consequence of the disagreement resulting from this section, but was passed at the next session with the objectionable section left out.

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[1] For full text of the bill, after agreement to the Senate amendments, see Globe, p. 196.

[2] Second session Thirty-fifth Congress, Globe, pp. 1666, 1682, 1684.

[3] James E. Orr, of South Carolina, Speaker.

[4] Third session Forty-first Congress, Globe, p. 791.

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

In regard to the point raised by the gentleman from Pennsylvania [Mr. Randall], that this is not a bill to raise revenue, but to repeal a provision of law by which revenue is now raised, the Chair would remark that, in his judgment, that circumstance does not affect the question of privilege raised by the gentleman from Massachusetts [Mr. Hooper]. Under the practice of the House the rule requiring tax bills to be first discussed in Committee of the Whole has been always considered to apply with equal force to bills repealing taxes, and for this very obvious reason: that, as such bills are amendable, they might have their entire character changed in the House without the committee having proper opportunity for untrammeled discussion; and for an additional reason of much force, that the repeal of one tax may involve the necessity of levying another, and thus involve the whole question of raising revenue. It is for the House to decide upon the propriety of adopting the resolution offered by the gentleman from Massachusetts. The question submitted to the Chair is simply whether the resolution be one of privilege, and the Chair decides that it is, and it is now before the House.

2562. On June 14, 1878,[1] Mr. Joseph G. Cannon, of Illinois, as a question of privilege, submitted the following resolution:

That House bill No. 4286, to establish post routes in the several States therein named, with the Senate amendment thereto, be returned to the Senate, as a part of said amendments are in the nature of and constitute a revenue bill.

The Speaker[2] said:

The House must determine whether it is a question of constitutional privilege in the assertion of the rights of the House. It does not belong to the Chair. If it were a question in reference to the rules, the Chair would determine it.

The points wherein the amendments were in the nature of revenue legislation were specified by Mr. Cannon—the repeal of customs duties on certain books published abroad, extension of the franking privilege, reducing the rate on second-class mail matter, and providing for the collection of a tax from newspaper publishers. The resolution was adopted by the House by a vote of 169 to 68, after a long discussion.

2563. A resolution implying that the constitutional rights of the House may have been invaded by the Executive presents a question of privilege.— On December 8, 1903,[3] Mr. Edgar D. Crumpacker, of Indiana, claiming the floor for a question of privilege, offered the following:

Whereas it is commonly reported that a treaty negotiated between the President of the United States and the Republic of Cuba, granting and ceding the Isle of Pines to the Republic of Cuba, is pending in the Senate of the United States for ratification or rejection; and

Whereas by the terms of the treaty of Paris the Kingdom of Spain relinquished sovereignty over the Isle of Pines as part of the island of Cuba; and

Whereas by the action of this Government in establishing and recognizing the independence of the Republic of Cuba it was expressly provided that the Isle of Pines should not be within the constitutional boundary of that Republic; and

Whereas this Government has been administering the affairs of and exercising sovereignty over the Isle of Pines ever since the treaty of Paris was ratified; and

Whereas section 3 of Article IV of the Constitution of the United States provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States:" Therefore,

Resolved, That the Committee on the Judiciary be instructed to inquire into the facts hereinbefore recited and report to this House as soon as practicable:

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[1] Second session Forty-fifth Congress, Journal, p. 1303; Record, pp. 4605–4614.

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

[3] Second session Fifty-eighth Congress, Journal, p. 26; Record, pp. 55–58.

First. Whether the Isle of Pines is "territory or other property belonging to the United States" within the sense and meaning of the Constitution.

Second. Whether a treaty granting and ceding territory of or belonging to the United States to a foreign government without action on the part of the Congress is authorized by the Constitution.

Resolved, That the Committee on the Judiciary may report at any time under the foregoing resolution.

Mr. John S. Williams, of Mississippi, made a point of order that no question of privilege was involved.

The Speaker[1] said:

Of course the point of order goes to the standing of the resolution—the propriety of the introduction of the resolution. What the facts may be if the inquiry is made is no part of the duty of the Chair to inquire. The first whereas recites that—

"By the action of this Government in establishing and recognizing the independence of the Republic of Cuba it was expressly provided that the Isle of Pines should not be within the constitutional boundary of that Republic."

The next whereas recites that the government existing in the Isle of Pines is by the United States. The next whereas quotes section 3 of Article IV of the Constitution of the United States, that—

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States."

And then comes the resolution:

That the Committee on the Judiciary be instructed to inquire into the facts hereinbefore recited and report to this House as soon as practicable."

Then follow "first" and "second." I will read the second paragraph, which is all that is necessary to enable the Chair to rule:

"Second. Whether a treaty granting and ceding territory of or belonging to the United States to a foreign government without action on the part of Congress is authorized by the Constitution."

Now, it seems, upon the face of the resolution, that this presents a question, in the opinion of the Chair, of the highest privilege. What the House may do with the resolution, or, if it be agreed to, what that committee may find to be the facts, and after the finding what the House may do with the report, is no part of the business of the Chair in ruling upon the question of order. The Chair overrules the point of order.

2564. Alleged infringement by the treaty-making power on the constitutional right of the House to originate revenue measures presents a question of privilege.—On January 22, 1887,[2] Mr. D.N. Wallace, of Louisiana, presented, as a question of privilege, this resolution:

Whereas it has been stated in the public prints, and is no doubt true, that the President and Senate have agreed to and ratified a convention by which the terms of the treaty made between the United States and the Government of the Hawaiian Islands on the 30th day of January, 1875, have been extended for seven years longer, and beyond the period limited for its operation by the original treaty; and

Whereas by the original treaty it was agreed that certain articles therein mentioned were to be admitted to the United States free of duty; and

Whereas the original treaty was, by its terms, subject to the confirmation of an act of Congress, which provision is not inserted in the convention said to have been ratified: Therefore,

Resolved, That the Committee on the Judiciary be instructed to inquire into the facts hereinbefore recited, and to report to this House whether the treaty which involves the rate of duty to be imposed on any article or the admission of any article free of duty can be valid and binding without the concurrence of the House of Representatives and how far the power conferred on the House by the Constitution of the United States to originate measures to lay and collect duties can be controlled by the treaty-making power under said Constitution.

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

[2] Second session Forty-ninth Congress, Journal, pp. 349, 350; Record, p. 917.

Resolved, That the President be requested to lay before the House, if consistent with the public welfare, a copy of the treaty or convention proposed to the Senate and ratified by that body between the United States and the Government of the Hawaiian Islands.

Resolved, That the Committee on the Judiciary may report at any time under the foregoing resolution.

Mr. Nelson Dingley, Jr., of Maine, made the point of order that the resolution was not privileged.

The Speaker[1] ruled:

The only question now before the House is the point of order. The resolution directs the Committee on the Judiciary to inquire and report how far the power conferred on the House by the Constitution of the United States to originate measures to lay and collect duties can be controlled by the treaty-making power under the Constitution. That is a question which involves the constitutional privileges and powers of the House to originate such measures, and the Chair thinks it has always been held to be a matter of privilege in the House.

2566. A resolution that the rights and dignity of the House have been invaded by the Executive presents a question of privilege.—On December 19, 1893,[2] Mr. Charles A. Boutelle, of Maine, submitted, as involving a question of privilege, the following preamble and resolution:

Whereas the Executive Communications[3] just read to the House clearly disclose that the rights and dignity of the House of Representatives as a coordinate branch of Congress of the United States have been invaded by the Executive Department in furnishing secret instructions to a minister plenipotentiary of the United States to conspire with the representatives of a deposed and discredited monarchy for the subversion and overthrow of the established republican government to which he was accredited and to which his public instructions pledged the good faith and sympathy of the President, the Government, and the people of the United States: Therefore,

Resolved, That it is the sense of this House that any intervention by the Executive of the United States, its civil or military representatives, without authority of Congress, in the internal affairs of a friendly, recognized government to disturb or overthrow it and to aid or abet the substitution or restoration of a monarchy therefor is contrary to the policy and traditions of the Republic and the letter and spirit of the Constitution, and can not be too promptly or emphatically reprobated.

Mr. James B. McCreary, of Kentucky, made the point of order that the resolution did not present a question of privilege.

Mr. W.C.P. Breckinridge, of Kentucky, made the farther point of order that in any event the resolution must first be referred to a committee of the House.

The Speaker[4] held that the resolution was privileged, but also held that under the rules it must be referred in the first instance to a committee.[5] Although the question is privileged, yet if the rules provide for its reference it must be referred. There is no question of higher privilege than the right of a Member to his seat, yet the rules provide that all matters touching the right of a Member to his seat shall be referred to the Committee on Elections.

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

[2] Second session Fifty-third Congress, Journal, pp. 43, 44; Record, pp. 397–400.

[3] A message relating to affairs in Hawaii.

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

[5] This ruling as to reference of a matter of privilege is contrary to the past and present practice of the House, which is that a matter of privilege supersedes the regular order of business and the pending question and engages the attention of the House at once. (See sections 2521–2531, 2567 of this volume.)

Now, it has been held expressly that where a matter is called up in the House, not having been referred to the Committee on Elections, touching the right of a Member to his seat, that when the point is made it must be referred to the Committee on Elections. The Chair is aware of one decision in conflict with this, but the Chair thinks that a moment's reflection will satisfy gentlemen that it is within the power of the House to make rules for its own government, to make rules for the transaction of business, to make the rules which will cover privileged questions as well as questions not privileged.

The House has determined by its rules that as to certain matters they shall be referred to certain committees. Now, if a privileged matter should arise in the House or be presented to the House and there was nothing in the rules providing for its reference to any committee, then the Chair is of the opinion it would be in order to consider it, or be in order to move to refer it to some committee, thereby giving the committee jurisdiction of the subject-matter. Such questions frequently arise where there is no express direction in the rules as to the reference of the matter to a specific committee. The resolution, however, of the gentleman from Maine relates to our foreign relations, and there is a distinct provision in the rules that all matters referring to our foreign relations shall be referred to the Committee on Foreign Affairs; and the gentleman from Kentucky made the point that this matter should be so referred.

The Chair has decided that the recitals of this resolution constitute a question of privilege, and the point being made that, as the resolution pertains to our foreign relations, it should be referred under the rules to the Committee on Foreign Affairs, the Chair holds that it must be so referred.

Mr. Boutelle appealed from the decision of the Chair, to wit, that the resolution should be first referred to a committee. This appeal was, on motion of Mr. McCreary, laid on the table.

On the same day, Mr. W. Bourke Cockran, of New York, presented a resolution on the same subject, alleging that the Executive Department of the Government had recently attempted to enlarge the territorial limits of the United States without any consultation with the House of Representatives, and providing for a special committee to examine into the rights, powers, privileges, and duties of the House on this subject.

Mr. Breckinridge, of Kentucky, made the point of order that the resolution must first be considered by the Committee on Rules.

The Speaker sustained the point of order, holding as follows:

This resolution is a resolution to raise a special committee, and under the rules of the House, when the point is made against its consideration, even though it be privileged, it must be referred to the Committee on Rules, because there is an express provision of the rules to that effect. The Chair holds. under the point made by the gentleman from Kentucky, that this resolution must be referred without a motion; and it will be referred to the Committee on Rules.

2566. A letter from an executive officer of the Government criticizing the Senate was condemned in debate as a breach of privilege and withdrawn.—On February 25, 1903,[1] a Senator read in the Senate a letter from the Civil Service Commission criticizing language used by a Senator in debate.

[1] Second session Fifty-seventh Congress, Record, pp. 2600–2604.

This letter, which was read during proceedings in relation to one Elmer E. Forshay, was criticized as a gross breach of privilege, and was withdrawn.

2567. A resolution relating to the recognition of a foreign state, no invasion of the House's prerogatives being alleged, does not present a question of privilege.

A definition of questions of privilege.

The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules, without precedence as matters of privilege.

On March 30, 1898,[1] Mr. Joseph W. Bailey, of Texas, presented, as a question of privilege, the following resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the heroic struggle of the Cuban people against the force of arms and the horrors of famine has shown them worthy to be free. And, second, the United States hereby recognizes the Republic of Cuba as a free and independent state.

Mr. Charles A. Boutelle, of Maine, made the point of order that the resolution was not in order.

After debate the Speaker[2] ruled:

A question of privilege which concerns the House is one which concerns the exercise of its functions in accordance with the principles which govern parliamentary bodies. Every parliamentary body has to have rules for its government, otherwise it would have no government at all; and upon adherence to those rules depends its success as a parliamentary body. The rights of the House under the Constitution are in no way to be confounded with the privileges of the House and of every Member in it in the sense in which this matter is presented here to-day. Congress has certain powers conferred upon it, and in the exercise of those powers each House is governed by its rules. It is authorized expressly by the Constitution to make rules; and without the authorization of the Constitution it would be at liberty to make rules. These rules are the protection of the rights of the House. Now, it will be noticed in the Constitution—if any gentleman will turn to it—that there are certain powers conferred upon Congress—the power to declare war, the power to legislate for the general welfare, and a series of other enumerated powers. No man up to this date has for an instant pretended or suggested that, because the Congress has the right to pass laws upon certain topics, proposals for those laws become questions of privilege—never before except once, and the Chair will present that decision to the House.

The same language is used with reference to our relations with foreign nations that is used with reference to the creation of the courts of law, and all other power which is concerned. It is a legislative power, and it is exercised under the Constitution by rules adopted by each body. This is the first preliminary idea that we ought to have in regard to this matter. But those propositions in regard to war, or about recognition, or any of those subjects which may or may not be within our purview, do not become questions of privilege at all because we have a right to pass upon them, because that would make everything a question of privilege and end by making nothing a question of privilege.

Now, let us see what this call upon us is founded on. This is a matter that we should not have given any attention to except in times of interest, not to say excitement. The gentleman from Maine, Mr. Boutelle, some time ago presented to Speaker Crisp a proposition which had in it certain elements charging that the Executive was interfering with some of the rights and privileges of the legislative body. The Speaker ruled that it was a question of privilege; and you will perceive that it is entirely different from the present proposition, has no aspect like it at all, not the faintest resemblance to it; but the Speaker ruled that that was a privileged question. He also ruled that, being a privileged question, it should go to a committee.

Well, now, against that doctrine the Chair has always opposed himself; and the question, as Members will see by turning to the Record, that was put to the House was on that part of the Speaker's

[1] Second session Fifty-fifth Congress, Record, p. 3381.

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

decision as to whether it should go to a committee or not, and if it appears that, as the gentleman from Texas says, I voted on that subject, I voted according to my lights and voted against it. But he has omitted to state to you this other question, the same question almost, was put afterwards to Speaker Crisp, and by him promptly decided to be out of order at a later day, on the 30th of July, 1894:

"2. That the Republic of Hawaii is entitled to exercise and enjoy international comity and the benefits of all rights, privileges, and advantages under existing treaties that were concluded between the United States of America and the late Kingdom of Hawaii.

"3. That the Republic of Hawaii is hereby recognized by the United States of America as a free, sovereign, and independent republic, and the President of the United States shall give proper notice of the recognition to the President of the Republic of Hawaii."

The gentleman from Maine, Mr. Boutelle, demanded its immediate consideration as presenting a privileged question; and the gentleman from Missouri, an old and experienced Member, Mr. Dockery, made the point of order that the resolution was not privileged. Well, now, as a matter of course, the Speaker sustained the point—and that is precisely this question. There was no appeal. It was too clear for an appeal even.

Mr. Bailey having appealed from the decision of the Chair, the appeal was laid on the table, 180 yeas to 140 nays, and so the decision of the Chair was sustained.

2568. Subjects relating to the relations of the United States with other nations or peoples do not constitute questions of privilege.—On December 21, 1893,[1] Mr. Charles A. Boutelle, of Maine, submitted as a privileged proposition, and asked immediate consideration of, a preamble reciting that the naval forces of the United States at Hawaii had been made subject to the orders of one James H. Blount, who had no rank or authority whereby he might be entitled to assume such authority, and the following resolution:

Resolved, That the Secretary of the Navy be, and he is hereby, directed to inform the House of Representatives by what authority instructions were issued placing the armed naval forces of the United States and the use of its ensign under the orders and control of said Blount, and that the Secretary of the Navy is further directed to furnish the House of Representatives with copies of an orders, directions, instructions, or official suggestions issued by him or any officer of the Navy Department or of the Navy since the 4th day of March, 1893, concerning the use or movements of the armed naval forces of the United States at the Hawaiian Islands.

The Speaker[2] held that the resolution was not privileged.

2569. On July 30, 1894,[3] Mr. Charles A. Boutelle, of Maine, introduced the following joint resolution (H. Res. 210):

Resolved by the Senate and House of Representatives in Congress assembled:

1. That the United States of America congratulates the people of the Hawaiian Islands on their just and peaceful assumption of the powers, duties, and responsibilities of self-government, as indicated by their recent adoption of a republican form of government.

2. That the Republic of Hawaii is entitled to exercise and enjoy international comity and the benefits of all rights, privileges, and advantages under existing treaties that were concluded between the United States of America and the late Kingdom of Hawaii.

3. That the Republic of Hawaii is hereby recognized by the United States of America as a free, sovereign, and independent republic, and the President of the United States shall give proper notice of the recognition to the President of the Republic of Hawaii.

Mr. Boutelle demanded its immediate consideration as presenting a privileged question.

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[1] Second session Fifty-third Congress, Journal, pp. 50, 51; Record, p. 468.

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

[3] Second session Fifty-third Congress, Journal, pp. 520, 521; Record, p. 8003.

Mr. Alexander M. Dockery, of Missouri, made the point that said resolution was not privileged.

The Speaker[1] sustained the point.

2570. On May 27, 1897[2] Mr. James Hamilton Lewis, of Washington, presented, as a question of privilege, the following resolution:

Whereas the United States Senate assembled has duly by a proper form of resolution declared for a state of neutrality and the according to the island of Cuba all rights as a belligerent as against Spain; and

Whereas it is asserted that such right of recognition exists only with the Executive of the United States: Therefore,

Be it resolved by the House of Representatives of Congress, That as a foreign policy of the United States it is the right and authority of the Senate and House of Representatives in adopting a foreign policy of the United States to recognize as Congress the belligerency of and declare the attitude of neutrality of the United States to the island of Cuba or any other government or country when in the sense of the House such course is demanded by existing conditions.

Mr. Nelson Dingley, of Maine, made the point of order that the resolution did raise a privileged question.

The Speaker[3] said:

The Chair thinks this is not a question of privilege. Under the rules of the House such a resolution can be presented in the regular course and should have the report of a committee upon the subject.

Mr. Lewis having appealed from the decision of the Chair, the appeal was, on June 1, laid on the table.

2571. On June 3. 1897,[4] Mr. William L. Terry, of Arkansas, presented, as a question of privilege, this resolution:

Whereas the people of the United States are taking a deep interest in the Cuban question and the Senate has passed and sent to the House a resolution recognizing the belligerency of Cuba; and

Whereas for the due and orderly consideration of the same, and in accordance with immemorial usage and the rules and practices of the House, it is necessary that there should be a Committee on Foreign Affairs to which said resolution may be promptly referred for proper consideration and report; Therefore,

Resolved, That it is the sense of this House that the Committee on Foreign Affairs authorized by Rule X should be appointed as soon hereafter as practicable, so that said Senate resolution——

Mr. Sereno E. Payne, of New York, made a point of order against the resolution.

The Speaker[3] ruled:

The point is made that this resolution does not raise a question of privilege, and the Chair decides that it does not.

Mr. Terry having appealed, the appeal was laid on the table.

2572. A resolution recommending the recall of a foreign minister of the United States does not present a question of privilege.—On February 26, 1894,[5] Mr. Charles A. Boutelle, of Maine, presented, as involving a privileged

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

[2] I First session Fifty-fifth Congress, Record, pp. 1305, 1386.

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

[4] First session Fifty-fifth Congress, Record, p. 1459.

[5] Second session Fifty-third Congress, Journal, p. 203; Record, p. 2425.

question, a resolution recommending the recall of the United States minister to Hawaii.

The Speaker[1] held that the resolution was not privileged, saying:

It seems to the Chair that there can be no question of privilege involved in the resolution. Whilst the question of the relations of the United States to the Hawaiian Islands has been submitted to Congress, so are a great many other matters of much moment, and they do not constitute questions of privilege, but go to a committee, under our rules, to be considered first by the committee and then reported; and even then, unless expressly provided for, they are not what we know as privileged questions. So the Chair thinks it is not a privileged question.

2573. A proposition relating to the counting of the electoral vote presents a question of constitutional privilege.—On February 4, 1853,[2] the House received from the Senate a resolution providing a method of examining the votes for President and Vice-President of the United States.

Mr. George W. Jones, of Tennessee, rising to a parliamentary inquiry, asked if this was not a question of privilege, which took precedence of a mere privileged question.

The Speaker[3] said:

The Chair thinks it is a question of privilege.

2574. On February 2, 1861,[4] Mr. Elihu B. Washburne, of Illinois, called up a resolution from the Senate providing for the appointment of a committee to join such committee as might be appointed by the "House to ascertain and report a mode for examining the votes for President and Vice-President of the United States," etc.

Mr. Muscoe R.H. Garnett, of Virginia, objected to the consideration of the resolution on the ground that it was not then in order.

The Speaker[5] decided that inasmuch as the resolution provided for ascertaining a mode of executing a duty required by the Constitution of the United States to be executed on a particular day, and which might not, under the rules, be considered before that day, he was of the opinion that it presented a question of privilege, and might, therefore, be called up at any time.

Mr. Garnett having appealed, the appeal was laid on the table.

2575. On December 7, 1880,[6] Mr. George A. Bicknell, of Indiana, as a privileged question, moved that the House proceed to the consideration of the resolution of the Senate proposing a joint rule for counting the votes of electors of President and Vice-President.

Mr. J. Warren Keifer, of Ohio, made the point of order that the question was not one of privilege.

The Speaker,[7] after debate, overruled the point of order on the ground that the resolution of the Senate related to the execution of a high constitutional duty devolving on the two Houses of Congress by the Twelfth Article of the Constitu

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

[2] Second session Thirty-second Congress, Globe, p. 511.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Second session Thirty-sixth Congress, Journal, p. 261; Globe, p. 715.

[5] William Pennington, of New Jersey, Speaker.

[6] Third session Forty-sixth Congress, Journal, p. 38; Record, p. 24.

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

tion, which was also a duty imposed by section 142 of the Revised Statutes, and that as a particular day during the present session was the one fixed by law for counting the votes for President and Vice-President, any proposition looking to the performance of that duty was a question of privilege. The Speaker said:

If it (the counting) is done by the two Houses it is the highest duty they have to perform, one imposed directly by the Constitution, as the Chair thinks, relating to the election of a President and a Vice-President, and the very existence of our form of government might depend thereon. If done by any other authority it must be done in the presence of the two Houses, and without their presence it can not be done at all; so that all laws and all rules relating to the joint meeting, which in any event is indispensable to a count must be of the highest privilege, affecting as they do the exercise of a most important function of the two Houses, the ascertainment of the choice of electors for President and Vice-President. * * * The Chair desires to say that it is not competent for the House to make any rule which impairs in any degree the execution of the terms of the Constitution of the United States. The Chair therefore considers, for the reasons given and in view of past practice, that this is a question of privilege.

2576. A resolution declaring that the counting of the electoral vote of a certain State by the direction of the Presiding Officer of the Senate was an invasion of the privileges of the House, was held in order in the House.—On February 10, 1869,[1] after the electoral count had been concluded and the Senate had withdrawn, Mr. Benjamin F. Butler, of Massachusetts, offered this resolution as a question of privilege:

Resolved, That the House protest that the counting of the vote of Georgia by the order of the Vice-President pro tempore was a gross act of oppression and an invasion of the rights and privileges of the House.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that the House had no right to make reflections on the other House.

The Speaker[2] said:

The House has the right to adopt such resolutions as it may consider proper when it deems that its rights and privileges have been infringed upon.

2577. A resolution relating to alleged fraud in connection with the electoral count has been presented as a matter of privilege.—On May 13, 1878,[3] Mr. Clarkson N. Potter, of New York, as a question of privilege, presented a preamble and resolution, reciting the allegation of the legislature of Maryland that by reason of fraudulent returns from the States of Florida and Louisiana due effect had not been given to the electoral vote cast by Maryland on December 6, 1876, alleging fraud with the connivance of high officials of the Government, and providing for the appointment of a select committee to investigate the charges.

Mr. Omar D. Conger, of Michigan, made the point of order that the preamble and resolution did not present or involve a question of privilege, and were not in order at this time.

The Speaker[4] overruled the point of order on the ground that the preamble and resolution presented the question of the rightful occupation of the Executive

[1] Third session Fortieth Congress, Globe, p. 1064.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Second session Forty-fifth Congress, Journal, pp. 1072, 1073; Record, p. 3440.

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

Chair and the connection of prominent officials with frauds alleged to have been committed in connection therewith, and, being presented on behalf of a sovereign States whose rights were alleged to be invaded, presented a question of high privilege.

Mr. Conger having appealed, the appeal was laid on the table, yeas 128, nays 108.

2578. A bill relating to the constitutional functions of the House in counting the electoral vote was held to be highly privileged.—On February 27, 1877,[1] Mr. David Dudley Field, of New York, from the Select Committee on the Privileges, Powers, and Duties of the House of Representatives in Counting the Vote for President and Vice President of the United States, reported a bill (H.R. 4693) to amend the Revised Statutes of the United States in respect to vacancies in the offices of President and Vice-President, and demanded the previous question thereon.

Mr. Horatio C. Burchard, of Illinois, made the point of order that the committee had no authority to report the said bill.[2]

The Speaker[3] overruled the point of order on the ground that the resolution creating the said committee authorized it "to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States," and also gave the committee the right to report at any time. The Speaker further stated that he could not conceive of a question of higher constitutional and parliamentary privilege than was involved in the bill under consideration, and he therefore held the bill to be in order at this time.

The record of the debates[4] further shows the Speaker to have said:

> The Chair thinks there will be no dispute about one point, and that is this: That this committee possesses the power to report at any time. In the next place, the Chair is unable to conceive of a higher constitutional and parliamentary privilege than the introduction of a bill of this character. He will even go so far as to say that a Member might rise in his place and introduce a bill of this character, involving, as it does, the highest constitutional privilege he can conceive of, and ask for its consideration. This House has the right to determine when the contingency arises in reference to the election of President and Vice-President of the United States requiring further legislation in reference thereto.

2579. The right of a Member to his seat presents a question of privilege, and takes precedence of other business.

Previous to 1840 the principle that the order of business might be interrupted by a question of privilege was not fully recognized.

On June 16, 1840,[5] Mr. John Campbell, of South Carolina, moved that the rules in relation to the order of business be suspended to enable him to submit to the House two reports from the Committee on Elections. The motion was defeated, 114 yeas to 64 nays—not the required two-thirds vote. Mr. Campbell then arose and notified the House that he was instructed by the Committee on Elections to make two reports from that committee upon the rights of persons to seats as Members of this

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[1] Second session Forty-fourth Congress, Journal, pp. 555, 556; Record, p. 1980.

[2] Mr. Burchard based his point of order upon the usages of the House prevailing at that time in, regard to the introduction of bills. (See Congressional Record, second session Forty-fourth Congress p. 1980.)

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

[4] Record, second session Forty-fourth Congress, p. 1980.

[5] First session Twenty sixth Congress, Journal, pp. 1279, 1283, 1300.

House,[1] and he claimed the right to make the reports on the ground that the privileges of the House were involved in the questions discussed in the reports.

The Speaker[2] decided against the right claimed. He based his decision that a contested election case was not a question of privilege upon a case of contested election from Mississippi in a former Congress, from which it was to be seen that the House could not have considered it a privileged question, as it was determined that it required a vote of two-thirds to make that case a special order for a particular day.[3]

From this decision Mr. Campbell took an appeal to the House, and, after debate, the decision of the Chair was reversed, 95 nays to 86 yeas. And so it was decided that a contested election case was a privileged question.

The House having thus decided, Mr. Campbell, from the Committee of Elections, made a report on the New Jersey contested election, accompanied by the journal of the proceedings of the committee.

On July 17, 1840, Mr. Campbell, from the Committee of Elections, as a matter of privilege, under the decision of the previous day, reported the following resolution:

Resolved, That the Committee of Elections be discharged from the further consideration of the petitions of certain electors of the Sixth Congressional district of the State of Massachusetts, alleging that Osmyn Baker, the sitting Member from that district, was not duly elected a Member of the House of Representatives, etc.

This resolution was agreed to.

2580. On January 7, 1846,[4] as a question of privilege, Mr. Hannibal Hamlin, of Maine, from the Committee of Elections, to which was referred the memorial of W.H. Brockenbrough, representing that he was elected a Member of the House of Representatives in the Twenty-ninth Congress from the State of Florida by a majority of the legally qualified voters of that State, and that he was entitled to the return and commission at the time that Edward C. Cabell received the same, made a report thereon, accompanied by resolutions.

The record of debates does not show that any question was made against receiving the report as one of privilege. The Journal also indicates that it was received as a matter of course.

2581. It has been held that an election case may not supersede the consideration of a proposition of impeachment.—On March 3, 1879,[5] the regular order of business was the report of the Committee on Expenditures in the State Department, proposing articles of impeachment against George F. Seward, late consul-general at Shanghai, China, and now minister plenipotentiary to China, the pending question being the question of consideration raised by Mr. James A. Garfield, of Ohio, on which the yeas and nays had been ordered.

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[1] These were the New Jersey contested election cases, which delayed so long the organization of the House in the Twenty-sixth Congress.

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

[3] This case was considered in 1837 (see section 518 of Vol. I). Also on March 4, 1836 (first session Twenty-fourth Congress, Journal, p. 464), the House took up the report in a contested election case by a two-thirds vote, Mr. Speaker Polk deciding that such a vote was necessary to set aside the regular order of business.

[4] First session Twenty-ninth Congress, Journal, p. 201; Globe, p. 158.

[5] Third session Forty-fifth Congress, Journal, p. 621; Record, p. 2347.

Mr. Hiram Price, of Iowa, proposed to submit the following resolution as a question of privilege:

Resolved, That the Committee of Elections be discharged from the further consideration of the contested election case of Nutting against Reilly, and that the same be now taken up for action in the House.

The Speaker[1] ruled the resolution out of order at this time, for the reason that a question of high privilege was already pending, involving the constitutional power of the House with reference to impeachment, on which question the yeas and nays had been ordered, thus precluding the presentation of another question of privilege until the pending question had been disposed of.

2582. The latest ruling establishes the principle that a proposition relating to the right of a Member to his seat may be acted on at once without reference to a committee.—On December 16, 1889,[2] Mr. John F. Lacey, of Iowa, as a privileged question, submitted the following preamble and resolution:

Whereas it is well known that a contest for a seat in this House was duly commenced by Hon. John M. Clayton, of Arkansas, against Hon. C.R. Breckinridge, a sitting Member; and

Whereas it is a matter of public notoriety that the said Clayton, while engaged in taking testimony in the said contest was assassinated and all further proceedings thereby suspended;

Resolved, therefore, That the Committee on Elections be, and is hereby, directed to inquire and report what further proceedings should be had in relation to the said case, and they are authorized to send for persons and papers if deemed necessary by them for the investigation of the said matter.

The same having been read, Mr. Charles F. Crisp, of Georgia, made the point of order that the said preamble and resolution, under the rule adopted, must be referred to the Committee on Elections.

After debate thereon, the Speaker[3] overruled the said point of order on the ground that the preamble and resolution touched the privileges of the House, and it therefore became the duty of the Chair to entertain and submit it to the House.

2583. On October 30, 1893,[4] Mr. Thomas A.E. Weadock, of Michigan, submitted as a privileged proposition, the following resolution, to wit:

Resolved, That the memorial of Henry M. Youmans, an elector residing in the Eighth Congressional district of the State of Michigan, touching the election of William S. Linton as a Member of the House of Representatives, to represent said district in this House, be referred to the Committee on Elections, which committee shall consider the allegation therein made, and, as speedily as possible, report to the House what action should be taken with reference thereto.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the resolution should be first considered by the Committee on Elections.

The Speaker[5] sustained the point of order; and the resolution was accordingly committed to the Committee on Elections.

2584. The right of a Member to his seat may come up at any time as a question of privilege, even though the subject may have been referred to a committee.

A resolution directing the Elections Committee to report an election case may not have precedence as a question of privilege.

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

[2] First session Fifty-first Congress, Journal, p. 22; Record, p. 196.

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

[4] First session Fifty-third Congress, Journal, p. 159.

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

On June 18, 1884,[1] Mr. Samuel H. Miller, of Pennsylvania, proposed, as a question of privilege, a resolution reciting that the Committee on Elections had had the case from the Second Mississippi district before them over six months, and proposing that, therefore, it be

Resolved, That the Committee on Elections be ordered to report said case to the House at the earliest practicable time.[2]

The Speaker[3] decided that this resolution, as it did not propose to administer the oath to a Member but only to instruct a committee, was not one of privilege. But immediately the following was offered:

Resolved, That James R. Chalmers was duly elected a Representative to the Forty-eighth Congress from the Second Congressional district of Mississippi, and is entitled to his seat.

Mr. Nathaniel J. Hammond, of Georgia, made the point of order that the resolution was not in order, as this subject has been committed by the House to the Committee on Elections.

The Speaker, after referring to the fact that the resolution did not come before the House as the report from a committee, ruled:

It is a proposition to seat a Member, and is a question of privilege.

It being proposed by Mr. Philip B. Thompson, Jr., of Kentucky, to raise the question of consideration, the Speaker ruled: "The Chair decides it a matter of privilege, but of course the question of consideration may be raised against it."

2585. A motion to discharge a committee from the consideration of a contested election case presents a question of the highest privilege.—On July 23, 1886,[4] Mr. Henry G. Turner, of Georgia, as a privileged resolution, submitted the following:

Resolved, That the Committee on Elections be discharged from the further consideration of the contested election case of Charles H. Page v. William A. Pirce, from the Second Congressional district of Rhode Island, and that the House proceed to consider said case.

Resolved, That neither Charles H. Page nor William A. Pirce was duly elected a Member of this House from the Second Congressional district of Rhode Island, and that the seat now occupied by said William A. Pirce be declared vacant.

The Speaker[3] said, "This presents a question of the highest privilege."

2586. A resolution providing for an investigation of the election of a Member presents a question of privilege.—On October 27, 1893,[5] Mr. Thomas A.E. Weadock, of Michigan, as involving a question of privilege, submitted the following resolution:

Resolved, That the memorial of Henry M. Youmans, an elector residing in the Eighth Congressional district of the State of Michigan, touching the election of William S. Linton as a Member of the House of Representatives to represent said district in this House, be printed and, with the accompanying papers, be referred to a select committee of seven Members, with power to send for persons

[1] First session Forty-eighth Congress, Record, p. 5299; Journal, pp. 1477, 1478.

[2] On February 10, 1893 (second session, Fifty-second Congress, Journal, p. 87; Record, pp. 1489–1493).

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

[4] First session Forty-ninth Congress. Record, p. 7403.

[5] First session Fifty-third Congress, Journal, p. 157.

and papers, administer oaths, and to employ a clerk and stenographer, and that said committee be authorized and directed to investigate the allegations of said memorial and report to this House; and the expenses necessarily incurred in the execution of this order shall be paid out of the contingent fund of the House.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the resolution did not present a question of privilege.

The Speaker[1] overruled the point of order.

2587. A claimant to a seat, with papers indicating his election, is entitled to have them presented as a question of privilege.—On December 12, 1865,[2] Mr. Henry J. Raymond, of New York, presented, as a question of privilege, the certificates of certain gentlemen claiming to be representatives from the State of Tennessee.

Mr. Thaddeus Stevens, of Pennsylvania, raised the question that no question of privilege was involved, since the State of Tennessee was not known to the House or the Congress.

The Speaker[3] overruled the point of order, saying:

The Chair has examined the precedents of previous Congresses, especially since the rebellion commenced, and finds that the usage of the House has been uniform that claimants of seats have their credentials presented as a question of privilege. It is then for the House to determine what shall be done with them. The presentation of the credentials does not involve the question of their reference. It is for the House to determine whether they shall be laid on the table or referred. But a claimant to a seat, with papers prima facie indicating his election, is entitled, as a question of privilege, to have them presented.

2588. A question relating to the existence of a vacancy in the membership of the House was held to be of privilege.

Effect of negative votes by the House on affirmative propositions as to the titles of persons to seats, especially as related to the creation of vacancies. (Footnote.)

On June 29, 1850,[4] the House had defeated by a vote of 94 yeas to 102 nays this resolution:

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

Thereupon Mr. Edward W. McGaughey, of Indiana, submitted the following resolution, viz:

Resolved, That there is now a vacancy in this House in the representation from the First Congressional district of the State of Iowa, and that the fact of vacancy be notified to the executive of the State of Iowa by the Speaker of this House.

Which having been read,

Mr. Armistead Burt, of South Carolina, made the point of order that the said resolution was not in order, as the result of the vote sufficiently declared the vacancy

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

[2] First session Thirty-ninth Congress, Journal, p. 51; Globe, p. 31.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] First session Thirty-first Congress, Journal, p. 1065; Globe, pp. 1315, 1317.

without further action. Mr. Burt then referred to a recent New York case [1] as one in point. He held that as a proposition of the minority that the contestant was entitled to his seat, as well as the proposition of the majority, had both been voted down, a vacancy existed. No Member of the House could be concerned, therefore, by this resolution pending, and therefore no question of privilege was involved.

The Speaker [2] decided that, being a question of privilege, the resolution was in order.

Mr. Burt having appealed, the Chair was sustained.

The resolution was then agreed to by a vote of 109 to 84.

2589. A resolution notifying the governor of a State of a vacancy in the representation of a district is presented as a question of privilege.— On June 29, 1850,[3] the report of the Committee of Elections on the Iowa contested election case was under consideration, and the House had decided that neither Mr. Thompson, the sitting Member, nor Mr. Miller, the contestant, was entitled to the seat as Representative from the First Congressional district of Iowa.

Thereupon Mr. Edward W. McGaughey, of Indiana, submitted the following resolution:

Resolved, That there is now a vacancy in this House in the representation from the First Congressional district of the State of Iowa, and that the fact of vacancy be notified to the executive of the State of Iowa by the Speaker of this House.

Mr. Armistead Burt, of South Carolina, made the point of order that the resolution was not in order.

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[1] This case seems to have been the following, which occurred April 19, 1848. (1st sess. 30th Cong., Globe, p. 643; Journal, p. 709.)

These resolutions were voted on:

"*Resolved,* That David S. Jackson is not entitled to his seat in this House as a Representative from the Sixth Congressional district of the State of New York.

"*Resolved,* That James Monroe is entitled to the seat now occupied in this Home by David S. Jackson as a Representative from the Sixth Congressional district of the State of New York."

The first resolution was decided in the affirmative and the second in the negative.

Mr. Burt inquired of the Speaker if, under the recent decisions of the House, he should not consider it his duty to inform the proper authority of the State of New York that a vacancy existed in the representation from that State in the House of Representatives for the Thirtieth Congress.

The Speaker (Robert. C. Winthrop, of Massachusetts) said that he should do so after the time had elapsed in which a motion for the reconsideration of the votes last taken could be moved.

This case, it will be observed, is essentially different from the Iowa case.

On May 29, 1896 (1st sess. 54th Cong., Record, p. 5915), the House was considering these resolutions:

"*Resolved,* That Thomas B. Johnston was not elected a Representative in the Fifty-fourth Congress from the Seventh Congressional district of the State of South Carolina, and is not entitled to a seat therein.

"*Resolved,* That J. William Stokes was duly elected a Representative in the Fifty-fourth Congress from the Seventh Congressional district of South Carolina, and is entitled to a seat therein."

Mr. Stokes was the sitting Member.

Mr. Samuel W. McCall, of Massachusetts, having raised the question as to whether the defeat of both resolutions would in effect declare the seat vacant, the Speaker (Mr. Reed) informally expressed the opinion that it would.

[2] Howell Cobb, of Georgia, Speaker.

[3] First session Thirty-first Congress, Journal, p. 1065; Globe, pp. 1315, 1316.

The Speaker[1] decided that, being a question of privilege, the resolution was in order.

Mr. Burt having appealed, the appeal was laid on the table, thus sustaining the decision of the Chair.

2590. A Member having resigned, a question as to his right to his seat was not entertained as a question of privilege.

Although a Member had resigned, the House proceeded to inquire whether or not his acceptance of an incompatible office had vacated his title to the seat.

On January 5, 1847,[2] Mr. Robert C. Schenck, of Ohio, offered the following resolution as a question of privilege:

Resolved, That the Committee of Elections be instructed to inquire and report to this House whether the Hon. Edward D. Baker, a Representative from the State of Illinois, having accepted a commission as colonel of volunteers in the Army of the United States, and being in the service and receiving compensation from the Government of the United States as such army officer, has been entitled, since the acceptance and exercise of said military appointment, to a seat as a Member of this House.

Mr. Linn Boyd, of Kentucky, raised the question of order that the resolution did not involve a question of privilege to take precedence of all other business.

The Speaker[3] decided that the Member whose name was mentioned in the resolution, having resigned his seat as a Member of this House, the question, although an abstract question of privilege, was not such a question, involving the privileges of any Member of this House, as would take precedence of all other business.

This decision was acquiesced in by the House.

The question was then put on the resolution and it was agreed to.

2591. A paper in the nature of a memorial condemning the decision of the House in an election case was held not to involve a question of privilege.—On April 24, 1894,[4] Mr. Richard Bartholdt, of Missouri, claiming the floor for a question of privilege, offered the following resolution, which was read in part, as follows:

Whereas the principles of justice have been outraged in the unseating of the lawfully elected Member of Congress from the Eleventh district of Missouri, Mr. Charles F. Joy; and

Whereas this act is a direct assault upon the dearest possession of a citizen—the right to choose his representatives in the enactment of his country's laws—and is the first step in the direction of anarchy, as subverting a government of the people, for the people, and by the people: Be it therefore

Resolved, That this assemblage of voters of the district, irrespective of party, condemns this outrage against the integrity of the ballot and protests against the misrepresentation of the district by a man——

At this point of the reading Mr. Benton McMillin, of Tennessee, made the point of order that no question of privilege was presented.

After debate, during which reference was made to a precedent arising in connection with the Michigan case in the preceding session, the Speaker[5] held that no question of privilege was presented, saying:

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[1] Howell Cobb, of Georgia, Speaker.

[2] Second session Twenty-ninth Congress, Journal. p. 136; Globe, pp. 115, 116.

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

[4] Second session Fifty-third Congress, Record, pp. 4032, 4033.

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

The Michigan case * * * was one where the memorial alleged that a gentleman who was on the roll and acting as a Member of the House had not been duly elected. That memorial was referred. But the case presented here is one in which there was a contest under the statute, notice given, evidence taken, a decision by the Committee on Elections, and a decision by the House after full debate; and the matter presented by the gentleman from Missouri is simply a resolution adopted by some individuals in St. Louis, declaring their opinion that there is no Representative of that district, although the gentleman from Missouri, Mr. O'Neill, was the duly and lawfully elected Member and entitled to his seat.

2592. No question of privilege is involved in the claim of a person to a seat in pursuance of the demand of a State for a representation greater than that allowed by law.—On March 9, 1869,[1] Mr. Roderick R. Butler, of Tennessee, offered as a question of privilege the following:

Whereas Hon. John B. Rodgers was on the first Tuesday of November, 1868, elected to the Forty-first Congress of the United States from the State of Tennessee as a delegate from the State at large; and

Whereas there is no existing law for the additional Member, but the loyal citizens of Tennessee believe that they are justly entitled to said additional Member: Therefore

Be it resolved, That the credentials of John B. Rodgers be referred to the Committee of Elections and that they be instructed to report, etc.

Mr. John F. Farnsworth, of Illinois, made the point of order that this was not a question of privilege.

The Speaker[2] said:

The Chair sustains the point of order. The resolution does not relate to the right of representation in any district of the United States, but refers to a law to confer additional representation.

2593. On March 28, 1879,[3] Mr. William M. Springer, of Illinois, presented the memorial of J.J. Wilson, claiming to have been elected a Representative from the State of Iowa for the Forty-sixth Congress and presented with the memorial a resolution providing for the reference of the subject to the Committee on Elections.

Mr. Omar D. Conger, of Michigan, and others made the point of order that no question of privilege was involved, since the petitioner claimed to have been elected at a pretended election at which a few votes only were cast, that the petition could not under the law be a basis for a contest, and that the petitioner had no credentials.

The Speaker[4] said:

The Chair desires to say that he can not see how the right of a person to be heard on this floor in reference to his right to a seat can be abridged or interfered with by any decision which the Clerk may have made in placing the names on the roll in pursuance of law. * * * The Constitution declares that this House "shall be the judge of the elections, returns, and qualifications of its own members." Now, for the Chair to deny a hearing to any person seeking a seat on this floor, claiming that he is entitled to it in preference to one who is already seated, would be an infringement upon the right which is guaranteed to every citizen in the Constitution itself. The Chair therefore considers that under the rules this is a question of privilege and entertains the resolution.

2594. A resolution proposing the exclusion of a Delegate from his seat presents a question of privilege.—On December 23, 1857,[5] Mr. Edward A.

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[1] First session Forty-first Congress, Globe, p. 38.

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

[3] First session Forty-sixth Congress, Record, pp. 93–95.

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

[5] First session Thirty-fifth Congress, Journal, pp. 112–115; Globe pp. 165–169.

Warren, of Arkansas, as a question of privilege, submitted the following preamble and resolution:

Whereas it appears from the proclamation of Brigham Young, late governor of the Territory of Utah, from the President's message, and from later developments, that the said Territory is now in open rebellion against the Government of the United States: Therefore

Be it resolved, That the Committee on Territories be instructed to report the facts and to inquire into the expediency of the immediate exclusion from this floor of the Delegate from said Territory.

Mr. Nathaniel P. Banks, of Massachusetts, raised a question of order as to the presentation of the resolution as a question of privilege.

The Speaker[1] overruled the point of order, on the ground that the resolution affected the right of a person who now occupied a seat on the floor.

A motion to lay the resolution on the table was decided in the negative, yeas 72, nays 118, and then the resolution and preamble were agreed to.

2595. A resolution embodying a general declaration as to the qualifications of Delegates was decided by the House not to involve a question. of privilege.—On January 10, 1882, the House had adopted a resolution referring to the Committee on Elections the subject of the representation of Utah, the principal question being as to the eligibility of Mr. George Q. Cannon, a Mormon and polygamist, to the seat to which he had been elected.

On the succeeding day, January 11,[2] Mr. Dudley C. Haskell, of Kansas, presented, as a question of privilege, a preamble and resolution reciting the facts as to the existence of polygamy in the United States, and as to Mr. Cannon's relations to the institution, and, concluding,

Resolved (as the fixed and final determination of this House of Representatives of the Forty-seventh Congress), That no person guilty of living in polygamous marital relations, or guilty of teaching or inciting others so to do, is entitled to be admitted to this House of Representatives as a Delegate from any Territory of the United States.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that the resolution did not involve a question of privilege under Rule IX, the subject-matter having been disposed of by the House.

During the debate it was urged that this subject involved the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.[3] On the other hand it was urged that Mr. Cannon did not have a seat in the House, his claims to one being before a committee; therefore the question was not before the House, and the resolution amounted merely to a declaration as to qualifications.

The Speaker[4] said he regarded it his duty to submit the question to the House, whether or not the resolution involved a question of privilege.

After further debate the House decided—yeas 109, nays, 139—that the proposition did not present a question of privilege.

2596. A resolution providing compensation for a Territorial agent, not having a seat on the floor, does not present a question of privilege.

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

[2] First session Forty-seventh Congress, Journal, pp. 260, 261; Record, pp. 359–362.

[3] Under Rule IX, see section 2521 of this volume.

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

In rare instances members of the minority party have been called to the Chair by the Speaker.

On March 2, 1861,[1] Speaker pro tempore Lawrence O'B. Branch,[2] of North Carolina, decided that a resolution providing compensation for a quasi-Delegate from the Territory of Colorado did not present a question of privilege, and on appeal the decision was sustained—yeas 79, nays 46. (The quasi-Delegate seems to have been one who attended to the business of the Territory as agent.)

2597. A protest against the method by which a bill had been passed, no error or infraction of the rules being alleged, was decided by the House not to present a question of privilege.

The Speaker held that a protest by Members should be read before any decision as to whether or not it might be offered as a question of privilege.

Instance in which the Speaker submitted to the House the decision as to whether or not a question involved privilege.

Summary of precedents relating to the placing of protests on the Journal.

On April 22, 1878,[3] the House having passed, under suspension of the rules, a bill making appropriations for the improvement of certain rivers and harbors, Mr. Samuel S. Cox, of New York, claimed the floor for a question of privilege and presented a protest, signed by several Members of the House, against the passage of the bill in this manner.

Mr. John H. Reagan, of Texas, made a point of order that the protest did not present a question of privilege and that it could not be admitted.

The Speaker[4] ruled that he could not decide whether a question of privilege was involved until he had heard the protest read.

From this decision Mr. Reagan appealed. On the following day Mr. Reagan withdrew his appeal, which was renewed by Mr. James A. Garfield, of Ohio.

The Speaker, in ruling, said:

Rule 141[5] provides that "when the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the House." In the Digest it is expressly stated in the same connection that the "rule above recited is not construed to apply to the single reading of a paper or proposition upon which the House may be called upon to give a vote or to the several regular readings of the bill, but to cases where a paper has been once read or a bill has received its regular reading and another is called for, and also where a Member desires the reading of a paper having relation to the subject before the House."

Further, in relation to questions of privilege, when a proposition is offered which relates 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. Now, how could the Chair submit a question of privilege to the House, or a paper as to whether it involved a question of privilege or not, if the paper was not read so it could be seen whether it involved a question of privilege

[1] Second session Thirty-sixth Congress, Journal, p. 474; Globe, p. 1426.

[2] It may be noted that Mr. Branch did not belong to the political party having control of the organization of the House.

[3] Second session Forty-fifth Congress, Record, pp. 2717, 2738, 2742, 2753; Journal, pp. 919–922, 925.

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

[5] Now Rule XXXI. (See sec. 5257 of Volume V of this work.)

or not? Under the rules it is the duty of the Chair 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 rule also provides that the gentleman has the right to call for the reading of a paper or proposition upon which the House may be called upon to give a vote.

The Chair did not know until this morning, when he read it in the daily paper, what was contained in the protest, but if he had known, under the rules of the House it was the duty of the Chair to entertain the question of privilege alleged by the gentleman from New York to the extent at least of submitting it to the House, and as it was a proposition upon which the House might be called upon to vote, the reading of the paper was a right which the gentleman from New York could demand. The only question decided by the Chair is that under the rules the reading of the paper is in order.

The appeal from the Speaker's decision was laid on the table by a vote of 131 yeas to 101 nays.

So the protest was read. It alleged that the rules of the House should not be suspended to facilitate the passage of a bill appropriating so large a sum of money; that it was an infraction of one of the rules of the House, and that certain provisions of the bill were infractions of the eighth section of the first article of the Constitution.

Mr. Eugene Hale, of Maine, made the point of order that it was not a question of privilege. After debate, the Speaker said:

In so far as this paper alludes to the rules of the House, the Chair on yesterday decided that point: That a suspension of the rules vacated them and for that occasion made them inoperative.

So far as the constitutional point alluded to in this paper is concerned, the Chair on yesterday stated it was not within his province to construe the Constitution, any more than it would be in the case of an amendment to cut off the House from determining whether such an amendment was contrary to law or not.

But in so far as this question of a protest is concerned and whether as a question of privilege it acquires the right to be read and the right to be placed upon the Journal, the Chair desires to refer to the proceedings of former Congresses. In the Third Congress, presided over by Mr. Muhlenberg, of Pennsylvania, Mr. Garnett, of Virginia, was allowed to spread upon the Journal the reasons of a vote given by him. In the Journal will be found the reasons in full.

"Mr. Swift, of Maryland, moved that the House do reconsider the vote taken on Saturday last on the question, Shall the declaration of Mr. Garnett then presented detailing the reasons for and motives of his vote on Thursday last on concurring with the Committee of the Whole on the state of the Union in their agreement to the first resolution subjoined to the report of the Committee on Foreign Affairs on the subject of a recognition of the independence of the late Spanish-American provinces be placed on the Journal? And on the question, Will the House reconsider the said vote? it passed in the affirmative.

"And on the question, Shall the said paper be placed on the Journal? it passed in the affirmative—yeas 89, nays 71."

The next precedent which the Chair has been able to consider was in the Twenty-eighth Congress, over which Mr. J.W. Jones, of Virginia, presided. New Hampshire, Georgia, Missouri, and Mississippi elected their Representatives by general ticket. Mr. Barnard, of New York, and forty-nine other Members signed a protest against the admission of Representatives from said States. The Journal of the House says Mr. Barnard so framed his protest as to embody it in a resolution. Subsequently, on motion, the Journal was corrected so as to make it appear that the protest had got upon the Journal surreptitiously. It will be observed that the latter suggestion was the ground given for refusing it to be on the Journal. In both these cases, however, the papers were read and considered.

The next case to which the Chair has had his attention directed is a case in the Thirty-first Congress, and is the one occurring in the Senate alluded to in the Manual. The decision quoted in the Manual, page 289, under the heading of "Protest," was a protest on the part of certain Senators against the passage of a bill admitting California into the Union as a State. After extended debate, the Senate decided, by yeas 22 to nays 19, to lay the whole subject upon the table. This protest was signed by Senators Hunter and Mason, of Virginia, Butler and Barnwell, of South Carolina; Soule, of Louisiana;

Jefferson Davis, of Mississippi, and other Senators. That paper appears of record, but did not go, the Chair presumes, on Senate Journal.[1]

The next is a case in the Thirty-sixth Congress, when John B. Clark, of Missouri (I believe the father of a respected Member of this House), claimed the right to submit a preamble and resolution, but the Clerk in that case declined to entertain it, on the ground he had not the power to do so pending the organization of the House. The same was read, however.

Again in the Thirty-ninth Congress, Mr. Brooks—it was the case alluded to yesterday—claimed the right to put upon the record a protest against the way in which the Clerk made up the roll of Members. The record shows that it was inserted in the proceedings, but the Clerk declined to recognize it, because he was then acting under the operation of law which instructed him as to the make up of the roll of Members.

It will thus be seen in every instance the Chair has mentioned the reading of the paper was allowed and that in one instance the Journal contains the protest.

The Chair, as an individual opinion, thinks that where a protest is respectful in terms no harm can come by allowing such courtesy as will place such respectful protest of record in the Journal, especially in a case where debate was not allowed and there was no possibility of amendment. Following, however, the rules which govern him in the administration of his duties as presiding officer, the Chair submits the question to the House itself to determine whether there is here presented or not a question of privilege. Those who think it involves a question of privilege will vote in the affirmative and those who are of a contrary opinion will vote in the negative.

The question being taken, the House decided, 52 yeas to 180 nays, that the paper presented by Mr. Cox did not involve a question of privilege.

2598. Alleged improper alteration of a bill presented as a question of privilege.

The enrolling clerks should make no change, however unimportant, in the text of a bill to which the House has agreed.

On July 24, 1854,[2] Mr. Elihu B. Washburne, of Illinois, submitted, as a question of privilege, the following resolution:

Resolved, That a special committee of five be appointed for the purpose of inquiring whether the text of House bill No. 342, to aid the construction of a railroad in the Territory of Minnesota, was altered or in any way changed in its language, subsequent to its engrossment or passage by this House, without the authority of the House; and if so, by whom, and under what circumstances, such change was made; and that said committee be empowered to send for persons and papers, and to examine witnesses on oath in the premises.

This resolution, having been amended by the addition of the words "and also in regard to all other cases of interpolations of bills or joint resolutions of the House during the present session," was adopted, and Mr. Washburne was appointed chairman of the committee.

The record[3] of the debate shows that no question was made about the privileged character of the resolution.

The report was made on August 2.[4] It shows that the change was made under direction of the Clerk of the House to make the enrolled bill conform to what he was assured was the intention of the Committee on Public Lands when they reported the bill to the House. The act was done as a correction of a clerical error made in

[1] First session Thirty-first Congress, Globe, p. 1578.

[2] First session Thirty-third Congress, Journal, p. 1194.

[3] Globe, pp. 1888, 1889.

[4] Globe, p. 2094.

reporting the bill from that committee. Such informal corrections in enrolled bills were made with considerable frequency, the committee found; and the report says:

In the opinion of your committee it is highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body.

2599. The printing of an argument with the text of a bill was held to involve a question of privilege, and the House ordered the objectionable portions stricken out.—On January 12, 1900,[1] Mr. James D. Richardson, of Tennessee, rising to a question of privilege, said:

I think, Mr. Speaker, the matter I present is one of privilege—one which affects the integrity of the proceedings of the House. I hold in my hand what purports to be a bill. It is in the form of a bill—that is, the first portion of it—and it is indorsed "H.R. 64. A bill to promote the commerce and increase the foreign trade of the United States, and to provide auxiliary cruisers, transports, and seamen for Government use when necessary."

It purports to have been introduced on the 4th day of December, 1899, and to have been referred to the Committee on the Merchant Marine and Fisheries, and ordered to be printed.

The first few pages of this paper is in the form of a bill. The latter pages—four pages—are in different type, and an argument, a partisan argument, in support of the bill. After the conclusion of the bill there are four pages of partisan arguments and facts. It is made up in part of statements purporting to show the effect of the bill.

I submit, Mr. Speaker, that this bill should be taken from the files. I make the point of order, first, that the paper should be suppressed—it is not a bill—and, failing in that, I shall move to strike it from the files and have it destroyed.

After debate, the Speaker[2] said:

The Chair is of the opinion that that request should have coupled with it that the committee be discharged from the consideration of the bill, it not being before the House, and then have it reprinted. * * * The Chair is of the opinion that the point of order made by the gentleman from Tennessee is a good one. The bill is not before the House—it is before the committee, and it seems that it is improperly before the committee; and now the request should be that the committee be discharged from the consideration of the bill, this objectionable part eliminated, and the bill referred to the Committee on Merchant Marine and Fisheries with a new order to print. If there be no objection to such an order, it will be made. [After a pause.] The Chair hears none.

2600. A proposition to correct an enrolled bill that has become a law may not be presented as privileged.—On November 21, 1877,[3] Mr. Andrew H. Hamilton, of Indiana, from the Committee on Enrolled Bills, proposed to report as a matter of privilege a proposition for the correction of an enrolled bill of the last Congress.

The Speaker[4] said:

This is not a privileged matter; it involves a change of existing law.

2601. There having been no unreasonable delay in transmitting an enrolled bill to the President, a resolution relating thereto was decided not to present a question of privilege.

Enrolled bills are taken to the President by the chairman of the Committee on Enrolled Bills.

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[1] First session Fifty-sixth Congress, Record, pp. 788, 789; Journal, p. 152.

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

[3] First session Forty-fifth Congress, Record, p. 582.

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

On September 20, 1888,[1] Mr. William W. Morrow, of California, presented, as a question of privilege, this preamble and resolution:

Whereas the House of Representatives did, on the 3d day of September, 1888, pass the bill H.R. 11336, entitled "A supplement to an act entitled 'An act to execute certain treaty stipulations relating to Chinese,' approved the 6th day of May, 1882," which said bill was on the same day reported to the Senate;

That it appears from the Record that said bill passed the Senate on the 17th day of September, 1888, and on the 18th day of September, 1888, was reported to this House by Mr. Kilgore, from the Committee on Enrolled Bills, as truly enrolled, whereupon the said bill was duly signed by the Speaker pro tempore of the House;

That thereafter and on the same day the said bill was reported to the Senate as having been so signed by the Speaker pro tempore of the House, whereupon it was duly signed by the President pro tempore of the Senate;

That the said bill having then passed both Houses, and having been duly enrolled and signed by the presiding officers of both Houses, was ready for transmittal to the President of the United States for his approval;

That it further appears that said bill was delivered to the Committee on Enrolled Bills of the House on the 19th of September, 1888, and is now in the possession of the acting chairman of said committee, Mr. Kilgore, for such transmittal to the President;

That it is reported in the Washington Post of this morning that said bill is being withheld from the President by said Committee on Enrolled Bills; that such action of the committee is without authority of law: Therefore,

Be it resolved by the House of Representatives of the United States, That said Committee on Enrolled Bills be directed to transmit said bill to the President of the United States forthwith and without further delay.

Mr. Benton McMillin, of Tennessee, having reserved a point of order, after debate, the Speaker[2] pro tempore decided:

In the opinion of the Chair this resolution does not present a question of privilege. If the resolution were properly before the House, being a resolution directing the Committee on Enrolled Bills to transmit a certain bill to the President of the United States forthwith, the House could no doubt adopt the resolution, but the point raised here is whether as this resolution now reaches the House it is a question of privilege. The point involved relates to the presentation of bills to the President after they are signed by the Speaker of the House and the President of the Senate. In the absence of any law on the subject or any rule governing the House in respect to this matter, reference has been made to the Constitution, which provides in section 7 of Article I that—

"Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States."

No time is fixed within which this presentation shall be made; there is no limit; the provision does not say "forthwith" or "immediately." The question presented therefore is not so much a question of law or Constitutional interpretation as a question of practice. The custom has grown up within the knowledge of the Chair—it is an old custom—for the Committee on Enrolled Bills to carry these bills to the President. We do not do as the Senate does. According to the practice of the House the chairman of the Committee on Enrolled Bills, by the direction of his committee or by reason of his function as chairman, takes these bills to the President. Within what time? There is no rule or law operating upon him in this respect.

In this resolution there is no reflection made upon this committee—none whatever. The only allegation in the resolution is based upon a statement taken from the Washington Post "that said bill is being withheld from the President by said Committee on Enrolled Bills; that such action of the committee is without authority of law." That is the statement of a newspaper; it is a part of the allegata; there is no proof of it. There is no statement of anything reflecting on the committee; no allegation of any impro-

[1] First session Fiftieth Congress, Record, p. 8787; Journal, p. 2809.

[2] Samuel S. Cox, of New York, Speaker pro tempore.

priety; nothing involving the integrity of the committee or the integrity of the House in any sense of the word "integrity."

Is this a question of privilege under those circumstances? What is a question of privilege? It is that which involves the safety, the dignity, or integrity of the House or its Members or of its proceedings. This does not in any way involve the safety or dignity of the House, and according to the statement of the gentleman submitting the proposition it does not involve the integrity of the gentleman from Texas or of the committee.

Has there been in this case unusual delay? The actual lapse of time appears to have been one day. The Chair has made inquiry into this matter, and finds, according to the report of the Clerk, that the time within which bills passed by the Senate and House and signed by their respective presiding officers reach the President varies from one to ten days, the average being three days. Non constat that the President may be out of town, or that there may be some other impediment. Possibly this Committee on Enrolled Bills is obliged to compare this bill in accordance with its function in these cases.

So that neither in the statement of the resolution nor the statement of Members on the floor is there any imputation upon the Committee on Enrolled Bills. Hence the Chair decides that this is not a question of privilege. If the resolution should properly come before the House it would no doubt be entertained; and the House could direct, according to its own judgment, the action which the Committee on Enrolled Bills should take in reference to this bill. If this matter should come up on a subsequent day, when there had been an unreasonable delay in transmitting the bill to the President, the Chair is not prepared to say what he might do in the premises, for lapse of time might raise some inference upon which to predicate a question of privilege.

The Chair sustains the point of order.[1]

2602. The correction of the reference of a public bill was held, at a time when the rules did not provide any other mode of correction, to present a question of privilege.—On March 22, 1880,[2] Mr. Richard W. Townshend, of Illinois, presented "A bill (H.R. 5265) to revise and amend sections 2503, 2504, and 2505 of title 33 of the Revised Statutes of the United States," and this bill was referred to the Committee on Revision of the Laws.[3] The text of this bill was as follows:

Be it enacted, etc., That sections 2503, 2504, and 2505 of title 33 of the Revised Statutes of the United States be revised and amended so that the duty on salt, printing type, printing paper, and the chemicals and materials used in the manufacture of printing paper, be repealed, and that said articles be placed on the free list.

When, on the succeeding day, the nature of the bill became known, there was an extended controversy over changing the reference to the proper committee, the Ways and Means.

Finally, Mr. Robert M. McLane, of Maryland, made the point that the improper reference of the bill involved the "integrity" of the proceedings of the House, and proposed as privileged the following:

Whereas the House, being of opinion that the reference of House bill 5265 to the Committee on the Revision of the Laws was incorrect under its rules, doth resolve that the said committee be discharged from its further consideration and the same be referred to the Committee on Ways and Means.

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[1] On February 13, 1884 (1st sess. 48th Cong, Record, pp. 1089, 1090), Mr. Speaker Carlisle made a similar decision as to a resolution proposing to investigate an alleged delay in transmitting to the President an enrolled joint resolution providing relief for sufferers from floods in the Ohio River.

[2] Second session Forty-sixth Congress, Record, pp. 1804, 1817, 1844, 1846; Journal, pp. 842–877.

[3] Public bills were then referred in open House. Now they are filed and referred under direction of the Speaker.

During the debate Mr. McLane explained his point of order:

I make the point to the House, the Journal of day before yesterday, on being read, having been approved by the Speaker and read to the House in pursuance of the first rule, reveals to me the reference of certain bills to the Committee on the Revision of the Laws which I think under the rules of this House ought to go to the Committee on Ways and Means. I believe it to be my privilege before I approve that Journal to see that a proper reference is made. It applies no more to this than to a multitude of cases which can occur. I do not choose to sit here and see a reference made which I know to be an improper reference under the rule, with no relief except what may come from the committee to which that bill has been improperly referred. I care not whether the reference results through the negligence of the officers of the House, through the design of the officers of the House, through the inadvertence of the officers of the House, it is my right and privilege to move the reference of the bill as the rules require; and, sir, that is the only point I make.

On the other hand it was urged by Mr. Carlisle:

I submit to my friend from Maryland that the phrase "integrity of its proceedings" means simply the unity, the completeness, and the truth of the proceedings of the House. When the proceedings of the House, as recorded by the Clerk under the direction of its presiding officer, do truthfully and correctly show what actually occurred, there can be no question of privilege about it.

The Speaker[1] submitted the question to the House, who decided, 135 yeas to 98 nays, to entertain the motion as a question of privilege.[2]

2603. The charge that the minority views of a committee had been abstracted from the Clerk's office by a Member was investigated as a question of privilege.—On March 3, 1863,[3] Mr. Elihu B. Washburne, of Illinois, rising to a question of privilege, charged that the minority views of the select committee on government contracts had been abstracted from the Clerk's office by a Member of the House with the connivance of a clerk in the office, and moved that a committee of three Members be appointed to investigate. This motion was agreed to and the committee were appointed; but the session and Congress ended so soon after that they did not report.

2604. The House authorized the clerk of a committee to disclose by deposition the proceedings of the committee.—On July 18, 1876,[4] Mr. Ansel T. Walling, of Ohio, from the Committee on the Public Lands, by unanimous consent, offered this resolution, which was agreed to:

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

This action was taken to relieve the Clerk who had, in a court, declined to testify as to what took place in the committee, believing that he had no right to communicate what occurred in the committee.

2605. A charge of unfair and improper action on the part of a committee has been held to involve a question of privilege.—On May 24, 1882,[5]

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

[2] The rules at present provide a privileged motion for the correction of errors of reference. (See Rule XXII, sec. 3. Sec. 3364 of Vol. IV of this work.)

[3] Third session Thirty-seventh Congress, Journal, p 617; Globe, p. 1551.

[4] First session Forty-fourth Congress, Journal, pp. 1284, 1285; Record, p. 4701.

[5] First session Forty-seventh Congress, Record, p. 4208.

Mr. William H. Calkins, of Indiana, claimed the floor for a question of personal privilege, and had read an article making a charge against a committee of which he was a member.

A point of order having been made that no question of privilege was involved, the Speaker [1] stated the case and his decision as follows:

The Chair always feels somewhat embarrassed in determining what constitutes a question of privilege. The matter which has been read by the Clerk, fairly analyzed, may be held to be equivalent to a statement that the case of Mackey against Dibble was not fairly heard by the committee, in this that the evidence of fraudulent transactions in the taking of the testimony in the case was unfairly or improperly rejected by the committee. Now, if that is to be considered as a reflection upon the conduct of members of the committee or of the majority of the committee, the Chair would feel bound to hold it was a question of privilege affecting the Member's rights in his representative capacity, which any member of the committee concurring with the majority might rise for the purpose of presenting to the House; and as it is a statement made by a Member of the House, the Chair feels it to be its duty to hold that this presents a question of privilege.

2606. A committee of the House having been charged with improper conduct, a member of that committee was recognized on a question of personal privilege.—On May 24, 1882,[2] Mr. William H. Calkins, of Indiana, rising to a question of personal privilege, sent to the Clerk's desk an extract from a newspaper relating to a contested election case. It was charged in this paper that the Committee on Elections had refused to hear any testimony as to the truth of a matter pending before that committee. Mr. Calkins asserted that this charge was made by a Member from New York, Mr. Abram S. Hewitt.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that no question of privilege was involved.

After debate, the Speaker [1] said:

The Chair does not feel bound to put an absolute construction on this language, because it may be open to a different construction from that suggested; but as it is a statement alleged to have been made by a Member of the House who is present, and as there is doubt about it, the Chair feels in the present case that it must hold this to be a question of privilege and one affecting the rights of a Member in his representative capacity.

Mr. Calkins thereupon proceeded with his explanation.

2607. An allegation that a committee had refused either to give hearings or to allow petitions to be read before it was held to involve no question of privilege.—On March 12, 1888,[3] Mr. Thomas M. Bayne, of Pennsylvania, claiming the floor on a question of privilege, presented the following preamble and resolution:

Whereas it is commonly stated in the newspapers throughout the country that the Committee on Ways and Mean by a majority has not only refused oral hearings to the producers, manufacturers, and workingmen of the country, but has denied to them also the right to have read before that committee their printed or written petitions in relation to the proposed changes of the tariff laws; and

Whereas the right of petition is a sacred constitutional right of the people; and

Whereas it has so long been the practice of the committees of the Senate and of the House of Representatives to freely grant opportunities to be heard by persons and interests affected by proposed legislation: Therefore, be it

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

[2] First session Forty-seventh Congress, Journal, p. 1318; Record, p. 4208.

[3] First session, Fiftieth Congress, Journal, pp. 1139–1140; Record, pp. 1978–1980.

Resolved, That the Committee on Rules be, and it is hereby, instructed to make thorough inquiry respecting the foregoing allegations and to report the facts, with such amendment of the rules of the House as may be necessary to assure to the people the full enjoyment of their constitutional right to be heard by petition or otherwise.

Mr. William C.P. Breckinridge, of Kentucky, made the point of order that the resolution did not present a question of privilege.

After debate, the Speaker pro tempore [1] said:

The Chair would state respectfully to the House that he has the privilege, under the rules, of selecting his own time for deciding points of order. He has now heard gentlemen on both sides; he has heard them sufficiently to make the point intelligible, to his own mind, at least. The resolution introduced by the gentleman from Pennsylvania refers, in the first place, to an alleged refusal on the part of the Committee on Ways and Means to allow oral hearings. That is not within the purview of a question of privilege here. It is a matter entirely within the province of the committee. Next, the resolution recites that certain persons have been denied the opportunity to have read before that committee their printed or written petitions in relation to proposed changes in the tariff laws. The gentleman from Pennsylvania [Mr. Bayne] takes the high constitutional ground that the right of petition has been thus invaded by this action of the Committee on Ways and Means. The right of petition is not abridged by the mode of reception of these petitions prescribed by our House rules, nor is it abridged by any denial of which the Chair is aware. That has already been decided. How, then, is the right of petition abridged? By the action of this Committee of Ways and Means in this alleged denial of the reading of the petitions? What has the committee done; and how can the House take control of this committee matter so as to regulate it either as to the mode of hearing, oral or written or otherwise? The committee has the right within itself to control it. It is not alleged that any member of the committee or of this House has been refused access to these petitions or that information in regard to their contents has been in any manner restricted. It is not a question of privilege to take that business from the committee. If it were done, the committee—in fact, all committees thus circumstanced—would be so crippled as to be practically useless.

Mr. Bayne having appealed, the appeal was laid on the table.

2608. The charge that a committee has reported a bill containing items of appropriation not in order under the rules does not present a question of privilege.—On February 22, 1897,[2] Mr. Joseph H. Walker, of Massachusetts, having claimed the floor on a question of privilege, offered the following resolution:

Resolved, That the Committee on Appropriations were not justified in bringing in ten items in their appropriation bill, under the laws or under the rules of the House, that were knowingly subject to the objection, under the point of order, that they were not justified by existing law.

The Speaker [3] decided that the resolution did not involve a question of privilege.

2609. A report having been ordered to be made by a committee, but not being made within a reasonable time, a resolution directing the report to be made was decided to be privileged.—On January 23, 1891,[4] Mr. George W. Cooper, of Indiana, submitted, as involving a question of privilege, this resolution:

Resolved, That the select committee having in charge the investigation of certain charges against the Commissioner of Pensions, to whom was referred, on the 4th day of September last, a preamble and resolution reciting additional misconduct and corruption in office on the part of said Commissioner, be directed to forthwith return said resolution to the House.

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[1] Samuel S. Cox, of New York, Speaker pro tempore.

[2] Second session Fifty-fourth Congress, Record, p. 2100.

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

[4] Second session Fifty-first Congress, Journal, p. 174; Record, p. 1789.

Mr. William McKinley, jr., of Ohio, having made the point of order that the resolution did not present a question of privilege, the Speaker[1] said:

The statement made by the gentleman from Indiana, Mr. Cooper, is that a committee of this House adopted a resolution to report, for reference by the House under the twenty-second rule, resolutions which had been referred to that committee in regular order. He states that a considerable length of time has elapsed since that action was taken by the committee to which the original resolution was referred, and he claims that this is a question of privilege involving the rights of the House and its method of doing business. The Chair think it plainly so; that the committee having ordered a report of that kind, it should have been made in a reasonable time, and that the House has a right to make inquiry into the matter and to decide what ought to be done under the circumstances.

2610. A charge that a committee had been inactive in regard to a subject committed to it was decided not to constitute a question of privilege.— On August 9, 1894,[2] Mr. James B. McCreary, of Kentucky, claimed the floor on a question of privilege to reply to remarks made by Mr. Charles A. Boutelle, of Maine, in which the latter was said to have attributed improper motives to the Committee on Foreign Affairs.

Mr. George W. Fithian, of Illinois, made the point of order that no question of privilege was involved.

The Speaker[3] said:

This is no question of privilege. There is no reflection on the gentleman. If there was, it would authorize him to rise to a question of privilege. But the mere inaction of the committee, if that is the charge of the gentleman from Maine, can not constitute a question of privilege. Of course the Chair would recognize the gentleman if the question, in the judgment of the Chair, involved one of privilege; but the mere question of the action of the Committee on Foreign Affairs, or the inaction of the committee, or any other committee, in relation to the measures brought before it, the Chair does not think constitutes a question of privilege. If that were so, why of course we might discuss everything that was discussed before any of the committees of the House.

2611. The premature publication of a paper as the report of a committee was, by permission of the House investigated by that committee.— On May 25, 1876,[4] Mr. George W. Hendee, of Vermont, from the Committee on the District of Columbia, as a question of privilege, although the Journal records it as by unanimous consent, stated that a paper presented before the committee, but not adopted as its report, had been made public as the report of the committee through the "fault, neglect, or improper act of some of the officers or employees of this House or of the Government Printing Office or of said committee," and therefore asked the House to authorize the committee to inquire into the matter. The House adopted a resolution giving the required order.

2612. A question affecting the integrity of the managers of an impeachment is a matter of privilege.—On May 1, 1868,[5] Mr. James Brooks, of New York, presented a resolution and preamble reciting that a charge had been made that some of the managers of the impeachment of the President had made to him, the accused, while thus accused, a proposition that he, by the exercise of the

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

[2] Second session Fifty-third Congress, Journal, p. 552; Record, p. 8339.

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

[4] First session Forty-fourth Congress, Journal, pp. 1007, 1008; Record, pp. 3339, 3340.

[5] Second session Fortieth Congress, Globe, p. 2337.

war power, seize the island of Alta Vela, off the coast of Santo Domingo. The preamble further recited that it was important that the dignity and purity of the House be maintained through its managers, and therefore proposed a resolution to create a committee of investigation.

The Speaker[1] said:

The Chair thinks this is a question of privilege, as the rulings have been uniform that questions touching the official conduct of officers of the House are questions of privilege. The managers representing the House of course are subject to the orders of the House.

2613. A proposition to correct an error in a message to the Senate presents a question of privilege.—On August 3, 1854,[2] Mr. George S. Houston, of Alabama, called attention to the fact that in the message to the Senate concerning the action of the House on the Senate's amendments to the civil and diplomatic appropriation bill several errors had been made.

Objection being made to the consideration of the subject, Mr. Houston inquired if the matter did not constitute a question of privilege.

The Speaker[3] said:

The Chair holds that if an error has been committed by the Clerk, or in any other form, in any bill passed by the House, it is competent for the House to correct that error, and in that form it becomes a privileged question.

The Senate having acted on the bill before the House had determined as to the manner of making the corrections, they were left to the committee of conference.

2614. A motion to correct an error in referring a bill to the proper calendar presents a question of privilege.

A bill which applies to a class, and not to individuals as such, is a public bill.

On March 31, 1906,[4] Mr. Sereno E. Payne, of New York, claiming the floor for a privileged motion, said:

House bill 186, to authorize the readjustment of the accounts of army officers in certain cases, and for other purposes, relates to all the officers of the Army up to a certain date—about 1880. It is the second bill on the Private Calendar. It belongs evidently on the Union Calendar, and I move it be taken from the Private Calendar and placed upon the Union Calendar. I make that as a privileged motion.

The bill was reported as follows:

Be it enacted, etc., That the claims of officers of the United States Army, or of persons who may have served as such, and of the heirs at law or legal representatives of such as are deceased, for arrearages of longevity pay, are hereby referred to the United States Court of Claims, and jurisdiction is hereby conferred upon said court to render judgment in all such claims, without regard to lapse of time, for the amount, if any, found due; and in the adjustment of such claims credit shall be allowed for the full time of service as cadets in the Military Academy at West Point, and as officers or enlisted men in the Army or Navy of the United States, Regular or Volunteer, or both.

After debate the Speaker[5] said:

As the Chair understands, the gentleman from New York [Mr. Payne] moves to change this bill from the Private Calendar to the Union Calendar. The objection is made, as the Chair understands,

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] First session Thirty-third Congress, Globe, p. 2093.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Fifty-ninth Congress, Record, pp. 4521–4524.

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

that the motion does not present a question of privilege, and therefore is not in order. Now, Mr. Speaker Randall held, and, as the Chair thinks, correctly, that such a motion does present a question of privilege. It seems to the Chair, however, that if the bill be a private bill it is on the right calendar. If it be a public bill, then it ought to go to the Union Calendar, under the rules. The Chair has followed the gentleman from Pennsylvania [Mr. Mahon] in his citation of precedents.

Under Rule XIII there are three calendars. There is a Calendar of the Committee of the Whole House on the state of the Union, which carries bills raising revenues, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property. There is a House Calendar, to which are referred all bills of a public character not raising revenue or directly or indirectly appropriating money or property. And there is a Calendar of the Committee of the Whole House to which are referred all bills of a private character. The practice is that the Journal Clerk, under the direction of the Speaker, shall refer the bills to the respective calendars as they come from the committees. In point of practice the Journal Clerk, with the assistance of the clerk at the Speaker's table, makes these references unless the matter is specifically called to the attention of the Speaker. The same principle applies in the reference of bills that are introduced by Members and come through the basket. Now, this bill when it was introduced, as the Chair finds on consulting the Journal, was referred as a public bill; but when it was reported back from the committee the Clerk placed it, as it seems to the Chair if it be a public bill, inadvertently, upon the Private Calendar. So, that after all, it becomes a question of fact whether it is a public or a private bill within the rules and precedents. The gentleman from Ohio [Mr. Keifer] in his statement is probably correct from the standpoint of the rules as they were prior to the Fifty-fourth Congress; but, at that time, on the suggestion of Representative Dingley to the Committee on Rules, an amendment was made to Rule XXIII, section 3, so as to add to the words "all motions or propositions involving a tax or charge upon the people," etc., "or releasing any liability to the United States for money or property," the following: "or referring any claim to the Court of Claims." The effect of this is that such bills, under the rules, go to the Committee of the Whole.

Now, as to whether it be a public or a private bill, the Chair reads from Parliamentary Precedents of the House, as follows:

"The line of distinction between public and private bills is so difficult to be defined in many cases that it must rest on the opinion of the Speaker and the details of the bill. It has been the practice in Parliament, and also in Congress, to consider as private such as are 'for the interest of individuals, public companies, or corporations, a parish, city, or county, or other locality.' To be a private bill it must not be general in its enactments, but for the particular interest or benefit of a person or persons. A pension bill for the relief of a soldier's widow is a private bill, but a bill granting pensions to such persons as a class, instead of as individuals, is a public bill," etc.

Now, treating this bill by the test, if the House will give the Chair attention, let us read it. The gentleman from Pennsylvania, in his argument, assumes that this would cover about 800 people; assumes that it is under a certain law. After all that is an assumption. It may be correct or may not, and the Chair is not informed. The bill is as follows:

"That the claims of officers of the United States Army, or of any person who may have served as such"—

So it covers persons who have served as officers, although they may not have been officers regularly—

"And of the heirs at law or legal representatives of such as are deceased, for arrearages of longevity pay, are hereby referred to the United States Court of Claims and jurisdiction is hereby conferred upon said court to render judgment in all such claims, without regard to the lapse of time, for the amount, if any found due; and in the adjustment of such claims credit shall be allowed for the full time of service as cadets in the Military Academy at West Point, and as officers or enlisted men in the Army or Navy of the United States, Regular or Volunteer, or both."

Now, this bill not only refers the cases to the Court of Claims, but it legislates, removing the statute of limitations upon all claims, if such exist, from the organization of the Government to the present time. As a matter of fact, whether such claims are in existence in the hands of assignees or administrators the Chair is not informed. The Chair only knows of this bill upon its face. Nor does it apply in its terms to claims on file, if they be on file in the Treasury Department. It would cover claims, if such exist, although they may never have been filed or made under the provisions of the bill. It is

not like unto the case where legislation was had for the relief of a battalion, mentioning the battalion, because there was a roster, a specific number of people to be covered by the bill. This bill relates to a class; it legislates; it removes the statute of limitations; it counts services in the Militia, as well as in the Regular Army; it covers officers who were never mustered in, if they acted as officers. It seems to the Chair that if this is not a public bill, it would be difficult to conceive of one, and therefore the Chair thinks the motion of the gentleman from New York [Mr. Payne] is in order.

The question is on the motion of the gentleman from New York to change the reference from the Private Calendar to the Calendar of the Committee of the Whole House on the state of the Union.

The motion of Mr. Pavne was agreed to, ayes 62, noes 37.

2615. On February 18, 1889,[1] Mr. William H. Hatch, of Missouri, raised the question that the bill (H.R. 11027) defining "lard," etc., reported from the Committee on Agriculture, had been referred to the House Calendar, when it should have been sent to the Calendar of the Committee of the Whole House on the state of the Union.[2] Therefore, as a matter of privilege, he moved the correction of the reference, and that the bill take the same place on the proper Calendar that it would have had had it been correctly referred at first.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that such motion did not present a privileged question and was not in order for consideration at this time.

The Speaker[3] said:

The question arose in the Forty-sixth Congress as to whether it was a matter of privilege to correct an erroneous reference to a committee, and the then occupant of the chair decided that it was, and the House sustained the decision.[4] Since that time two or three questions of a similar character have arisen in the House, and have been decided in the same way. The Chair thinks that an erroneous reference of a bill to one of the Calendars of the House stands upon the same footing. It involves simply carrying out the rules of the House, and therefore the Chair thinks that the presentation of the question is a matter of privilege, but it is not the province of the Chair to correct the error by referring it to the Committee of the Whole House on the state of the Union. It is for the House to say whether it will or will not do so. The gentleman from Missouri moves that the bill be referred to the Committee of the Whole House on the state of the Union, as of the date July 28, 1888, when the House made the improper order, and the Chair puts that question to the House.

2616. A mere clerical error in the Calendar does not give rise to a question of privilege.—On April 13, 1876,[5] Mr. Thomas L. Jones, of Kentucky, claiming the floor for a question of privilege, stated that the calendar was in error in recording a certain bill as a special order for one date, when in fact it had been made a special order for another date.

The Speaker[6] said:

That is not a question of privilege. The Journal is correct, and as that and not the Calendar will guide the action of the House, the error in the Calendar will not cause any difficulty.

2617. A question as to the constitutionality and propriety of a continuing order of arrest was held not to supersede a motion to discharge the Sergeant-at-Arms from further execution of the order.—On April 17,

[1] Second session Fiftieth Congress, Record, pp. 2020, 2021; Journal, p. 534.

[2] See sections 3115, 3116 of Volume IV of this work for rules relating to Calendars.

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

[4] See sections 2602 of this volume. The Speaker submitted the question to the House.

[5] First session Forty-fourth Congress, Record, p. 2457.

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

1894,[1] after the Journals of two preceding days had been approved, the Speaker stated that the question first in order would be on the motion of Mr. William M. Springer, of Illinois, to discharge the Sergeant-at-Arms from the further execution of the warrant of the 29th ultimo against absent Members, upon which motion the previous question had been demanded and the yeas and nays ordered on said demand.

Mr. Thomas B. Reed, of Maine, thereupon, as involving a question of privilege, submitted the following resolution:

Whereas the continuing order sought to be dispensed with is contrary to the Constitution and rules of the House, the same is hereby declared void.

After debate on the question of order, the Speaker [1] held as follows:

The Chair can not see that the question presented by the gentleman from Maine is one of superior privilege to the pending question, because it must be borne in mind that the pending question is to discharge a warrant for the arrest of certain Members. The question of the gentleman from Maine raises the question of the legality of the warrant. Now, the Chair can not see that that question ought to take precedence of the question of the discharge of a Member from custody or of a warrant for his arrest.

Therefore the Chair thinks the proposition presented by the gentleman from Maine does not in its present status take any priority of or supersede the pending proposition, and can not now be considered.

2618. The Sergeant-at-Arms having made no report of his execution of an order of arrest, and no excessive delay appearing, a motion summoning him to report was held not to be of privilege.—On February 8, 1894,[3] Mr. Thomas B. Reed, of Maine, as a matter of privilege, moved that the Sergeant-at-Arms be summoned to the bar of the House to make report of his action upon the order to take absent Members into custody, made by the House just before adjournment on the preceding day.

Mr. Richard P. Bland, of Missouri, made the point that the motion of Mr. Reed was not privileged and not in order.

The Speaker [2] sustained the point of order, saying, in the course of his ruling:

There has been no report from the Sergeant-at-Arms, and, so far as the Chair knows, no Member has been arrested, so that it seems to the Chair it certainly must be in the power of the House to get on with the transaction of its business until some report is made from the Sergeant-at-Arms. The Chair has no doubt that when that report is made the House will proceed at once to consider it, because it would present a question of high privilege, relating to the right of the House to punish its absent Members.

2619. An alleged error in the Congressional Directory relating to the representation of a district in the next Congress does not present a question of privilege.—On February 21, 1893,[4] Mr. J. Logan Chipman, of Michigan, submitted as a privileged proposition the following resolution:

Resolved, That the Committee on Printing be directed to ascertain by what authority the editor of the Congressional Directory, in the edition published February 10, instant, inserted the name of

[1] Second session Fifty-third Congress, Journal, pp. 337, 338; Record, p. 3795.

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

[3] Second session Fifty-third Congress, Journal, p. 149; Record, p. 2034.

[4] Second session Fifty-second Congress, Journal, p. 101; Record, p. 1940.

Charles B. Belknap in the list of Members-elect to the Fifty-third Congress as a Representative-elect from the Fifth Congressional district of Michigan.

Mr. William J. Bryan, of Nebraska, made the point of order that the resolution did not present a privileged question.

The Speaker [1] sustained the point of order.

2620. The House having approved the Journal of the preceding day, a resolution to correct an alleged error in a vote of that day, which had been discussed before the vote of approval, was held not to be of privilege.

Instance wherein the House declined to permit a change in the Journal record of persons noted as present and not voting, on the statement of certain ones, not numerous enough to change the result, that they had been improperly noted.

On February 20, 1891,[2] the question was taken on ordering the previous question on a resolution reported from the Committee on Rules, when the Speaker announced yeas 150, nays 8, noted as present and not voting 35—in all 193, a quorum being 165.

Among those noted as present and not voting was Mr. Charles J. Boatner, of Louisiana. Mr. Benton McMillin, of Tennessee, raised the question that Mr. Boatner had not in fact been present; but another Member, Mr. Thomas M. Bayne, of Pennsylvania, stated that he had seen Mr. Boatner in the Hall.

On February 21,[3] when the Journal had been read for approval, four of those noted as present (Mr. Boatner not being one of the four) arose in yielded time and claimed that they had not been properly noted as present, since they had left the Hall before the time arrived when they might be noted properly.

But they were not permitted to move a correction of the Journal, the previous question being ordered by yeas 155, nays 113, on motion of the Member having the floor. Then the Journal was approved, yeas 150, nays 95.

Immediately after the approval of the Journal, Mr. William M. Springer, of Illinois, proposed to offer as a question of privilege a resolution as follows:

Whereas the Speaker of the House on yesterday directed the Clerk to announce and record as present Mr. Boatner, of Louisiana, on the statement of the Clerk that he passed between the tellers on the demand for yeas and nays;

Whereas Mr. Boatner was not in the, Hall of the House during the taking of the vote by yeas and nays on the pending proposition: Therefore,

Resolved, That the recording of Mr. Boatner as present and not voting at that time was contrary to the facts and in violation of the rules of the House.

Mr. William McKinley, jr., of Ohio, made the point of order that the preamble and resolution did not present a privileged question, and was therefore not in order.

The Speaker [4] pro tempore said:

In the judgment of the Chair, a question of privilege is not presented by this resolution because of the fact that, after the reading of the Journal by the Clerk, after debate had upon the motion made

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

[2] Second session Fifty-first Congress, Journal, p. 275; Record, pp. 2997, 2998.

[3] Record, pp. 3080, 3081, 3083; Journal, p. 283.

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

by the gentleman from Ohio that the Journal be approved, and after the previous question had been ordered, the House by a vote of 150 to 95 approved the Journal, which involved the method in which a quorum was secured, and the evidence of the fact, the action of the House, concludes the question. The Chair is of opinion that no question of privilege is presented because of the action of the House upon the Journal itself; and therefore the point of order made by the gentleman from Ohio is sustained.

Mr. Springer having appealed, the appeal was laid on the table by a vote of 145 yeas to 98 nays.

2621. A rule giving the Speaker power to hold as dilatory certain motions, a resolution condemning his action thereunder was not admitted as a question of privilege.

Instance wherein the Speaker retained the Chair and ruled as to a resolution which in effect proposed a censure of a decision made by himself as Speaker.

On January 27, 1891,[1] Mr. William M. Springer, of Illinois, on the ground of its being a privileged question, submitted the following preamble and resolution:

Whereas during yesterday's session of the House, when a vote by yeas and nays had been ordered upon the previous question on the motion to approve the Journal, and the yeas and nays had been called, the recapitulation of said vote was dispensed with without the request for the consent of the House; and upon the request of the gentleman from Missouri [Mr. Bland] and the demand of the gentleman from New York [Mr. Tracey] for a recapitulation of the vote, the Speaker declined to order a recapitulation; and an appeal from this decision being made by the gentleman from Missouri [Mr. Bland], the Speaker declined to entertain the appeal: Therefore,

Resolved, That this action on the part of the Speaker was unlawful; that to permit it to go uncondemned by the House would be to permit a precedent to stand, with apparent approval, that impairs the right and dignity of the House and that is inconsistent with a proper evidence of the integrity of its proceedings.

Mr. William McKinley, jr., of Ohio, made the point of order that the resolution did not present a question of privilege, since the Speaker distinctly made the ruling upon the ground that the motion was dilatory, and also because there was no rule which required the recapitulation of the yeas and nays.

After debate the Speaker[2] said:

The Chair does not think that the action of the Chair under the rules of the House in deciding motions to be out of order, on the ground that they are dilatory, can be made a question of privilege. If they could be, the sole purpose of the rule in giving to the Chair the power to put an end to dilatory motions would be nugatory. The Chair thinks, therefore, that it is not a question of privilege.

Mr. Springer having appealed from the decision of the Chair, the appeal was laid on the table by a vote of 139 yeas to 105 nays, and so the Chair was sustained.

2622. A proposition that the House cooperate with the Senate in the conduct of the ceremonies of the President's inauguration was held not to present a question of privilege.—On February 28, 1885,[3] Mr. Roger Q. Mills, of Texas, offered, as a question of the highest privilege:

Resolved, That the Speaker appoint a committee of three Members of the House to cooperate with the committee appointed by the Senate to take charge of the arrangements for the inaugural ceremonies at the Capitol on the 4th of March.

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[1] Second session Fifty-first Congress, Journal, p. 187; Record, p. 1872.

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

[3] Second session Forty-eighth Congress, Record, p. 2301.

Mr. Richard W. Townsend, of Illinois, having made the point of order that the resolution was not a question of privilege, the Speaker[1] ruled:

The Chair does not see that the resolution involves any matter of privilege. It does not relate to the legislative proceedings of the House or its duties under the Constitution.

2623. A Member having announced his intention to publish in the Record certain extracts, but not having obtained leave of the House, the refusal of the proposed insertion violates no privilege.—On September 27, 1893,[2] Mr. Elijah A. Morse, of Massachusetts, stated, as involving a question of privilege, that on the 25th instant, in the course of his remarks, he had announced that he would incorporate in his remarks certain newspaper extracts; that objection was not made thereto at the time, but that no leave to insert the extracts had been granted by the House. The proposed insertions had been denied publication in the Record. He asked that they be printed with his remarks in the Record.

The Speaker[3] held that no question of privilege had been presented and that a Member had no right to have printed with or appended to his remarks any matter not actually delivered unless the express consent of the House thereto be given.

Mr. William M. Springer, of Illinois, submitted the question of order, whether the business first in order was not the resolution of inquiry reported as a privileged matter and pending when the House adjourned on the previous day.

The Speaker held that, inasmuch as the previous question had not been ordered on the resolution, it did not come up as the regular order of business until called up.

2624. An alleged violation of the rule relating to admission to the floor presents a question of privilege.—On March 1, 1886,[4] Mr. Lewis Beach, of New York, presented this resolution:

Whereas it is asserted in the public press that Rule XXXIV,[5] regulating admission to the floor of the House, is being violated: Therefore,

Resolved, That the Committee on Rules be instructed to inquire into the facts, and report as to the truth or falsity of the said charges and what remedy, if any, is necessary to secure a strict enforcement of the rule.

Mr. Richard P. Bland, of Missouri, made the point of order that the resolution was not in order.

The Speaker[1] said:

The Chair thinks this presents a question of privilege.

2625. A resolution relating to an alleged abuse of the privileges of the floor presents a question of privilege.—On March 1, 1886,[6] Mr. Lewis Beach, of New York, rising to a question of privilege, sent to the Clerk's desk to be read an article from a newspaper. During the reading, the point being made that a question of privilege had not been developed, the Speaker[1] said:

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

[2] First session Fifty-third Congress, Journal, p. 114.

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

[4] First session Forty-ninth Congress, Record, p. 1905; Journal, p. 781.

[5] For this rule see section 7283 of Volume V of this work.

[6] First session Forty-ninth Congress, Journal, p. 781; Record, p. 1905.

The Chair thinks, under the rulings made heretofore, that a proposition must be presented to the House in a case when a gentleman rises to a question of privilege which he states involves the dignity of the House or the integrity of its proceedings, and then the gentleman can support his proposition by any argument, or having anything read which he chooses in his own time, provided it is pertinent.

Mr. Beach then presented the following:

Whereas it is asserted in the public press that Rule XXXIV, regulating admission to the floor of the House, is being violated: Therefore,

Resolved, That the Committee on Rules be instructed to inquire into the facts, and report as to the truth or falsity of the said charges, and what remedy, if any, is necessary to secure a strict enforcement of the rule.

Mr. Richard P. Bland, of Missouri, made the point of order that the preamble and resolution were not in order for present consideration.

The Speaker overruled the point of order and held that they presented a question of privilege.

2626. A resolution relating to an alleged abuse of the privileges of the floor does not present a question of higher privilege than an election case.—On May 22, 1884,[1] during the consideration of the contested election case of English *v.* Peelle, the previous question having been ordered on the resolution and pending substitute, Mr. Thomas M. Bayne, of Pennsylvania, presented the following resolution:

Resolved, That the Committee on Rules be, and it is hereby, instructed to inquire and report to this House whether or not Hon. William H. English, an ex-Member of this House, has violated the privileges thereof in the contested election case of English *v.* Peelle.

Mr. Richard P. Bland, of Missouri, made the point of order that the resolution was not in order while a contested election case was pending, which was of higher privilege

The Speaker[2] said:

While this resolution presents a matter of privilege, the Chair does not think it is a matter of higher privilege than the question of the right of a Member to a seat on the floor. The Chair thinks that except by consent it could not be introduced during the pendency of a contested election case.

2627. Alleged misconduct of an occupant of the press gallery, although occurring during a former Congress, brought before the House as a matter of privilege.—On January 29, 1884,[3] Mr. James H. Hopkins, of Pennsylvania, submitted the following as a privileged resolution:

Whereas Hon. J. Warren Keifer, a Member of this House, has charged H.V. Boynton, the Washington correspondent of the Cincinnati Commercial-Gazette, now holding a seat in the press gallery under the rules of the House, with having approached the Speaker of the House during the closing days of the last session of Congress with corrupt propositions intended to influence his official action; and

Whereas this alleged act is in the nature of a gross breach of the privileges of the House, and the charge if sustained would call for the exclusion of the said H.V. Boynton from the press gallery; therefore,

Be it resolved, That a special committee of five Members of this House be appointed by the Speaker with power to send for persons and papers and administer oaths, to investigate the said charge of attempted corruption, and to report the results of this investigation to the House.

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[1] First session Forty-eighth Congress, Record, p. 4406.

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

[3] First session Forty-eighth Congress, Journal, p. 444; Record, p. 741.

Mr. William H. Calkins, of Indiana, made the point that it was a matter of privilege for the last and not for the present House.

The Speaker[1] ruled:

The Chair is called upon to determine whether this is or is not a question of privilege under the rules or under the general parliamentary law.[2] The preamble alleges that a person who is now occupying the gallery of the House by the permission of the House has made an improper proposition to a Member, not during the present session, but during the last session. Of course it is well known to the Chair and to every Member on the floor that no person can occupy a seat in that gallery without signing a statement or pledge that he is not interested in any legislation pending before the House. It does seem to the Chair that if there is any person occupying a seat in that gallery who has at any time, in violation of that pledge, made improper proposals to a Member of the House, it is not only the right but the duty of the House to investigate the matter, with a view of protecting the integrity of its own proceedings and denying to that person hereafter the privileges of the gallery. The Chair is therefore disposed to hold and does hold that this is a matter of privilege.

2628. A newspaper charge that an officer of the House had conspired to influence legislation was considered as a question of privilege.—On April 26, 1876,[3] Mr. John D. White, of Kentucky, submitted as a question of privilege a preamble and resolution reciting an allegation from a newspaper charging that the Clerk of the House and some of his subordinates had conspired to prevent retrenchment of expenditures, and directing the Committee on Rules to investigate the charges and make report thereon.

Mr. William M. Springer, of Illinois, made the point of order that the resolution did not involve a question of privilege.

The Speaker[4] overruled the point of order on the ground that the resolution, though going to the verge to which any matter of privilege of a Member of the House should go, involved enough of substance in its connection with the House and legislation to bring it within the rule and definition of a question of privilege.

2629. A resolution from the Committee on Ventilation and Acoustics relating to the comfort of Members in the Hall was received as a question of privilege.—On June 8, 1894,[5] Mr. George W. Shell, of South Carolina, from the Committee on Ventilation and Acoustics, presented for consideration as involving a question of privilege the resolution (Mis. Doc. 162) reported by him on the preceding day:

Resolved, That the Architect of the Capitol is hereby authorized to employ for the balance of this session an assistant engineer at the rate of $100 per month, and three additional laborers at $60 per month each, to be paid out of the contingent fund of the House; and the Clerk of the House is hereby directed to pay out of the contingent fund of the House the sum of $20 for incidental expenses of the Architect's office, and the sum of $400 for additional coal for the use of the same.

Mr. William S. Holman, of Indiana, made the point of order that the resolution should receive its first consideration in the Committee of the Whole.

The Speaker sustained the point of order.

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

[2] The House had not yet adopted permanent rules.

[3] First session Forty-fourth Congress, Journal, pp. 867, 868; Record, p. 2771.

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

[5] Second session Fifty-third Congress, Journal, p. 421; Record, pp. 5924, 5989.

The record of the debate shows that the resolution was called up as a question of privilege, the subject relating to the health of Members, and was admitted to consideration as such.

2630. A proposition relating to the comfort or convenience of Members is presented as a question of privilege.—On December 10, 1880,[1] Mr. Speaker Randall intimated that he considered a proposition relating to the construction of a proposed elevator for the House to be a question of privilege, since it related to the convenience of the House.

2631. On December 14, 1883,[2] Mr. Richard W. Townshend, of Illinois, proposed a resolution providing for the removal of the desks from the hall.

A point of order being made against the resolution by Mr. William H. Calkins, of Indiana, the Speaker[3] said:

> It was decided by Mr. Speaker Blaine in the Forty-second Congress that all matters relating to the arrangement of the hall and the convenience of Members were to be considered and treated as matters of privilege, and a similar ruling was made by Mr. Speaker Keifer in the last Congress.

Accordingly the resolution was admitted.

2632. A subject relating to the convenience of Members and comfort of employees presents a question of privilege.—On June 13, 1882[4] Mr. John H. Brewer of New Jersey, called up a report of the Select Committee on Ventilation and Acoustics[5] in relation to the unhealthfulness of the folding room of the House of Representatives.

Mr. Joseph G. Cannon, of Illinois, objected to its consideration.

The Speaker[6] held the report to be of a privileged character on the ground that the committee had been specially directed to consider the subject-matter of the resolution submitted, and report their conclusions thereon to the House, and although authority had not been specially given to that committee to report at any time, it was still the duty of the committee to report at as early a day as practicable, and having so reported, their report was properly before the House; and also on the further ground that the pending resolution related to the convenience of Members and comfort of the employees of the House.

2633. A resolution reported from the Committee on Ventilation and Acoustics and relating to the sanitary conditions surrounding certain employees, was held to be privileged.—On June 13, 1882,[7] Mr. John H. Brewer, of New Jersey, called up the report[8] of the Select Committee on Ventilation and Acoustics, which had come over from the preceding day with a question as to whether or not it involved a question of privilege.

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[1] Third session Forty-sixth Congress, Record, p. 75.

[2] First session Forty-eighth Congress, Record, p. 145.

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

[4] First session Forty-seventh Congress, Journal, p. 1469; Record, p. 4846.

[5] This committee is now one of the standing committees.

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

[7] First session Forty-seventh Congress, Record, pp. 4846, 4852.

[8] The report was in response to a resolution directing an investigation of the sanitary condition of the House folding room.

Mr. Samuel J. Randall, of Pennsylvania, having renewed the question of order, the Speaker[1] said:

The Chair wishes to state that under the resolution which passed the House ordering this committee to investigate this subject it was required by the terms of that resolution that the committee report to the House; and while it does not specify it should report at any time, yet in view of the fact that it relates to the convenience of the employees of the House and is necessarily connected with the business of the House, the Chair is inclined to hold to-day that it is a privileged matter.

2634. A resolution relating to the dismissal of an employee was held not to involve a question of privilege.—On February 11, 1884,[2] Mr. John D. White, of Kentucky, claiming the floor for a question of privilege, presented a resolution instructing the Committee on Reform in the Civil Service to inquire into the cause of the removal of William H. Smith, librarian of the House of Representatives, and directing it to report on what changes might be necessary to protect employees of the House from dismissal.

Mr. Philip B. Thompson, jr., of Kentucky, made the point of order that no question of privilege was involved.

The Speaker[3] said:

The Chair does not think this resolution comes within any definition of a privileged matter given in the rules or the general parliamentary law of the country.

2635. Subjects relating to the convenience of Members are not necessarily entertained as matters of privilege.—On November 19, 1903,[4] Mr. Charles Q. Hildebrandt, of Ohio, offered as a question of privilege the following resolution:

Resolved, That the Clerk of the House is hereby authorized and directed to employ an additional laborer in the bathroom during the remainder of the present fiscal year, to be paid out of the contingent fund of the House at the rate of $60 per month.

The Speaker[5] declining to entertain it as a question of privilege, it was submitted by unanimous consent.

2636. A resolution from the Committee on Accounts relating to the management of the House restaurant was not received as a matter of privilege.—On April 25, 1904,[6] Mr. Joseph V. Graff, of Illinois, claiming the floor for a privileged matter, offered the following resolution:

Resolved, That the superintendent of the Capitol building and grounds shall, under the direction of the Speaker of the House, make such alterations of the rooms now used as a restaurant as to provide facilities for luncheon rooms for the Members, Delegates, and officers of the House, and for the employees of the House and the public. And the privilege of conducting said luncheon rooms shall be granted by the Speaker of the House to such person or persons as he shall select, who shall be subject to removal by him and who shall be governed by such rules for the conduct of said luncheon rooms as he may prescribe: *Provided,* That in no sense shall it be understood that the practical management of the House luncheon rooms is hereby assumed by the House.

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

[2] First session Forty-eighth Congress, Journal, p. 560; Record, p. 1031.

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

[4] First session Fifty-eighth Congress, Journal, p. 82; Record, p. 389.

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

[6] Second session Fifty-eighth Congress, Record, p. 5581; Journal, p. 680.

The Speaker[1] did not entertain the resolution as one involving the privileges of the House, but admitted it after asking the unanimous consent of the House.

The resolution was agreed to.

2637. The publication by a Member of alleged false and scandalous charges against the House and its Members, which he also reiterated in debate, was held to involve a question of privilege.

The House took action as to a Member who reiterated on the floor certain published charges against the House, although other business had intervened.

Instance wherein testimony taken before a Committee and relating to the conduct of a Member was not reported to the House at once.

On July 29, 1892,[2] Mr. Charles J. Boatner, of Louisiana, as a matter of privilege, submitted the following resolution, and demanded immediate consideration thereof, to wit:

Whereas on page 216 of a book purporting to have been written by Thomas E. Watson, of Georgia, a Member of the House of Representatives, the following charge appears:

"Drunken Members have reeled about the aisles, a disgrace to the Republic. Drunken speakers have debated grave issues on the floor, and in the midst of maudlin ramblings have been heard to ask: 'Mr. Speaker, where was I at?'" and

Whereas the publication of such charges, if untrue, is a grave wrong to this body, and if true the responsibility should be placed where it belongs; and

Whereas the said Watson has reiterated the same on the floor of the House: Therefore, be it

Resolved by the House, That a committee of five Members be appointed by the Speaker to investigate and report to the House whether such charges are true, and, if untrue, whether the said Watson has violated the privileges of the House and their recommendations relative to the same. That said committee have leave to sit during the sessions of the House, to send for persons and papers, to swear witnesses, and to compel their attendance.

Mr. Thomas B. Reed, of Maine, submitted the question of order, whether, the House having failed to take action respecting the remarks of Mr. Watson at the time he reiterated the charges on the floor of the House, and having passed to other business, it was not now too late to hold him to account therefore.

Mr. Louis E. Atkinson, of Pennsylvania, made the further point of order that the pending business before the House was a conference report, which was itself a matter of the highest privilege.

The Speaker[3] held that the resolution submitted by Mr. Boatner presented a question of privilege, and that whenever the Speaker is of opinion that a question of privilege is involved in a proposition, he must entertain it in preference to any other business.

The Speaker also held that the pending business was the amendments of the Senate to the bill H.R. 752, and that no conference report was pending. Both points of order were therefore overruled.

On August 8, 1892,[4] Mr. Boatner submitted the report[5] of the select committee authorized by the adoption of the resolution, and of which he had been made chairman.

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

[2] First session Fifty-second Congress, Journal, p. 345; Record, p. 6943.

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

[4] Journal, p. 357; Record p. 7105.

[5] Report No. 2132.

This report stated that the committee summoned Mr. Watson and such witnesses as he indicated, and very soon the fact was developed that the charge as to drunken speakers referred to Mr. J. E. Cobb, of Alabama. The committee thereupon went on and examined testimony as to Mr. Cobb, no point of order being made that the testimony implicating a Member should first be reported to the House.

The committee concluded that the charge was a libel upon the membership, and recommended the adoption of the following resolution:

Resolved, That the charges made by Thomas E. Watson in his book against the House of Representatives, viz, "that drunken Members have reeled about the aisles, a disgrace to the Republic," and "drunken Members have debated grave issues on the floor," etc., are not true, and constitute an unwarranted assault upon the honor and dignity of the House, and that such publication has the unqualified disapproval of the House.

This report was made in the last hours of the session and does not appear to have been acted on.

2638. General charges that attempts are being made through public sentiment to influence the House do not give rise to a question of privilege.—On March 11, 1902,[1] Mr. John R. Thayer, of Massachusetts, claimed the floor to offer, as involving a question of privilege, the following:

Whereas it has been currently reported in many reputable newspapers, and by many Republican Members of this House, that in the event of a reduction of the duty on sugar imported from Cuba the American Sugar Refinery, commonly known as the "sugar trust," will be the chief beneficiary; and

Whereas it has been currently reported from reliable sources that the entire crop of Cuban sugar has already been purchased from the Cubans at ruinously low prices by the said sugar trust, and is only awaiting shipment until a reduction of the duty on the same can be secured through the action of Congress, and that any concessions intended to be for the alleviation of the deplorable condition of the Cubans by admitting their sugar this year at reduced rates of duty will serve only to benefit the sugar trust, and that the Cubans will receive no benefit whatever from it, and

Whereas it has been currently alleged by many reputable newspapers that the American Sugar Refinery Company (commonly known as the "sugar trust") has, by subsidizing the press, establishing literary bureaus, and by spending large sums of money, and in other ways attempted to create a public sentiment in favor of a radical reduction of the tariff on sugar imported from Cuba; and

Whereas it is due to the dignity of this House that the truth or falsity of these charges should be clearly established before the House proceeds to a consideration of the question of reducing the duty on sugar imported from Cuba, as recommended by the President of the United States in his annual message to Congress: Therefore, be it

Resolved, That a special committee of seven Members of this House be appointed by the Speaker to investigate the subject-matter of this resolution.

Mr. Eugene F. Loud, of California, raised the question of order that no question of privilege was presented.

The Speaker[2] sustained the point of order.

Mr. Thayer having appealed, the House, on motion of Mr. Sereno E. Payne, of New York, laid the appeal on the table by a vote of yeas 125, nays 87.

2639. A newspaper article making general charges concerning the proceedings of the House was held not to involve a question of privilege.—

[1] First session Fifty-seventh Congress, Record, p. 2639.

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

On April 21, 1868,[1] Mr. Charles E. Phelps, of Maryland, offered, as a question of privilege, the following:

Whereas there appeared in the Baltimore American newspaper of the 15th of April, 1868, the following paragraph:

"GENERAL SHERMAN BEFORE THE MANAGERS.

"Lieutenant-General Sherman was before the impeachment managers for a consider-able time and was very minutely examined in relation to his interviews with the President at the time of the proffer of the War Department to him. It is understood that the declination of General Butler to proceed with the cross-examination of General Sherman yesterday was in view of this preliminary examination of General Sherman this morning."

And whereas "false and scandalous reports of proceedings in this House," "charges affecting the official character of its Members," and "alleged combinations on the part of certain Members," as questions of high privilege, demand that such indecent imputations as are contained in the above-recited paragraph upon the official conduct of the honorable managers appointed by the House of Representatives to conduct the trial of the impeachment of the President at the bar of the Senate of the United States should not be promulgated without proper action on the part of this House to vindicate the reputation of its officers and its own dignity:

Resolved, That a committee of three be appointed to inquire into the truth or falsity of the imputations conveyed in the above-recited paragraph, with power to send for persons and papers and to report what action, if any, should further be taken in the premises.

Mr. Elihu B. Washburne, of Illinois, made the point of order that this did not involve a question of privilege.

The Speaker[2] said:

The Chair will rule that this is not a question of privilege, and will state his reasons. Although the gentleman from Maryland has noted upon his resolution references to the Digest, which relate to questions of privilege, if he will examine the authorities there quoted he will find that the charges are not to be general charges. If a charge is made by a newspaper affecting the official character of a Member of this House, that would be a question of privilege. If an attack should be made by the Public Printer, and, the Chair would add, by the publisher of any paper, in an article alleged to be for the purpose of inciting unlawful violence among Members, that would be a privileged question, because relating to the privileges of the House. If alleged corrupt combinations on the part of certain Members were presented, those would be questions of privilege. But the corrupt combinations must be charged, and the statement of the corrupt combination must be incorporated in the resolution. In the extract which the gentleman has quoted in his resolution * * * the Chair is unable to see how, even by the utmost stretching of the rule that could be construed into a question of privilege. * * * If this proposition could be entertained as a question of privilege, the House of Representatives would or could have resolutions upon questions of privilege before them every day, because probably not a day elapses without some newspaper in the country making a general charge against the Congress of the United States or some of its Members. These charges must be specific charges. A general charge that some conduct has been scandalous and unjust, the Chair will rule is not a question of privilege, unless the gentleman from Maryland desires to have that question submitted to the House.

Mr. Phelps having asked the decision of the House, the question was put, will the House entertain the same as a question of privilege? and decided in the negative.

2640. The House ordered the investigation, as a question of privilege, of a newspaper report of certain proceedings of the House.—On February 8, 1847,[3] Mr. Stephen A. Douglas, of Illinois, offered the following resolution as a question of privilege, and it was entertained as such without question:

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[1] Second session Fortieth Congress, Journal, p. 632; Globe, p. 2320.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Second session Twenty-ninth Congress, Journal, pp. 311–313, 353; Globe, pp. 349–352, 426.

Resolved, That a committee of five Members be appointed to examine into the truth of the report of the Union of the 6th instant, in regard to the proceedings of the House and of the Committee of the Whole, on Saturday last, on the bill for the relief of Thomas Wishart, and to ascertain who the reporter was and what Members were engaged in creating disorder in the House and in the committee, and report thereon, with the names of such reporter and Members; and for the purposes of such examination said committee shall have power to send for persons and papers.

This resolution having been agreed to, yeas 128, nays 64, the Speaker appointed Messrs. Douglas; Andrew Kennedy, of Indiana; Thomas H. Bayly, of Virginia; David Wilmot, of Pennsylvania; and Andrew Trumbo, of Kentucky, the committee.

On February 15 Mr. Douglas reported from the committee that they had found the investigation would require more time than could be obtained so near the end of the session, and asking that they be discharged from further consideration of the subject. Such a motion was made and agreed to.[1]

2641. The publication by the Public Printer of an article alleged to be for the purpose of exciting unlawful violence among Members has been considered a matter of privilege.

The Speaker may pass on a question presented as of privilege instead of submitting it directly to the House.

On June 8, 1854,[2] Mr. Joshua R. Giddings, of Ohio, submitted, as a question of privilege, the following preamble and resolution:

Whereas A.O.P. Nicholson, esq., printer to this body,[3] editor and proprietor of the Washington Union, in his paper of this morning has published an article most evidently designed to excite unlawful violence upon Members of this body: Therefore,

Resolved, That said A.O.P. Nicholson, and all other persons connected with the Washington Union, be expelled from this House.

Upon the presentation of these resolutions a suggestion was at first made that questions of privilege had heretofore been referred to the judgment of the House.

The Speaker[4] at first acquiesced in this view, but afterwards determined that there was involved in the resolution a question of privilege, and that the gentleman from Ohio, Mr. Giddings, had a right to move to expel from the Hall any officer of the House. * * * The editor or editors of the Union had the privilege of the Hall, but they had not the privilege of the floor. That paper had a number of reporters here, and they were here by law of the House and under the direction of the Speaker. The gentleman proposed to expel them all, editors and reporters. The Chair was of the opinion that the question was a privileged one, and so decided. * * * Mr. A. O. P. Nicholson was entitled, under an express law of the House, to the privilege of the Hall as an ex-Senator of the United States. He was named in the resolution.

The resolution proposed by Mr. Giddings was not agreed to by the House.

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[1] At about this time a similar resolution in the Senate caused a long debate on the freedom of the press. The resolution excluded the editors of the Union from the floor for "uttering a public libel upon the character of this body." (Globe, pp. 392, 406–417.)

[2] First session Thirty-third Congress, Journal, p. 965; Globe, p. 1361.

[3] The Public Printer was at that time elected by the two Houses. At present he is, under the terms of law, appointed by the President.

[4] Linn Boyd, of Kentucky, Speaker.

2642. An alleged offense against the dignity of the House and the participation of a Member therein was held to constitute a question of privilege.

Early instance wherein the Speaker and not the House decided whether or not a question was one of privilege.

On April 27, 1846,[1] Mr. Robert C. Schenck, of Ohio, offered as a question of privilege a preamble and resolution reciting that the President, in response to a resolution of the House, had declined to disclose in regard to the use of the secret service fund of the State Department during the Oregon boundary negotiations, and that Charles Jared Ingersoll, a Member from Pennsylvania, had averred that he had procured such information from the Department of State, and therefore resolving that a committee of five be appointed to ascertain how Mr. Ingersoll got his information, whether by his own act or by the act of "any officer of any Department of this Government."

The Speaker[2] decided that the resolution did not involve a question touching the privileges of this House or any of its Members.

Mr. Schenck modified his resolution by inserting after the word "Government," where it last occurs, the following:

> And if by a Member, then whether he does not deserve by such conduct punishment by the House, and whether, in such transaction, there has been an offense committed against the dignity and privileges of the House.

The Speaker decided that the resolution, as modified, involved a question touching the privileges of this House and must be entertained in preference to any other business.

2643. A proposition to investigate alleged unnecessary violence of policemen toward citizens on the Capitol grounds was ruled not to present a question of privilege.—On May 2, 1894,[3] Mr. Tom L. Johnson, of Ohio, submitted, as presenting a question of privilege, the following preamble and resolution:

> Whereas it is well known that the Capitol grounds were, on May 1, overrun by a large assemblage of people, including a considerable number of the regular and special police of this District; and
>
> Whereas it is publicly stated that the safety of the Members of this House has been endangered, thereby making it necessary for the House to rely upon the clubs of policemen for their protection:
>
> *Resolved,* That the Committee on Public Buildings and Grounds be instructed to inquire into the question as to whether unnecessary force was used, whether unoffending citizens were cruelly beaten, and whether the dignity of this House has been violated; that the said committee have the power to send for persons and papers, and report the facts in connection with the subject, with their recommendations as to whether any legislation is necessary in the premises.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that no question of privilege was presented in said resolution.

After debate the Speaker[4] sustained the point of order, holding that the resolution did not present a question of privilege.

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[1] First session Twenty-ninth Congress, Journal, p. 724; Globe, p. 734.

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

[3] Second session Fifty-third Congress, Journal, p. 369; Record, p. 4335.

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

2644. A charge affecting the character of an elected officer of the House was held to involve a question of privilege.

The office of Journal Clerk and its requirements. (Footnote.)

On May 13, 1876,[1] Mr. John D. White, of Kentucky, as a question of privilege, submitted the following preamble and resolution:

Whereas the following articles which affect the character of an officer of this House have appeared in the public print [the articles were not read]: Therefore,

Resolved, That the Committee on Rules be, and they are hereby, directed to inquire into the charges publicly made against L.H. Fitzhugh, Doorkeeper of the House, and report, by resolution or otherwise, whether there is anything in said charges that would render him an improper person to be an officer of this House; and that they be further directed to inquire into the propriety of abolishing the office of Doorkeeper and requiring the duties of said office to be performed by the Sergeant-at-Arms.

Mr. Samuel J. Randall, of Pennsylvania, raised the point of order that as the articles read did not affect or relate to the privileges of a Member it was not a question of privilege.

The Speaker pro tempore[2] overruled the point of order, holding that any matter affecting the character of an officer of the House was a question of privilege.

In this decision the House acquiesced.[3]

2645. The request of an officer of the House for an investigation of newspaper charges against his administration is presented as a question of privilege.—On December 10, 1867,[4] Mr. William B. Allison, of Iowa, presented a communication from the Sergeant-at-Arms of the House asking for an investigation of his administration of his office, certain charges reflecting on his official integrity having been made in certain newspapers.

Mr. Lewis W. Ross, of Illinois, raised a question as to whether or not the communication was privileged.

The Speaker[5] said:

The Chair thinks that this is a question of privilege, as it involves a question concerning the fidelity of one of the officers of the House.

2646. A resolution for the investigation of the conduct of an employee of the House may be presented as a matter of privilege.—On January 8, 1883,[6] Mr. Thompson H. Murch, of Maine, submitted the following as a question of privilege:

Whereas it has been asserted on the floor of this House that John Bailey, chief clerk, is an officer and large stockholder of the Washington Gaslight Company, and has been retained in the Clerk's office of the House for many years past through the influence of said company in order to advise it of what was going on in Congress affecting its interests and to assist in procuring favorable legislation for said company; and

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[1] First session Forty-fourth Congress, Journal, p. 948; Record, pp. 3065, 3066.

[2] Samuel S. Cox, of New York, Speaker pro tempore.

[3] On April 15, 1876 (First session Forty-fourth Congress, Journal, p. 806; Record, pp. 2480, 2655), a question as to the conduct of the Journal Clerk of the House was presented as a question of privilege apparently, although Record and Journal do not agree on this point. On April 20 the Committee on Rules, after investigating the charges, made a report which dwells at length upon the necessity of competency and integrity on the part of that officer.

[4] Second session Fortieth Congress, Globe, p. 105.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] Second session Forty-seventh Congress, Journal, pp. 190, 235; Record, pp. 967–970, 1165.

Whereas the same charge has been heretofore made in the public press: Therefore,

Resolved, That a select committee of five Members be appointed, whose duty it shall be to thoroughly investigate said charges; and said committee shall have power to send for persons and papers, and shall have leave to report at any time.

Mr. George M. Robeson, of New Jersey, made the point of order that the preamble and resolution did not involve a question of privilege.

After debate the point of order was withdrawn, and the resolution was agreed to.

On January 13, Mr. Murch, also as a question of privilege, introduced and the House agreed to a resolution instructing the committee to inquire "whether said Bailey has at any time attempted to influence legislation in this House for the benefit of the Washington Gaslight Company." [1]

2647. A proposition to investigate the conduct of certain officers of the House while they were officers of the preceding House was presented as a matter of privilege.—On March 16, 1886,[2] Mr. Thomas M. Browne, of Indiana, presented a preamble reciting that the charge had been made that certain officers of the preceding House had in that Congress exacted a sum of money on pretense of influencing the action of Congress, and further reciting that these persons so exacting money were officers of the present House. Therefore he proposed a resolution instructing the Committee on Reform of the Civil Service to make an investigation of the charges.

The preamble and resolution were presented as a question of privilege, and agreed to without question.

2648. A proposition relating to the expulsion of a Member presents a question of privilege which supersedes the regular order of business.

Instance wherein the Speaker left to the House to decide whether or not a proposition involved a question of privilege.

On February 19, 1857,[3] Mr. Henry Winter Davis, of Maryland, from the select committee on certain alleged corrupt combinations, proposed to submit a special report from the said committee, having reference to William A. Gilbert, a Member of the House from the State of New York, accompanied by a resolution reciting the alleged corrupt acts of Mr. Gilbert and providing for his expulsion from the House forthwith.

The report and resolution having been read, the Speaker [4] stated the question to be, Shall the said committee have leave to report in part at this time, and win the House receive the said resolution as a question of privilege?

After debate, and a motion to adjourn, Mr. Davis modified the motion originally submitted by him, as follows: That the said special report, together with the other special reports of the said committee, the views of a minority, the general report, and the evidence, be received and printed.

This motion was agreed to, 168 yeas to 5 nays.

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[1] Mr. Murch, who proposed the resolution, was not made a member of the committee. Record, p. 1088.

[2] First session Forty-eighth Congress, Journal, p. 933; Record, p. 2404.

[3] Third session Thirty-fourth Congress, Journal, pp. 475, 476; Globe, pp. 764, 766.

[4] Nathaniel P. Banks, of Massachusetts, Speaker.

2649. A proposition to censure a Member presents a question of privilege.

Early instances wherein the Speaker passed on questions presented as of privilege instead of submitting them directly to the House.

On January 24, 1842,[1] Mr. Thomas W. Gilmer, of Virginia, presented the following resolution:

Resolved, That in presenting for the consideration of the House a petition for the dissolution of the Union the Member from Massachussets [Mr. Adams] has justly incurred the censure of this House.

Mr. Joseph R. Underwood, of Kentucky, objected to the reception of the resolution at this time, as not within the established order of business, and consequently not now in order.

The Speaker[2] said that he considered this a matter of privilege, and referred to a precedent that occurred in 1836, in which the gentleman from Massachusetts offered a petition from certain slaves near Fredericksburg, Va., and on which occasion a resolution was offered by a gentleman from Virginia that the gentleman be brought to the bar and censured. Under this precedent the Chair did not feel at liberty to arrest the proceeding.

2650. On April 27, 1858,[3] Mr. James Hughes, of Indiana, submitted as a question of privilege a preamble reciting that Air. Francis E. Spinner, of New York, by proposing to the House an investigation of mere newspaper insinuations against a certain Senator and certain Members of the House, had reflected upon their characters without presenting any matter or charge proper for action, and concluding with this resolution:

Resolved, That the offer to introduce said preamble and resolution was a breach of the privilege, order, and decorum of the House, and that the said Francis E. Spinner is hereby censured for the same.

Mr. Lewis D. Campbell, of Ohio, raised the question of order that no question of privilege was involved.

The Speaker[4] held that as the resolution proposed to censure a member it involved a question of privilege.

After debate the resolution was laid on the table.

2651. A proposition to censure a Member for violating the rules of the House involves a question of privilege.—On February 10, 1865,[5] Mr. James A. Garfield, of Ohio, submitted as a question of privilege the following:

Resolved, That Hon. E. B. Washburne, in leaving the Hall without permission, pending a call of the House at its session Tuesday evening, February 9, was guilty of disorderly conduct, and deserves the censure of the House.

Mr. John F. Farnsworth, of Illinois, raised a question of order as to the privilege of the resolution.

The Speaker[6] said:

The Chair is of the opinion that it is a question of privilege, as a charge is made by one member against another for violating the rules of the House.

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[1] Second session Twenty-seventh Congress, Journal, pp. 273, 274; Globe, p. 168.

[2] John White, of Kentucky, Speaker.

[3] First session Thirty-fifth Congress, Journal, p. 703; Globe, p. 1829.

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

[5] Second session Thirty-eighth Congress, Journal, pp. 239, 242; Globe, p. 741.

[6] Schuyler Colfax, of Indiana, Speaker.

Mr. Garfield's resolution was later withdrawn.

2652. A charge that a Member had been holding intercourse with the foes of the Government was investigated as a question of privilege.—On July 15, 1861,[1] Mr. John F. Potter, of Wisconsin, offered the following resolution:

Resolved, That the Committee on the Judiciary be directed to inquire whether the Hon. Henry May, a Representative in Congress from the Fourth district of the State of Maryland, has not been found holding criminal intercourse and correspondence with persons in armed rebellion against the Government of the United States, and to make report to the House as to what action should be taken in the premises, and that said committee have power to send for persons and papers and to examine witnesses on oath or affirmation, and that said Hon. Henry May be notified of the passage of this resolution (if practicable) before action thereon by said committee.

Mr. Henry C. Burnett, of Kentucky, made the point of order that the resolution was not in order as a question of privilege.

The Speaker[2] submitted the question to the House, and the House decided that the resolution was in order as involving a question of privilege.

By a vote of 56 yeas to 82 nays the House refused to lay the resolution on the table. It was then agreed to.[3]

2653. A resolution directing an inquiry into alleged treasonable conduct on the part of a Member was admitted as a question of privilege.— On December 19, 1865,[4] Mr. John F. Farnsworth, of Illinois, as a question of privilege, submitted the following:

Whereas it is alleged that Benjamin G. Harris, a Representative in this House from the Fifth district of the State of Maryland, was, in the month of May last, before a very respectable and intelligent court-martial tried, and by said court convicted, upon charge and specifications, to wit: "Violative of the sixth article of war," by giving aid and comfort to the public enemy and inciting them to continue to make war against the United States, declaring his sympathy with the enemy and his opposition to the Government of the United States in its efforts to suppress the rebellion; and

Whereas it was proved at such trial (as is alleged) that the said Harris expressed his regret that the assassination of President Lincoln came too late to be of any use to the rebels, and at the same time declared that Jeff. Davis was a great and good man, all of which acts on the part of said Harris axe inconsistent with the oath which he has taken as a Member of this House; and

Whereas the said court-martial sentenced the said Harris (among other things) to be forever disqualified to hold any office of honor, trust, or profit under the United States, which sentence was approved by the President: Therefore

Resolved, That the Committee of Elections be directed to inquire into the facts of the case and that they report the same to the House, together with such action as said committee shall recommend; and in making their investigations said committee to have power to send for persons and papers.

Mr. Charles A. Eldridge, of Wisconsin, raised the question of order that no question of privilege was involved.

The Speaker[5] held that the question raised was a question of privilege, and of the very highest kind, since it involved the right of a Member to his seat.

The resolution was then agreed to, yeas 138, nays 21.

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[1] First session Thirty-seventh Congress, Journal, p. 88; Globe, p. 131.

[2] Galusha A. Grow, of Pennsylvania, Speaker.

[3] On July 18 the committee reported that they found no evidence against Mr. May. Journal, p. 105; Globe, p. 196.

[4] First session Thirty-ninth Congress, Journal, p. 89; Globe, p. 81.

[5] Schuyler Colfax, of Indiana, Speaker.

2654. The House declined to entertain as a question of privilege a resolution to investigate a charge made by a Cabinet officer that Members of Congress, not named, had made a corrupt proposition to the Executive.

There is a distinction between a question of privilege and a privileged question.

In 1842 the Speaker could find no precedent for deciding as to a question offered as of privilege.

On December 13, 1842,[1] Mr. John M. Botts, of Virginia, moved, as involving the privileges of this House, a resolution in the words following:

Resolved, That a committee of ——— be appointed to inquire into the truth of the charges contained in the letter of the Hon. John C. Spencer,[2] dated October 25, addressed to Lewis K. Faulkner and others, against Members of Congress, of having submitted a proposition to the President of the United States, at the extra session of Congress, to postpone the consideration of a great national measure, intimately connected with the best interests of the country, on condition of a pledge from him that he would not disturb the then members of his cabinet in office.

Mr. Henry A. Wise, of Virginia, submitted that it was not in order to entertain the proposition without a vote of two-thirds (i. e., by suspension of rules) unless it be a privileged question; and he submitted that the paragraphs read by Mr. Botts from a letter purporting to be written by John C. Spencer, Secretary of War, did not involve any question of the privileges of this House.

The Speaker[3] stated that there was a difference between a question of privilege and a privileged question, and it was the duty of the Chair to decide such questions. A question of privilege was one which involved the character and the rights of Members of the House, and the Chair would inform the gentleman from Virginia, Mr. Wise, that his question of order did not reach the point. It was for the House to determine whether it should be entertained, and if no gentleman made a motion for that purpose it was the duty of the Speaker to test the sense of the House. He should therefore propound the question, "Shall the resolution be considered?" because for the Chair to decide in such a case would be a usurpation on its part. What the Chair might deem a breach of privilege the House might not deem so, and vice versa, and therefore he should propound the question which he had stated; to do which he had the authority of the fifth rule,[4] which said: "When any motion or proposition is made the question, 'Will the House now consider it?' shall not be put unless it is demanded by some Member or is deemed necessary by the Speaker."

Mr. Wise insisted that the resolution could not be considered except by a two-thirds vote suspending the rules, unless it could be shown that a question of privilege was involved. This was simply a resolution to raise a committee of inquiry. The House was not charged by the Secretary of War with malfeasance. He had simply made charges against a party in the House, and that could not be a question of privilege.

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[1] Third session Twenty-seventh Congress, Journal, p. 46; Globe, pp. 47 and 48.

[2] At that time Secretary of War in President Tyler's cabinet.

[3] John White, of Kentucky, Speaker.

[4] Now section 3 of Rule XVI.

The Speaker said that he could find no instance on record where the Chair had entertained of himself, and settled, what was a question of privilege; on the contrary, he found numerous instances where the House had settled it.

The question being put by the Speaker, the House decided, 86 yeas to 106 nays, that the resolution did not present a question of privilege.

2655. A resolution to investigate the charge that a Member had improperly abstracted papers from the files of an Executive Department was entertained as privileged. (Speaker overruled.)—On July 5, 1850,[1] the House voted that a charge in a newspaper that the Hon. Joshua R. Giddings, of Ohio, had abstracted from the files of the Post-Office Department certain papers relating to the post-office at Oberlin, Ohio, did not involve a question of privilege. On July 6 Mr. Orsamus B. Matteson, of New York, having made an explanation in behalf of the Second Assistant Postmaster-General, stating that the newspaper article was unauthorized by that official, but that Mr. Giddings did ask to see the papers referred to and examined them at the Department, Mr. Edward D. Baker, of Illinois, submitted the following resolution:

Resolved, That a committee of five be appointed by the Speaker to investigate the charges against the Hon. Joshua R. Giddings of having improperly abstracted papers from the files of the Post-Office Department, and that they have power to send for persons and papers.

The Speaker[2] decided that the whole subject was disposed of by the action of the House on the preceding day, the House having decided that it did not involve a question of privilege. He therefore ruled the resolution out of order.

Mr. William A. Richardson, of Illinois, appealed from the decision on the ground that the state of facts on this day was different from what it had been on the preceding day.[3]

Mr. Harman S. Conger, of New York, moved that the appeal be laid on the table, and on this question there appeared, yeas 54, nays 86.

The question being then taken on the appeal, the decision of the Chair was overruled, and the House decided that the resolution of Mr. Baker might be considered.

2656. One House should not take notice of bills or other matters depending in the other, or votes or speeches until they be communicated.— Section III of Jefferson's Manual, on the subject of privilege, provides:

It is highly expedient, says Hatsel, for the due preservation of the privileges of the separate branches of the legislature that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate which is essential to a free council. They are, therefore, not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated to them in the usual parliamentary manner. (2 Hats., 252; 4 Inst., 15; Seld. Jud., 53.) Thus the King's taking notice of the bill for suppressing soldiers, depending before the House; his proposing a provisional clause for a bill before it was presented to him by the two Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, where breaches of privilege (2 Nalson, 743); and in 1783, December 17, it was declared a breach of fundamental privileges, etc., to report any

[1] First session Thirty-first Congress, Journal, pp. 1085, 1086; Globe, p. 1343.

[2] Howell Cobb, of Georgia, Speaker.

[3] See section 2536 of this volume for decision of preceding day.

opinion or pretended opinion of the King on any bill or proceeding depending in either House of Parliament with a view to influence the votes of the members. (2 Hats., 251, 6.)

2657. Certain Members of the House having, in a published letter, sought to influence the vote of a Senator from their State in an impeachment case, it was held that no question of privilege arose thereby in the House.—On May 15, 1868,[1] Mr. George W. Woodward, of Pennsylvania, as a question of privilege, offered the following:

Whereas a letter has been published purporting to be addressed by Members of this House to a Senator from the State of Missouri, with a view of influencing his vote upon articles of impeachment preferred by this House against the President of the United States, and now pending in the Senate of the United States, sitting as a court of impeachment, which letter, as published, is as follows:

"WASHINGTON, *May 12, 1868.*

"SIR: On a consultation of the Republican Members of the House of Representatives from Missouri, in view of your position on the impeachment articles, we ask you to withhold your vote on any article upon which you can not vote affirmatively. This request is made because we believe the safety of the loyal people of the United States demands the immediate removal of Andrew Johnson from the office of President of the United States.

Respectfully,

"GEORGE W. ANDERSON.
"WILLIAM A. PILE.
"C. A. NEWCOMB.
"JOSEPH W. MCCLURG.
"BENJAMIN F. LOAN.
"JOHN F. BENJAMIN.
"JOSEPH J. GRAVELY.

"Hon. JOHN B. HENDERSON, *United States Senate.*"

And whereas such a communication, if addressed to a Senator sitting in judgment upon a President of the United States, is a gross breach of the privileges of the Senate, calculated to degrade the House of Representatives and to obstruct the course of public justice; therefore—

Resolved, That a select committee of seven be appointed, etc.

The Speaker[2] said:

In the opinion of the Chair it is not a question of privilege. The wording of the resolution expressly shows that it is not. The charge is that this was an infringement of the privileges of the Senate. It has not yet occurred, in the recollection of the Chair, that the House of Representatives has been recognized by the Senate as the protector of its privileges. If the privileges of the Senate are assailed, that body is competent to protect its own privileges; nor would the House consent that the Senate of the United States should assume to protect its privileges. The Chair, therefore, does not think that it is a question of privilege.

Mr. Woodward thereupon struck out the reference to the Senate, whereupon the Speaker said:

The Chair is still of the opinion that it is not a question of privilege. From a hurried examination of the precedents to be found in the Digest, the Chair can not see on what ground it could be held to be a question of privilege, unless it were "an alleged corrupt combination." But it does not appear that any corruption is charged in this case upon Members of the House. As to intercourse between Members of the House and Senators, whether oral or written, the Chair can not see that that properly involves a question of privilege, unless corrupt influences were used.[3]

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[1] Second session Fortieth Congress, Journal, pp. 695, 704; Globe, pp. 2471, 2497, 2527.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] The Journal of May 15 contains no reference to this action, no vote being taken on appeal. (Journal, pp. 690–694.)

On May 16 Mr. Charles A. Eldridge, of Wisconsin, introduced the subject again, reciting in the preamble "that an indecent and corrupt combination of the Representatives aforesaid has been entered into to improperly influence the Senator aforesaid in his judgment and decision."

The Speaker said:

The evident object of the language of this resolution is to charge that the letter written by the Representatives from Missouri to their Senator appears to be an indecent and corrupt combination of the Representatives aforesaid, but without a direct charge to that effect. In the opinion of the Chair it is not a corrupt combination and the Chair will state the reasons for his opinion. If the conversations and the interviews between Members of the House and those representing the same State in the Senate in writing are corrupt, then the same conversations in regard to matters pending before the Senate sitting as a court orally are corrupt. If the gentleman from Wisconsin had charged directly that there was a corrupt combination, the Chair would be disposed to submit the question to the House for them to decide whether it is or is not a question of privilege, as the rules allow him to do in doubtful cases, and as he intends to do, even as the resolution reads. In the opinion of the Chair it is not a corrupt combination. There does not appear on the face of it anything corrupt in its character.

The Chair thereupon submitted the question to the House, and it was decided, yeas 28, nays 82, that the preamble and resolution did not present a question of privilege.

2658. A charge of general corruption in the Government, made in the Senate, does not so reflect on the House as to raise a question of privilege.—On February 15, 1847,[1] Mr. William H. Brockenbrough, of Florida, offered a preamble and resolution setting forth that a Senator, in the Senate, had charged general corruption in the Government, and as the silence of the House might be construed as acquiescence in this charge, providing a committee to go to the Senate and ask for such specifications in regard to the charges as would enable the House to act in the matter. Mr. Brockenbrough offered this as a question of privilege, but Mr. Joseph R. Ingersoll, of Pennsylvania, objected to the introduction thereof on the ground that it did not present a question of privilege.

The Speaker[2] sustained the point of order.

2659. A resolution relating to the protection of the records of the House presents a question of privilege.—On January 26, 1885,[3] Mr. Strother M. Stockslager, of Indiana, claiming the floor for a question of privilege, presented a resolution instructing a committee to investigate the causes of a fire which occurred on the roof of the House that morning, and ascertain what action might be necessary in future to protect the records of the House from a recurrence of such an accident.

The Speaker[4] said:

The Chair thinks it is properly a matter of privilege.

2660. The House, after discussion, declined to make a general rule permitting Members to waive their privilege in attending court as witnesses, but gave the permission asked on behalf of a single Member.—

[1] Second session Twenty-ninth Congress, Journal, p. 351; Globe, p. 426.

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

[3] Second session Forty-eighth Congress, Record, p. 1004.

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

On May 6,1846,[1] Mr. George C. Dromgoole, of Virginia, rising to a question of privilege, stated that his colleague, Mr. George W. Hopkins, of Virginia, had been summoned to attend as a witness before the circuit court of the United States for the District of Columbia. The rule of the Manual forbade a Member to waive his privilege without leave of the House. Therefore Mr. Dronigoole offered this resolution:

Resolved, That any member of this House who has been, or may be, summoned to attend as a witness before the circuit court of the United States for the District of Columbia, now sitting in the City of Washington, has the leave of this House, during the present session, to attend as a witness in said court, if he shall think proper to do so.

The words "if he shall think proper to do so," were added at the suggestion of Mr. Robert C. Winthrop, of Massachusetts, who favored the assertion of the House's privileges to the fullest extent.

Considerable discussion arose over the resolution. Reference was made to the case of Thomas Cooper, tried while Congress was in session in Philadelphia. Members of Congress were summoned, but the court decided that Mr. Cooper was not entitled to compulsory process against them. Mr. John Quincy Adams, of Massachusetts, criticized the resolution as far more extensive than was necessary to meet the case. This was an exceedingly delicate matter for the House to decide. On the one hand were privileges which were a departure from the common law of the country in favor of Members of the House—not for their own advantage, but for the advantage of the country whose interests they represented. On the other hand the sacred powers of the courts of justice to summon witnesses before them was equally important to the liberties of the country, and to all its rights and interests. For his own part he should object to any general resolution. He should wish to recur to the practice heretofore of the British Parliament, from which our institutions, in this respect, had their origin, not for the purpose of considering any of these privileges, in relation to the British Parliament, as having any application here, but because the practice as there established, was a good source to consult as to the mode of proceeding in such cases.

Finally, after considerable debate, and the suggestion of several propositions, the House adopted the following substitute resolution, offered by Mr. Armistead Burt, of South Carolina:

This House having been informed that Mr. Hopkins, one of its Members, has been served with a process of the circuit court of the United States, now sitting in this city, to attend as a witness in a criminal proceeding pending in that court:

Resolved, That Mr. Hopkins have the leave of this House to attend said court.

2661. The House decided that the summons of a court to Members to attend and testify constituted a breach of privilege, and directed them to disregard the mandate.—On March 7, 1876,[2] certain Members of the Committee on Expenditures in the War Department, who had examined the charges against William W. Belknap, late Secretary of War, and had reported in favor of his impeachment, informed the House that they had been commanded by the supreme court of the District of Columbia "to bring all papers, documents, records, checks,

[1] First session Twenty-ninth Congress, Journal, pp. 757–759; Globe, pp. 767–769.

[2] First session Forty-fourth Congress, Journal, p. 528; Record, pp. 1522, 1538.

and contracts in your possession, or in possession of the committee of the House of Representatives on Expenditures in the War Department, in relation to the charge against said defendant of accepting a bribe or bribes while Secretary of War of the United States, and to attend the said court immediately to testify on behalf of the United States, and not depart from the court without leave of the court or district attorneys," and that they had attended.

A long debate arose over this statement. It was urged[1] that had the Members belonged to the British House of Commons they would, on their own statements, be punished for breach of privilege in attending without the permission of their House, the privilege being the privilege of the House and the individual Member having no right to waive it.

The House adopted a resolution the preamble of which gave a statement of the facts and declared that—

Whereas the mandate of said court is a breach of the privileges of this House:

Resolved, That the said committee and the members thereof are hereby directed to disregard said mandate until the further order of this House.

2662. Members having informed the House, as a matter of privilege, that they had been summoned before the grand jury of the District of Columbia, the House authorized them to respond to the summons.—On March 21, 1876,[2] Mr. Jeptha D. New, of Indiana, rising to a question of privilege, stated that he and two of his colleagues had been subpoenaed to appear before the grand jury of the District of Columbia. Inasmuch as it seemed to be well settled that the privilege of the Member was the privilege of the House and that privilege could not be waived except with the consent of the House, they had thought it their duty to submit the matter to the House.

Mr. J. Randolph Tucker, of Virginia, offered this resolution:

Whereas John M. Glover, Jeptha D. New, and A. Herr Smith, Members of this House and of the committee of this House for investigating the affairs of the real-estate pool of the District of Columbia, have been summoned to appear as witnesses before the grand jury of the district court of said District to testify; and whereas this House sees no reason why the said Members should not appear and testify: Therefore,

Resolved, That they be, and are hereby, authorized to appear and testify under the said summons.

After brief debate this resolution was agreed to without division.

2663. No officer or employee of the House may produce any paper belonging to the files of the House before a court without permission of the House.

No officer or employee of the House should furnish, except by authority of the House or a statute, any copy of any paper belonging to the files of the House.

No officer or employee should furnish any copy of any testimony given or paper filed on any investigation before the House or any of its committees.

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[1] By Mr. George F. Hoar, of Massachusetts.

[2] First session Forty-fourth Congress, Record, p. 1847.

On April 22, 1879,[1] Mr. J. Proctor Knott, of Kentucky, from the Committee on the Judiciary, made a report on a question which had arisen as follows:

The Adjutant-General of the Army had transmitted to the Speaker a subpoena addressed to Mr. Ferris Finch, file clerk of the House. This subpoena was given under the hand of D.G. Swaim, judge-advocate of a general court martial convened in the city of New York, and commanded Mr. Finch to appear there as a witness, and commanded him to bring with him manuscript of certain testimony given before the Military Affairs Committee of the House in 1872.

This letter of transmittal, with the accompanying subpoena, were referred to the Committee on the Judiciary.

The committee concluded that under the law the judge-advocate of a court martial was not authorized to compel the attendance of witnesses from beyond the limits of the State, Territory, or district in which the court-martial was ordered to sit. As to the further and more important question, whether or not any officer of the House had the right or could be lawfully compelled without the consent of the House to produce, in obedience to a subpoena duces tecum, any paper belonging to its files, the committee concluded, after examining the decisions of the courts, that the file clerk could not lawfully be compelled by a subpoena duces tecum to remove any paper or document whatever from the files of the House. He was not even mentioned or recognized in the rules as an officer or employee of the House. He was merely an assistant, employed by the Clerk to enable him to discharge one of the functions which, from the necessity of the case or the unbroken practice and usage of the House, pertained to his office, namely, that of preserving and arranging the archives of the House so that they might be produced immediately whenever the business of the House should require. He had no property in nor authority to remove a solitary paper from the files for any other purpose than those just specified. Were he to attempt to do so, the Clerk could forbid it, remove the papers beyond his reach, or remove him from his position, as he might choose. It was scarcely necessary to add that if he could not be compelled by legal process to take a paper from the files he had no authority to do so voluntarily, unless by the permission or under the direction of the House. The report continues:

Nor has the Clerk of the House himself any such authority, either of his own volition or in obedience to a subpoena duces tecum. It is simply his duty, as one of the incidents of his office, to keep the files of the House, preserve the papers belonging to its archives, and see that they are arranged in convenient and proper order. He has no such property in, possession of, or control over them as to impose any obligation upon him to produce them before a court, or to authorize him to do so of his own accord. They belong to the House, and are under its absolute and unqualified control. It can at any time take them from the custody of the Clerk refuse to allow them to be inspected by anyone, order them to be destroyed, or dismiss the Clerk for permitting any of them to be removed from the files without its expressed consent.

The committee discuss the inconvenience that might result from allowing papers from the files to be taken to places where they might not be accessible when needed, and also to the fact that good faith and public policy, especially in the case of witnesses, who might give testimony compromising to themselves, often required that certain documents be kept in the custody of the House. In this regard it had long been the settled and invariable practice of the English Parliament to refuse to permit

[1] First session Forty-sixth Congress, House Report No. 1; Journal, p. 94; Record, p. 535.

the testimony taken before any of its committees to be used in any criminal proceeding involving the party who testified, provided he testified truly.

It was a principle well understood that the President, the governor of a State, or the head of a department was not bound to produce papers or disclose information communicated to him when, in his own judgment, the disclosure would, on considerations of public policy, be improper or inexpedient.[1] And by parity of reasoning the House of Representatives, having the exclusive custody and absolute control of its own archives, should judge for itself whether the production or inspection of these papers would be injurious to the public interests or not, and refuse or permit such production or inspection accordingly as its own judgment might dictate.

The committee therefore recommended the adoption of the following resolution:

Resolved. 1. That no officer or employee of the House of Representatives has the right, either voluntarily or in obedience to a subpoena duces tecum, to produce any document, paper, or book belonging to the files of the House before any court or officer, nor to furnish any copy of any testimony given or paper filed on any investigation before the House or any of its committees, or of any other paper belonging to the files of the House, except such as may be authorized by statute to be copied, and such as the House itself may have made public, to be taken without the consent of the House first obtained.

2. That the consent of the House is hereby given to either party in the case of the United States against Col. D.S. Stanley, now pending before the general court-martial sitting in the city of New York, to have made and properly proven such copies of the papers mentioned in the subpoena duces tecum issued by the judge-advocate of said court and directed to Ferris Finch, esq., file clerk of the House of Representatives, on the 16th instant as may be desired, but that the originals thereof shall not be removed from the files of the House.

On April 22, as soon as made to the House, this report was adopted under operation of the previous question.[2]

2664. The House, in maintenance of its privilege, has refused to permit the Clerk to produce in court, in obedience to a summons, an original paper from the files, but has given the court facilities for making certified copies.

Instance wherein a report was ordered printed in the Journal.

On February 9, 1886, Mr. J. Randolph Tucker, of Virginia, from the Committee on the Judiciary, made a report[3] on the subject of a subpoena duces tecum issued by the Chief Justice of the Supreme Court of the District of Columbia and addressed to Hon. John B. Clark, Clerk of the House of Representatives, directing him to appear as a witness at a certain place within the District of Columbia and to bring with him a certain volume from the files of the House.[4]

The report states that the committee deemed it important to protect with strict care the privileges of the House in respect of its officers and its records, and papers upon file in its various offices, and under charge and in custody of its officers. Subject to this supreme duty the committee thought that all proper access to records and papers should be allowed in furtherance of the ends of justice, in the courts, but so as not to endanger the safety nor surrender the custody of the papers. It did not

[1] The committee here cite 1 Greenl., E., section 251.

[2] First session Forty-sixth Congress, Journal, pp. 181–186; Record, p. 690.

[3] First session Forty-ninth Congress, House Report No. 385.

[4] This subpoena had been laid before the House by the Speaker on the preceding day. (Journal, p. 594.)

appear in this case that the production of the book was necessary. The precedents of the Forty-fourth and Forty-sixth Congresses [1] were cited, and the following resolution was recommended to the House:

Resolved, 1. That by the privilege of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate or process of the ordinary courts of justice, be taken from such control or possession but by its permission.

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

3. That the Hon. John B. Clark, Clerk of the House, be authorized to appear at the place and before the officer named in the subpoena duces tecum before mentioned, but shall not take with him the books named therein, nor any document or paper on file in his office, or under his control or in his possession as Clerk of the House.

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

5. That a copy of this report and these resolutions be transmitted to the said court as a respectful answer to the subpoena aforementioned.

On February 9 these resolutions were agreed to by the House without debate.[2]

2665. The Secretary of the Senate being subpoenaed to appear before a committee of the House with certain papers from the files, the Senate, after a discussion as to privilege, empowered him to attend with the papers in his custody.—On June 7, 1878,[3] a letter was laid before the Senate from the Secretary of the Senate stating that on the 3d instant he was served with a subpoena to appear before a special committee of the House of Representatives, of which Hon. Clarkson N. Potter was chairman, and to bring with him all books, returns, and papers in his custody as secretary of the Senate in any manner relating to the election of Presidential electors of the State of Louisiana in the year 1876. The Secretary stated that he had obeyed the subpoena, and the papers had been from day to day before the committee, in the custody, however, of one of the clerks of his office. The Secretary requested instructions as to his duty.

Mr. George F. Edmunds, of Vermont, offered the following:

Ordered, That the Secretary of the Senate attend before the committee of the House of Representatives mentioned in the letter of the Secretary with the papers desired by said committee, and submit said papers to the examination of said committee from time to time according to its convenience.

The objection was made that the House had commanded the papers as a legal and superior authority. It was an attempt of the House to visit the archives of the Senate, or at least to command documents in the custody of the Senate. The House should have asked leave of the Senate for its officer to attend. The question was

[1] See sections 2661–2663 of this chapter.

[2] First session Forty-ninth Congress, Record, p. 1295; Journal, p. 602. The report was ordered printed in the Journal.

[3] Second session Forty-fifth Congress, Record, pp. 4228–4232.

raised that the electoral certificates were not especially the archives of the Senate, as no constitution or law made them such, but it was replied that they never had been in any other custody since the foundation of the Government, and they were actually among the papers of the Secretary's office.

Finally the Senate agreed to the order, modified as follows:

Ordered, Reserving all questions touching the regularity of the action of the committee of the House of Representatives in calling for the papers, that the Secretary of the Senate attend before the committee of the House of Representatives mentioned in the letter of the Secretary, with the papers desired by said committee, and submit said papers to the examination of said committee from time to time, according to its convenience, retaining, however, the custody of said papers.

2666. The Secretary of the Senate being subpoenaed to produce a paper from the files of the Senate, permission was given him to do so after a discussion as to whether or not he was exempted by privilege from the process.—In the Senate, on December 28, 1842,[1] the Chair laid before the Senate a subpoena issued from the circuit court of the United States for the District of Columbia, which had been served upon the Secretary of the Senate, with a view to compel his attendance in court with a certain antibank memorial, on the files of the Senate. The Chair stated that the Secretary was in doubt as to what to do, having no authority to take from the files any portion of the public archives.

Considerable discussion arose as to the character of the office of the Secretary, whether, being a ministerial officer, he was entitled to the privilege which attached to Senators and exempted them from the processes of the courts. The question was also raised as to whether a transcript would not be sufficient to carry into court.

Finally, on motion of Senator J. M. Berrien, of Georgia, the following was agreed to:

Resolved, That the Secretary of the Senate have leave to take from the files of the Senate the antibank memorial specified in the subpoena duces tecum issued from the circuit court of the United States for the District of Columbia, in the case of Henry Addison *v.* Robert White, this day served upon him for the purpose of being exhibited as evidence in the said case.

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[1] Third session Twenty-seventh Congress, Globe, pp. 88, 89 .