

Chapter LV.

THE CONDUCT OF INVESTIGATIONS.

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1750. Witnesses are summoned in pursuance and by virtue of the authority conferred on a committee to send for persons and papers.—On January 15, 1858,⁶ Mr. George S. Houston, of Alabama, by unanimous consent, from the Committee on the Judiciary, reported the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on the Judiciary be authorized to send for persons and papers and examine witnesses on oath in relation to the charges made against John C. Watrous, judge of the United States court for the western district of the State of Texas.

¹ See Chapter LXIV, sections 2025–2054 of this volume, for functions of the House in investigations with a view to impeachment. Punishment of witnesses for contempt, chapter LIII, sections 1666–1724 of this volume. Instances of witnesses summoned by House in an election case, sections 598, 764 of Volume I. Authorization of investigation by Senate in the case of Smoot, section 481 of Volume I.

² In a contempt case at the bar of the House, section 1602 of Volume II. Testimony sometimes kept secret, section 1694 of this volume.

³ Members called before the House as witnesses, section 1726 of this volume.

⁴ As in the case of Roberts also, section 475 of Volume I.

⁵ Power of a subcommittee when authorized to send for persons and papers, section 2029 of this volume. Forms of subpoenas, sections 1668, 1673, 1695, 1699, 1701, 1702, 1732.

⁶ First session Thirty-fifth Congress, Journal, p. 175; Globe, p. 304.

1751. Resolution of the House authorizing a committee to make an investigation.—On April 21, 1906,¹ Mr. Charles H. Grosvenor, of Ohio, from the Committee on Rules, submitted the following resolution, which was agreed to by the House:

Resolved, That the Speaker of the House of Representatives be, and he is hereby, directed to appoint from the membership of the House a committee of five, with full power and whose duty it shall be to make a full and complete investigation of the management of the Government Hospital for the Insane and report their findings and conclusions to the House; said committee is empowered to send for persons and papers, to summon and compel the attendance of witnesses, to administer oaths, to take testimony and reduce the same to writing, and to employ such clerical and stenographic help as may be necessary, all expenses to be paid out of the contingent fund of the House.

1752. The resolutions of the House creating, empowering, and instructing the select committee which in 1856 investigated affairs in the Territory of Kansas.

The Kansas committee of 1856 was empowered by the House to employ or dismiss clerks and assistant sergeants-at-arms and to administer oaths to them.

The Kansas committee of 1856 was empowered to send for persons and papers and to arrest and bring before the House any witness in contempt.

The House requested the President, if necessary, to afford military protection to the Kansas committee of 1856.

On March 19, 1856,¹ after debate and the consideration of several propositions, the House adopted the following resolutions:

Resolved, That a committee of three of the members of this House, to be appointed by the Speaker, shall proceed to inquire into and collect evidence in regard to the troubles in Kansas generally and particularly in regard to any fraud or force attempted or practiced in reference to any of the elections which have taken place in said Territory, either under the law organizing said Territory or under any pretended law which may be alleged to have taken effect therein since; that they shall fully investigate and take proof of all violent and tumultuous proceedings in said Territory, at any time since the passage of the Kansas-Nebraska act, whether engaged in by residents of said Territory or by any person or persons from elsewhere going into said Territory and doing, or encouraging others to do, any act of violence or public disturbance against the laws of the United States, or the rights, peace, and safety of the residents of said Territory; and for that purpose said committee shall have full power to send for and examine, and take copies of, 0 such papers, public records, and proceedings as in their judgment will be useful in the premises; and also to send for persons, and examine them on oath or affirmation as to matters within their knowledge touching the matters of the said investigation; and said committee, by their chairman, shall have power to administer all necessary oaths or affirmations connected with their aforesaid duties.

Resolved further, That said committee may hold their investigations at such places and times as to them may seem advisable, and that they have leave of absence from the duties of this House until they shall have completed such investigation; that they be authorized to employ one or more clerks and one or more assistant sergeants-at-arms to aid them in their investigations, and may administer to them an oath or affirmation faithfully to perform the duties assigned to them respectively, and to keep secret all matters which may come to their knowledge touching such investigation as said committee shall direct, until the report of the same shall be submitted to this House; and said committee may discharge any such clerk or assistant sergeant-at-arms for neglect of duty or disregard of instructions in the premises, and employ others under like regulations.

Resolved further, That if any person shall in any manner obstruct or hinder said committee, or

¹First session Fifty-ninth Congress, Record, p. 5660.

²First session Thirty-fourth Congress, Journal pp. 700, 707, 719; Globe, pp. 674, 692.

attempt so to do, in their said investigation, or shall refuse to attend on said committee, and to give evidence when summoned for that purpose, or shall refuse to produce any paper, book, public record, or proceeding in their possession or control, to said committee when so required, or shall make any disturbance where said committee are holding their sittings, said committee may, if they see fit, cause any and every such person to be arrested by said assistant sergeant-at-arms, and brought before this House to be dealt with as for a contempt.

Resolved further, That for the purpose of defraying the expenses of said commission there be, and hereby is, appropriated the sum of ten thousand dollars, to be paid out of the contingent fund of this House.

Resolved further, That the President of the United States be, and is hereby, requested to furnish to said committee, should they be met with any serious opposition, by bodies of lawless men, in the discharge of their duties aforesaid, such aid from any military force as may at the time be convenient to them, as may be necessary to remove such opposition, and enable said committee, without molestation, to proceed with their labors.

Resolved further, That when said committee shall have completed said investigation they report all the evidence so collected to this House.

This committee as finally appointed consisted of Messrs. William A. Howard, of Michigan; John Sherman, of Ohio, and Mordecai Oliver, of Missouri.

They reported on July 1.¹

1753. The House sometimes enlarges the powers of a select committee after it has been created.

The House sometimes directs the Sergeant-at-Arms to attend the sittings of a committee and serve the subpoenas.

An investigating committee being empowered to sit during recess, the Speaker was authorized and directed to sign subpoenas as during a session.

On July 17, 1861,² Mr. William S. Holman, of Indiana, from the select committee appointed to investigate departmental contracts, reported the following resolution:

Resolved, That the provisions of the resolution appointing the select committee to inquire into and report in relation to certain contracts made by the departments for provisions, supplies, etc., be so extended as to embrace an inquiry into all the facts and circumstances of all the contracts and agreements already made, and all such contracts and agreements hereafter to be made, prior to the final report of the committee, by or with any department of the Government, in any wise connected with or growing out of the operations of the Government in suppressing the rebellion against its constituted authorities.

Resolved, That the said committee be authorized to sit during the recess of Congress, at such times and places as may be deemed proper.

Resolved, That said committee be authorized to employ a stenographer as clerk at the usual rate of compensation.

Resolved, That the Sergeant-at-Arms of the House be directed to attend in person, or by assistant, the sittings of the committee, and serve all the subpoenas put into his hands by the committee, pay the fees of all witnesses, and the necessary expenses of the committee.

Resolved, That the Speaker of the House, during the recess of Congress, is hereby authorized and directed to issue subpoenas to witnesses, upon the request of the committee, in the same manner as during the session of Congress.

¹ On March 25, 1856 (First session Thirty-fourth Congress, Journal, p. 719; Globe, p. 728), on motion of Mr. Percy Walker, of Alabama, the House agreed to this resolution:

“*Resolved*, That the Committee on the Judiciary be instructed to inquire and report to this House whether the Kansas Investigating Committee have the power to coerce the attendance of witnesses and punish for contempts.”

It does not appear that the committee reported.

² First session Thirty-seventh Congress, Journal, p. 98; Globe, pp. 168–171.

After debate as to the propriety of authorizing an investigation of such wide scope, the House, by a vote of 49 yeas to 77 nays, refused to lay the resolutions on the table.

The resolutions were then agreed to, yeas 81; nays 42.

1754. Committees of investigation, by authority of the House expressly given, often carry on their work by subcommittees.—In 1869,¹ the House authorized a subcommittee of the Committee of Elections to be appointed by the committee, with power to send for persons and papers, administer oaths, and investigate the elections in Louisiana, the investigation to take place during the approaching recess of Congress.

1755. On January 16, 1874,² the House agreed to the following:

Resolved, That the chairman of any subcommittee of the Committee on Patents be authorized to administer oaths in the investigation of any matter pending before such subcommittee.

1756. On April 7, 1876,³ Mr. Washington C. Whitthorne, of Tennessee, by unanimous consent, submitted the following resolution, which was agreed to:

Resolved, That for the purpose of enabling the Committee of this House on Naval Affairs to discharge the duties imposed upon them by the House resolution instructing them to inquire into certain alleged abuses and frauds at the different navy-yards of the United States, and the misapplication of appropriation made for the construction of eight vessels of war, * * * it is hereby directed that said committee, through the subcommittee appointed for that purpose, consisting of Messrs. Whitthorne, Jones, Harris, and Burleigh, shall make said investigation, as far as it relates to the Philadelphia and League Island navy-yards, at said yard and at the city of Philadelphia.

On April 27 a similar resolution was agreed to, authorizing another subcommittee of the Naval Affairs Committee to make investigation at the Brooklyn Navy-Yard and in the cities of New York and Brooklyn.

1757. On May 23, 1876,⁴ Mr. Joseph C. S. Blackburn, of Kentucky, by unanimous consent, submitted this resolution, which was agreed to:

Resolved, That the Louisiana investigating committee, while in New Orleans, have authority to take testimony by subcommittees in their discretion, and that the chairmen of such subcommittees be authorized to administer oaths to witnesses.

1758. On June 20, 1876,⁵ Mr. Earley F. Poppleton, of Ohio, by unanimous consent, from the Committee on Expenditures on Public Buildings, submitted the following resolution, which was agreed to:

Resolved, That the Committee on Expenditures on Public Buildings be, and is hereby, authorized to send a subcommittee of said committee to New York City and such other places as the committee may deem proper and necessary for the purpose of taking testimony in matters of expenditures on public buildings in said city and elsewhere, and that said subcommittee have power to send for persons and papers and employ a stenographer, and the chairman of such subcommittee shall have power to administer oaths.

¹First session Forty-first Congress, Journal, p. 183; Globe, p. 588.

²First session Forty-third Congress, Journal, p. 249; Record, p. 716.

³First session Forty-fourth Congress, Journal, pp. 766, 874.

⁴First session Forty-fourth Congress, Journal, p. 1000.

⁵First session Forty-fourth Congress, Journal, p. 1130; Record, p. 3942.

1759. On April 21, 1890,¹ on motion of Mr. John F. Lacey, of Iowa, the Committee on Elections reported the following resolution, which was agreed to by the House:

Resolved, That the subcommittee of the Committee on Elections, charged with the investigation of the contest of Clayton *v.* Breckinridge, are authorized to employ such deputy sergeants-at-arms, not exceeding three, and additional stenographers, as may be deemed necessary by them for their assistance in said investigation.

1760. A committee charged with an investigation may ask the House to broaden the scope of its authority.—On January 12, 1857,² the select committee appointed to investigate certain alleged combinations among Members for preventing or furthering legislation corruptly, directed its chairman to report to the House for consideration a resolution to broaden the scope of the committee's authority, so that it might not only investigate as to corrupt transactions in relation to bills "now pending" before the House, but also in regard to bills before the House at any time during the session. On January 13 the committee were notified by the Clerk of the House that the resolution had been agreed to by the House.

1761. A committee making an investigation sometimes makes a report asking the House for instructions.—On April 12, 1850,³ Mr. Armistead Burt, of South Carolina, reported from the select committee appointed to investigate the connection of Hon. George W. Crawford, Secretary of War, with the Galphin claim, that the committee were in some doubt as to the extent of the investigation which they were empowered to make, and asking the House for instructions. The House thereupon agreed to a resolution instructing the committee. Mr. Burt made his report asking for the instructions by unanimous consent.

1762. The House, by general order, has revoked the powers of all its existing committees of investigation.—On November 25, 1867,⁴ the House passed a general order revoking leaves to committees to send for persons and papers, examine witnesses, or travel at the public expense.

1763. The two Houses, by concurrent resolution, constituted a joint select committee of investigation, with power to send for persons and papers and sit during the recess of Congress.

By concurrent resolution the two Houses empowered the Vice-President and Speaker to sign subpoenas during the recess of Congress.

On January 13, 1864,⁵ the Senate sent to the House a concurrent resolution, which, as amended by the House and concurred in by the Senate, had this final form:

Resolved, That a joint committee of three members of the Senate and four Members of the House of Representatives be appointed to inquire into the conduct and expenditures of the present war; and may further inquire into all the facts and circumstances of contracts and agreements already made, and such contracts and agreements hereafter to be made, prior to the final report of the committee, by or with any Department of the Government, in anywise connected with or growing out of the operations

¹ First session Fifty-first Congress, Journal, p. 503; Record, p. 3628.

² Third session Thirty-fourth Congress, House Report No. 243, pp. 39, 40.

³ First session Thirty-first Congress, Journal, p. 785; Globe, p. 717.

⁴ First session Fortieth Congress, Journal, p. 265; Globe, p. 791.

⁵ First session Thirty-ninth Congress, Journal, pp. 136, 155, 156, 167; Globe, pp. 173, 260, 275.

of the Government in suppressing the rebellion against its constituted authority; and that the said committee shall have authority to sit during the sessions of either House of Congress, and during the recess of Congress, and at such times and places as said committee shall deem proper, and also employ a stenographer as clerk, at the usual rate of compensation.

And be it further resolved, That the said committee shall have power to send for persons and papers, and that the Sergeant-at-Arms of the House or of the Senate, as the said committee may direct, shall attend in person, or by assistant, the sittings of the said committee, and serve all subpoenas put into his hands by the committee, pay the fees of all witnesses, and the necessary and proper expenses of the committee.

And be it further resolved, That the Speaker of the House, or the Vice-President and President of the Senate, shall be authorized to issue subpoenas to witnesses during the recess of Congress upon the request of the committee in the same manner as during the sessions of Congress, and said committee shall have authority to report in either branch of Congress at any time.

1764. In 1871,¹ the House and Senate agreed to the following concurrent resolution, which originated in the Senate and was amended in the House:

Resolved by the Senate of the United States (the House of Representatives concurring), That a joint committee consisting of seven Senators and fourteen Representatives be appointed, whose duty it shall be to inquire into the condition of the late insurrectionary States so far as regards the execution of the laws and the safety of the lives and property of the citizens of the United States, with leave to report at any time during the next or any subsequent session of Congress the result of their investigations to either or both Houses of Congress, with such recommendations as they may deem expedient; that said committee be authorized to employ clerks and stenographers, to sit during the recess, and to send for persons and papers, to administer oaths and take testimony, and to visit at their discretion, through subcommittees, any portions of said States during the recess of Congress; and all expenses of said committee shall be paid out of the contingent fund of the Senate, upon vouchers approved by the chairman of said committee.

1765. Instance of legislation directing and empowering executive officers of the Government to investigate and report.—On February 12, 1906,² the Senate passed the following joint resolution (S. R. 32) instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time:

Whereas persons engaged or wishing to engage in mining and shipping bituminous coal and other products from one State of the United States to other States of the United States complain, * * * etc.: Therefore, be it

Resolved by the Senate and House of Representatives in Congress assembled, That the Interstate Commerce Commission be authorized and instructed to immediately inquire, * * * etc.

On February 13³ this resolution was received in the House and referred to the Committee on Interstate and Foreign Commerce.

On February 23⁴ the House agreed to the joint resolution with the following amendments:

Strike out the preamble and all after the enacting clause and insert the following:

“That the Interstate Commerce Commission be, and is hereby, authorized and instructed immediately to inquire, investigate, and report to Congress, or to the President when Congress is not in session, from time to time, as the investigation proceeds:

“First. Whether any common carriers by railroad, subject to the interstate-commerce act, or either of them, own or have any interest in, by means of stock ownership in other corporations or otherwise,

¹ First session Forty-second Congress, Journal, pp. 89, 141; Globe, pp. 180, 534, 537.

² First session Fifty-ninth Congress, Record, pp. 2424–2431.

³ Record, p. 2493.

⁴ Record, p. 2885.

any of the coal or oil which they or either of them, directly or through other companies which they control or in which they have an interest, carry over their or any of their lines as common carriers, or in any manner own, control, or have any interest in coal lands or properties or oil lands or properties.

“Second. Whether the officers of any of the carrier companies aforesaid, or any of them, or any person or persons charged with the duty of distributing cars or furnishing facilities to shippers, are interested, either directly or indirectly, by means of stock ownership or otherwise, in corporations or companies owning, operating, leasing, or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties, or oil traffic over the railroads with which they or any of them are connected or by which they or any of them are employed.

“Third. Whether there is any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize or combines or conspires with any other carrier, company or companies, person or persons, to monopolize any part of the trade or commerce in coal or oil or traffic therein among the several States, or with foreign nations, and whether or not, and if so to what extent, such carriers, or any of them, limit or control, directly or indirectly, the output of coal mines or the price of coal and oil fields or the price of oil.

“Fourth. If the Interstate Commerce Commission shall find that the facts, or any of them, set forth in the three paragraphs above do exist, then that it be further required to report as to the effect of such relationship, ownership, or interest in coal or coal properties and coal traffic, or oil, oil properties or oil traffic aforesaid, or such contracts or combinations in form of trust or otherwise, or conspiracy, or such monopoly or attempt to monopolize or combine or conspire as aforesaid, upon such person or persons as may be engaged independently of any other persons in mining coal or producing oil and shipping the same, or other products, who may desire to so engage, or upon the general public as consumers of such coal or oil.

“Fifth. That said Commission be also required to investigate and report the system of car supply and distribution in effect upon the several railway lines engaged in the transportation of coal or oil as aforesaid, and whether said systems are fair and equitable, and whether the same are carried out fairly and properly; and whether said carriers, or any of them, discriminate against shippers or parties wishing to become shippers over their several lines, either in the matter of distribution of cars or in furnishing facilities or instrumentalities connected with receiving, forwarding, or carrying coal or oil as aforesaid.

“Sixth. That said Commission be also required to report as to what remedy it can suggest to cure the evils above set forth, if they exist.

“Seventh. That Said Commission be also required to report any facts or conclusions which it may think pertinent to the general inquiry above set forth.

“Eighth. That said Commission be required to make this investigation at its earliest possible convenience and to furnish the information above required from time to time and as soon as it can be done consistent with the performance of its public duty.”

Amend the title so as to read:

“Joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil and report on the same from time to time.”

This amendment was agreed to by the Senate and the joint resolution became a law.¹

1766. Decision of the Supreme Court that a law of Congress empowering the Federal courts to compel testimony before the Interstate Commerce Commission was constitutional.

Discussion of the power of investigation possessed by Congress in relation to the individual's right of privacy.

On May 26, 1894² the Supreme Court of the United States decided the case of *Interstate Commerce Commission v. Brimson*, Mr. Justice Harlan delivering the

¹ 34 Stat. L., p. 823.

² 154 U. S. p. 447; 155 U.S., p. 3. See also *Hale v. Henkel*, 201 U. S., p. 43; *American Tobacco Company v. Werckmeister*, 207 U. S., p. 284.

opinion of the court, and Mr. Justice Brewer, with the concurrence of the Chief Justice and Mr. Justice Jackson, filing a dissenting opinion. The case involved was an appeal which brought up for review a judgment of the circuit court, delivered on a petition of the Interstate Commerce Commission, based on the twelfth section of the act authorizing the Commission to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documents, books, and papers, the said law being as follows:

The Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

The opinion of the court thus propounds the question at issue:

Is the twelfth section of the act unconstitutional and void, so far as it authorizes or requires the circuit courts of the United States to use their process in aid of inquiries before the Commission?

After discussing the powers of Congress over interstate commerce and its right to obtain full information, the court says:

It was clearly competent for Congress, to that end, to invest the Commission with authority to require the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents relating to any matter legally committed to that body for investigation. We do not understand that any of these propositions are disputed in this case.

After arguing that when Congress has the right to do a certain thing it may select such means as it may deem proper, the court says:

An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce and with power to call witnesses before it, and to require the production of books, documents, and papers relating to that subject, would go far toward defeating the object for which the people of the United States placed commerce among the States under national control.

The opinion of the court goes on to discuss what is a case or controversy to which, under the Constitution, the judicial power of the United States extends, and concludes that the petition of the Interstate Commerce Commission in accordance with the terms of the law in question was such as could properly be brought under judicial cognizance. The opinion continues:

We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. (*Kilbourn v. Thompson*, 103 U. S., 168, 190.) We said in *Boyd v. United States* (116 U. S., 616, 630)—and it can not be too often repeated—that the principles that embody the essence of constitutional liberty and

security forbid all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of his life. As said by Mr. Justice Field in *In re Pacific Railway Commission* (32 Fed. Rep., 241, 250), "of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others."

After referring to the case of *Counselman v. Hitchcock* (142 U. S., p. 547) as one wherein the guaranties of personal rights are fully discussed, the opinion cites various other cases and reaffirms that these duties assigned the circuit court are judicial in their nature:

The inquiry whether a witness before the Commission is bound to answer a particular question propounded to him or to produce books, papers, etc., in his possession and called for by that body is one that can not be committed to a subordinate administrative or executive tribunal for final determination. Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment. Except in the particular instances enumerated in the Constitution, and considered in *Anderson v. Dunn* (6 Wheat, 204) and in *Kilbourn v. Thompson* (103 U. S., 168, 190), of the exercise by either House of Congress of its right to punish disorderly behavior upon the part of its Members, and to compel the attendance of witnesses, and the production of papers in election and impeachment cases, and in cases that may involve the existence of those bodies, the power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises. See *Whitcomb's case* (120 Mass., 118) and authorities there cited.

After discussion of further phases of the case, the court proceeds to remand the case to the circuit court that the latter may proceed with the case on its merits.

The minority opinion dissented from the proposition that the proceeding in question was judicial in its nature, and held that the courts could not be turned into commissions of inquiry to aid legislative action, and held that the Commission or the legislature should seek information by the ordinary processes of legislative or administrative bodies.

1767. A decision that the Federal courts may not be made by act of Congress an agency for compelling testimony before a commission.—On August 29, 1887,¹ Circuit Justice Field, in the northern district of California, delivered the opinion of the court in the matter of the application of the Pacific Railway Commission. This Commission had been created under the act of Congress of March 3, 1887, "authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes." The act authorized the President to appoint three Commissioners to make a searching investigation into the business of the railways in question, and also to ascertain and report—

whether any of the directors, officers, or employees of said companies, respectively, have been, or are now, directly or indirectly, interested, and to what amount or extent, in any other railroad, steamship, etc., * * * or other business company or corporation, and with which any agreements, undertakings, or leases have been made or entered into; * * * and further, to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration, or done any other act or thing for the purpose of influencing legislation.

¹ 32 Federal Reporter, p. 241.

The act further provided that the Commissioners, or either of them, should have the power—

to require the attendance and testimony of witnesses, and the production of all books, papers, contracts, agreements, and documents relating to the matter under investigation, and to administer oaths; and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

The act further provided:

That any of the circuit or district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring any such person to appear before said Commissioners, or either of them, as the case may be, and produce books and papers, if so ordered, and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In the discharge of their duties the Commission attended at San Francisco, and called before them Leland Stanford, president of the Central Pacific Railroad Company, one of the companies which received aid in bonds from the Government. Mr. Stanford's testimony showed that he had expended for "general expenses" large sums of the railroad's money, but he declined to answer interrogatories intended to develop the facts as to whether or not any of these sums had been used to influence legislation. He furthermore took the ground that the money expended did not affect the Government's interest in the road; the matter was one merely between himself and the stockholders and directors of the road.

Mr. Stanford, in resisting the efforts of the Commission, further made the point that the Commission propounded questions involving criminality on his part. In respect to this point the law creating the Commission provided—

that the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The district attorney, acting for the Commission, moved in the circuit court for a peremptory order to compel the witness to answer the interrogatories.

This motion was denied, Circuit Justice Field delivering the opinion of the court. In the course of this opinion he said especially in reference to the action of counsel for respondent in assailing the validity of the act creating the Commission:

The Pacific Railway Commission, created under the act of Congress of March 3, 1887, is not a judicial body; it possesses no judicial powers; it can determine no rights of the Government, or of the companies whose affairs it investigates. Those rights will remain the subject of judicial inquiry and determination as fully as though the Commission had never been created; and in such inquiry its report to the President of its action will not be even admissible as evidence of any of the matters investigated. It is a mere board of inquiry, directed to obtain information upon certain matters, and report the result of its investigations to the President, who is to lay the same before Congress. In the progress of its investigations, and in the furtherance of them, it is in terms authorized to invoke the aid of the courts of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents. And the act provides that the circuit or district court of the United States, within the jurisdiction of which the inquiry of the Commission is had, in case of contumacy or refusal of any person to obey a subpoena to him, may issue an order requiring such person to appear before the Commissioners, and produce books and papers, and give evidence touching the matters in question.

The investigation directed is to be distinguished from the inquiries authorized upon taking the census. The Constitution provides for an enumeration of the inhabitants of the States at regular periods, in order to furnish a basis for the apportionment of Representatives, and, in connection with the ascertainment of the number of inhabitants, the act of Congress provides for certain inquiries as to their age, birth, marriage, occupation, and respecting some other matters of general interest, and for the refusal of anyone to answer them a small penalty is imposed. (Rev. Stat., sec. 2171.) There is no attempt in such inquiries to inquire into the private affairs and papers of anyone, nor are the courts called upon to enforce answers to them. Similar inquiries usually accompany the taking of a census of every country and are not deemed to encroach upon the rights of the citizen. And in addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it can not compel the production of the private books and papers of the citizen for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain.

Of all the rights of the citizen few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault but exemption of his private affairs, books, and papers from the inspection and scrutiny of others.

The opinion then goes on to discuss the rights of the citizen to privacy, citing and commenting on the cases of *Boyd v. United States* (116 U. S., 616) and *Kilbourn v. Thompson* (103 U. S., 168), and then discusses the functions of the courts, concluding that, whether the act creating the Pacific Railroad Commission intended to force the answering of all questions, or only such as were proper in view of the principles of law, it was yet in either case void:

The Federal courts, under the Constitution, can not be made the aids to any investigation by a commission or a committee into the affairs of anyone. * * * The conclusions we have thus reached disposes of the petition of the railway commissioners, and renders it unnecessary to consider whether the interrogatories propounded were proper in themselves, or were sufficiently met by the answers given by Mr. Stanford, or whether any of them were open to objection for the assumptions they made, or the imputations they implied. It is enough that the Federal courts can not be made the instruments to aid the commissioners in their investigations.

1768. The parliamentary law as to the examination of witnesses.

Rule for asking questions of a person under examination before a committee or at the bar of the House.

According to the parliamentary law questions asked a witness are recorded in the Journal.

The parliamentary law provides that the answers of witnesses before the House shall not be written down, but such is not the rule before committees.

A person under examination at the bar withdraws while the House deliberates on the objection to a question.

Either House may request of the other the attendance of a person in custody of the latter House.

Either House may request by message, but not command, the attendance of a Member of the other House.

A message requesting the attendance of a Member of the other House should state clearly the purpose thereof.

According to the parliamentary law neither House compels its Members to attend the other House in obedience to a request.

The parliamentary law relating to the appearance of counsel.

Jefferson's Manual, in Section XIII, has the following in regard to the examination of witnesses:

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. (Resolution House of Commons, 1 Car. 1, 1625; Rush, L. Parl., 115; Grey, 16-22, 92; 8 Grey, 21, 23, 27, 45.)

Witnesses are not to be produced but where the House has previously instituted an inquiry (2 Hats., 102), nor then are orders for their attendance given blank. (3 Grey, 51.)

When any person is examined before a committee, or at the bar of the House, any member wishing to ask the person a question must address it to the speaker or chairman, who repeats the question to the person, or says to him, "You hear the question; answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw, for no question can be moved or put or debated while they are there. (2 Hats., 108.) Sometimes the questions are previously settled in writing before the witness enters. (Ib., 106, 107; 8 Grey, 64.) The questions asked must be entered in the journals. (3 Grey, 81.) But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. (7 Grey, 52, 334.)

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. (3 Hats., 52.)

A member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. (Jour. H. of C., Jan. 22, 1744-5.)

Either House may request, but not command, the attendance of a member of the other. They are to make the request by message of the other House, and to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The House then gives leave to the member to attend, if he choose it; waiting first to know from the member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There, it is to be a request. (3 Hats., 17; 9 Grey, 306, 406; 10 Grey, 133.)

Counsel are to be heard only on private, not on public, bills, and on such points of law only as the House shall direct. (10 Grey, 61.)

1769. The Speaker, the chairman of the Committee of the Whole, or any other committee, or any Member may administer oaths to witnesses in any case under examination.

The statutes provide that a person summoned as a witness who fails to appear or refuses to testify shall be punished by fine or imprisonment.

No witness is privileged to refuse to testify when examined by the House or its committee on the ground that his testimony would disgrace himself.

Testimony given before a House or its committee may not be used as evidence against the witness in any court, except in case of alleged perjury

The statutes provide that the fact of a witness' contumacy shall be certified by the Speaker under seal of the House to the district attorney of the District of Columbia.

The law in relation to witnesses (ses. 101-104, 859, R. S.) provides:

SEC. 101.¹ The President of the Senate, the Speaker of the House of Representatives, or a chairman of a Committee of the Whole, or of any committee of either House of Congress [or any Member],² is empowered to administer oaths to witnesses in any case under their examination.³

SEC. 102.⁴ Every person who, having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisoned in a common jail for not less than one month nor more than twelve months.

SEC. 103.⁵ No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

SEC. 859.⁶ No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the same privilege.

SEC. 104.⁷ Whenever a witness summoned as mentioned in section 102 fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

1770. The House may in a resolution creating a committee of investigation empower it to examine witnesses, but may not give it leave to report at any time, except by a special order changing the rules.—On May 13, 1878,⁸ 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 with power to administer oaths and “leave to report at any time.” The resolution also conferred on the chairman the power to administer oaths.

Mr. Omar D. Conger, of Michigan, made the point of order that the resolution changed or enlarged the law with respect to the power of administering oaths to witnesses.

The Speaker⁹ overruled the point of order.

Mr. James A. Garfield, of Ohio, made the point of order against that portion

¹ Acts of 1798 and 1817, 1 Stat. L., p. 554; 3 Stat. L., p. 345.

² 23 Stat. L., p. 60.

³ Act of May 3, 1798. This law was proposed to obviate the inconveniences that had been experienced in the examination of witnesses (second session Fifth Congress, Journal, pp. 203, 250; Annals, p. 1069). On July 6, 1797 (first session Fifth Congress, Annals, p. 458), during proceedings relating to the impeachment of William Blount, the Speaker had declined to administer the oath to witnesses without authority, and the House declined to give him authority.

⁴ Act of 1857, 11 Stat. L., p. 155.

⁵ Act of 1862, 12 Stat. L., p. 333.

⁶ Acts of 1857 and 1862, 11 Stat. L., p. 156; 12 Stat. L., p. 333.

⁷ Act of 1857, 11 Stat. L., p. 156.

⁸ Second session Forty-fifth Congress, Journal, pp. 1072–1074; Record, pp. 3444, 3445.

⁹ Samuel J. Randall, of Pennsylvania, Speaker.

of the resolution giving the committee leave to report at any time, as that would change the order of business prescribed by the rules.

The Speaker sustained the point of order.

1771. A former regulation as to counsel appearing before committees.—On May 20, 1876,¹ the House, on the recommendation of the Judiciary Committee, agreed to the following:

Resolved, That all persons or corporations employing counsel or agents to represent their interests in regard to any measure pending at any time before this House or any committee thereof, shall cause the name and authority of such counsel or agent to be filed with the Clerk of the House; and no person whose name and authority are not so filed shall appear as counsel or agent before any committee of this House.

1772. Instance wherein a witness summoned before an investigating committee was accompanied by counsel.—On June 4, 1878² James E. Anderson, a witness before the select committee appointed to investigate the Presidential election of 1876, was accompanied by counsel, who sat behind him and consulted with him during the examination.

1773. A question proposed to be propounded by a member of a committee directly to a witness should not be amended, but should be allowed or rejected in its original form.—On January 25, 1837,³ in the committee appointed to examine into the management of the deposit banks, Mr. Balie Peyton, of Tennessee, a member of the committee, propounded to a witness this question:

Did Amos Kendall recommend you, or use his influence to procure you an office, agency, or appointment in the deposit bank of this city about the time before alluded to? Was such an application complied with or rejected, on the part of said bank?

Mr. Ransom H. Gillett, of New York, offered the following amendment:

To insert after "Amos Kendall," the words "while he was agent of the Treasury Department."

The Chair⁴ decided the motion to be out of order; that interrogatories proposed to be sent to witnesses at a distance, as propounded by the committee were amendable; but those propounded to witnesses in the presence of the committee by individual members were not, but must be either allowed or rejected by the committee.

Mr. Gillett, having appealed, the decision of the Chair was sustained, yeas 5, nays 2.

1774. The validity of testimony taken when a quorum of a committee was not present has been doubted.—On December 17, 1862,⁵ the select committee appointed to investigate Government contracts, adopted the following:

Resolved, That inasmuch as certain testimony has been taken by one member of the committee, in the absence of a quorum, touching the official conduct of certain Federal officers in New York, under objection from them, therefore the committee will examine such testimony, and whenever it appears that the testimony of any such witness so taken is found to affect the official character of any such person, such witness shall be reexamined, and so far as his testimony on reexamination affects the official conduct of any Federal officer in New York, it shall be submitted to him for his inspection.

¹First session Forty-fourth Congress, Journal, p. 985; Record, p. 3230.

²Third session Forty-fifth Congress, Mis. Doc. 31, Vol. 1, p. 48.

³Second session Twenty-fourth Congress, House Report No. 193, journal of the committee, p. 83.

⁴James Garland, of Virginia, Chairman.

⁵Third session Thirty-seventh Congress, House Report No. 49, pp. 25, 26.

1775. During an investigation by a committee, if a question is objected to, the committee decides whether or not it shall be put.—On May 26, 1856,¹ while the select committee appointed to consider the assault upon Senator Charles Sumner by Preston S. Brooks, of South Carolina, a Member of the House, were examining Mr. Sumner at his lodgings, whither the committee proceeded, Mr. Alexander C. M. Pennington, of New Jersey, a member of the committee, objected to a question propounded by Mr. Howell Cobb, of Georgia, another member of the committee. Thereupon the question “Shall the question be received?” was put, and decided in the negative.

1776. Instance wherein a Speaker gave testimony before a committee of investigation.—On December 12, 1772,² Mr. Speaker Blaine was sworn and testified before the select committee appointed to investigate the transactions of the Credit Mobilier.

1777. Members have been summoned before committees to testify as to statements made by them in debate; but in one case a Member formally protested that it was an invasion of his constitutional privilege.—In 1837³ the select committee appointed to investigate the condition of the Executive Departments of the Government, of which Mr. Henry A. Wise, of Virginia, was chairman, summoned Mr. John Bell, of Tennessee, a Member of the House, and required him, under oath, to respond to this question:

Do you, of your own knowledge, know of any act by either of the heads of the Executive Departments which is either corrupt or a violation of their official duties?

Against this examination Mr. Bell protested, as follows:

I therefore protest against the course of the committee in subjecting me to such an examination as a private injury, a gross personal injustice, and an act, in its consequences to me, oppressive, tyrannical, and without any sufficient ground of public interest or necessity to justify it.

I protest against it as an emanation of Executive power and influence⁴ unconstitutionally exerted over the proceedings of the House of Representatives, an influence wholly incompatible with the due independence of Congress as a coordinate department of Government.

I protest against it as a violation of my privilege as a Member of the House of Representatives, the committee having no rightful power to summon or examine me as a witness in the manner proposed. The Constitution declares (Art. I, sec. 6) in relation to this subject that “for any speech or debate in either House, they (Members of Congress) shall not be questioned in any other place.” This Protection will amount to nothing if I may be put upon trial before this committee and be required to answer upon oath as to the grounds upon which I have made statements of any kind in the House, and it is no argument against this objection to say that I may refuse to answer if I think proper. I have a right to be free from the conclusions which may be drawn from my silence when questioned under such circumstances.

I protest against it as a proceeding in derogation of the fundamental powers and privileges of the House of Representatives. Public rumor, uncontradicted by any authentic denial, has heretofore been regarded as evidence sufficient upon which to found statements in debate, and to institute inquiries into the abuses of public administration. In the House of Commons of Great Britain common fame is held to

¹ First session Thirty-fourth Congress, journal of the committee; *Globe*, p. 1353.

² Third session Forty-second Congress, House Report No. 77, page I of the proceedings of the committee.

³ Second session Twenty-fourth Congress, House Report No. 194, p. 85.

⁴ President Jackson in a letter to the committee had suggested that they summon such Members of the House as had charged corruption in debate and require them under oath to state what they knew. See *Journal of the committee*, p. 18.

be sufficient evidence on which to found an impeachment. But who will hereafter enter freely into the debates of Congress upon the numerous questions connected with the purity of the administration? Who will incur the risk of being able to measure his language and qualify his assertions so exactly as to enable him to subscribe an affidavit as to their accuracy when called upon by a committee composed of a majority of his political opponents?

In fine I protest against the course of the committee as unprecedented, so far as I know, in the history of a free government; as a direct attack on the public liberty, inasmuch as the perfect freedom of debate in Congress is essential to its preservation; as a proceeding which could only originate or find countenance at a period when the principles of civil and political liberty are either grossly misunderstood or disregarded; as a proceeding fit only to be employed under an arbitrary government, as the means of suppressing all inquiry into the abuses and corruptions with which it maintains its unjust authority, and upon these several grounds I might object to answer the interrogatory which has been propounded to me. Yet as I am of the opinion that the unjust, unconstitutional, oppressive, and personal objects intended to be effected by the author of this proceeding, and the public injury consequent thereupon, would be rather promoted than defeated by my silence, I think proper, under all the circumstances, to waive all my privileges, whether attached to me as a citizen or as a Member of Congress, and to answer according to my best judgment as to all questions of mere opinion, and, according to the best of my knowledge, information, and belief, as to all matters of fact, except so far as I may think proper to withhold any matter of private confidence or the names of those from whom I may have received material information.

The committee in their report¹ say that they do not consider the position assumed by Mr. Bell "just or reasonable."

1778. In 1839² the select investigating committee appointed to examine into the defalcations in the New York custom-house, summoned Mr. Churchill C. Cambreleng, a Member of the House, to testify concerning a charge which he had made in the course of debate in the House.

Mr. Cambreleng responded without objection.

1779. Discussion of the privilege of a witness summoned to testify before a committee of the House.—On March 2, 1875, Mr. E. Rockwood Hoar, of Massachusetts, from the Committee on the Judiciary,³ made a report⁴ on the bill (H. R. 4855) "to provide for the protection of witnesses required to attend before either branch of Congress or a committee of the same."

The report makes this statement of the circumstances suggesting the bill:

It appeared that the attendance of Whitelaw Reid was required before the Committee on Ways and Means as a witness upon an investigation ordered by this House, in which that committee was authorized to send for persons and papers. He attended accordingly, and after his examination, but before a reasonable time had been afforded for his return to his home in New York, he was arrested and held to bail under a criminal prosecution for a libel and a summons to appear in a civil suit for a libel was also served upon him. He was not arrested in the civil suit, and has made no application for the protection of the House or for their interference in his behalf. We are of the opinion that his arrest upon the criminal process was lawful, and that, if he was entitled to exemption from the service of civil process, he can assert his privilege, if he is disposed to do so, in the court before which such process was made returnable. There is therefore nothing in the case of Mr. Reid which requires the action of the House.

¹ Report No. 194, p. 15.

² Third session Twenty-fifth Congress, House Report No. 313, pp. 317, 318, 415.

³ This committee had been directed on January 19 to inquire whether the arrest of Mr. Reid was an invasion of the privileges of the House. (Second session Forty-third Congress, Journal, p. 203.)

⁴ Second session Forty-third Congress, House Report No. 273.

The committee go on to say:

We find that, by the settled parliamentary law of England and America, a witness in attendance upon either branch of Congress, or a committee thereof, with power to send for persons and papers, whether regularly summoned or attending voluntarily upon notice and request, is privileged from arrest, except in case of treason, felony, or breach of the peace. This exception is held to include all indictable crimes and offenses. But it is an open question whether a witness coming within the jurisdiction of the courts of a State or of the District, and only amenable to the service of process by reason of his personal presence, is protected against the service of civil process upon him, which does not require his arrest or detention. Different courts of highly respectable authority have made opposing decisions upon the question. We are not aware that it has ever been determined by the Supreme Court of the United States.

Therefore the committee, believing that "as far as civil rights are concerned" the witness "brought into the District by a superior power should not be regarded as within it for any other purpose than that of giving his testimony and that he should not have his condition changed to his prejudice on that account," recommended the passage of the bill.

The bill passed the House March 2, 1875,¹ and was sent to the Senate, where it was referred to the Judiciary Committee and was not reported therefrom.

1780. The House sometimes transmits to the courts reports in regard to witnesses who have apparently testified falsely.—On March 3, 1875,² the House agreed to the following resolution reported from the Committee on Ways and Means.:

Resolved, That the Clerk of this House transmit to the United States district attorney for the District of Columbia a copy of the evidence taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service, with direction to lay so much of the same as relates to the truth of the testimony given by William S. King and John G. Schumaker before the grand jury of said district for such action as the law seems to require.

1781. On February 26, 1859,³ Mr. William E. Niblack, of Indiana, from the select committee appointed to investigate the accounts of the late Superintendent of Public Printing, made a report in regard to the testimony of Peter S. Duvall before the said committee, accompanied by the following resolution:

Resolved, That a copy of this report be certified to the United States district attorney for the District of Columbia for such action in the premises as the circumstances in his opinion require.

Mr. Niblack explained that the witness had made statements which were contradicted by the statements of two other witnesses, as well as by strong corroborative testimony.

The resolution was agreed to.

1782. An investigating committee sometimes reports testimony to the House with the recommendation that it be sealed and so kept in the files until further order of the House.—On June 9, 1846⁴ the select committee

¹ Second session Forty-third Congress, Journal, pp. 614, 615; Record, pp. 2066, 2081.

² Second session Forty-third Congress, Journal, p. 636.

³ Second session Thirty-fifth Congress, Journal, p. 494; Globe p. 1408.

⁴ First session Twenty-ninth Congress, Journal, pp. 924, 983; Globe pp. 946, 948, 988.

appointed to investigate certain charges made by the Hon. Charles J. Ingersoll against the Hon. Daniel Webster for official misconduct while Secretary of State, made a report, presenting these resolutions:

Resolved, That the testimony taken in this investigation be sealed up by the Clerk, under the supervision of the committee, indorsed "confidential," and deposited in the archives of the House, and that the same be not opened unless by its order.

Resolved, That this report be laid on the table and printed, and that the select committee be discharged from the further consideration of the subject.

Mr. Jacob Brinkerhoff, of Ohio, made a minority report, recommending that the testimony and exhibits taken before the committee be printed.

On June 17, at the suggestion of the majority of the committee, a resolution was passed ordering the printing of all the testimony.

1783. The House sometimes orders that testimony taken by an investigating committee be taken in charge by the Clerk, to be by him delivered to the next House.—On March 2, 1867,¹ the House ordered the Clerk to lay before the next House of Representatives the testimony and report of the select committee which investigated the affairs of the southern railroads, also the papers on the judiciary's investigation of affairs in the State of Maryland.

On March 8, 1867,² the House ordered the testimony in the Maryland case referred to the Judiciary Committee with instructions.

1784. On March 3, 1875,³ the House agreed to the following resolution:

Resolved, That a copy of the testimony taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service be delivered to the Clerk of the House of Representatives, to be by him laid before the House at the first session of the Forty-fourth Congress, to the end that they may make further inquiry and take due action upon the questions affecting William S. King and John G. Schumaker, and further proceed thereon as they shall deem just.

1785. The House sometimes directs the Speaker to certify to the Executive authority testimony taken by a House committee and affecting an official.—On May 16, 1876,⁴ the House agreed to the following resolution:

Resolved, That the Speaker of the House be, and he is hereby, directed to certify to the proper authorities of the District of Columbia the testimony heretofore taken by the order of this House relating to the conduct of A. M. Clapp as Congressional Printer, to the end that he may be indicted and prosecuted.

Resolved, That the Committee on the Judiciary be, and they are hereby, instructed to inquire whether A. M. Clapp, Congressional Printer, is an officer who may be impeached under the Constitution of the United States, and report to the House at as early a day as practicable.

1786. A telegram from a person beyond reach of the process of the House and not verified by oath was held not competent evidence for the consideration of an investigating committee.

¹ Second session Thirty-ninth Congress, Journal, pp. 597, 609.

² First session Fortieth Congress, Journal, p. 61.

³ Second session Forty-third Congress, Journal, p. 636.

⁴ First session Forty-fourth Congress, Journal, p. 963.

A charge that the chairman of an investigating committee had suppressed evidence was presented as a matter of privilege.

On May 2, 1876,¹ the House agreed to a resolution directing the Judiciary Committee to investigate the sale of certain bonds of the Little Rock and Fort Smith Railroad Company to the Union Pacific Railroad Company. No allegation was made that any Member was involved in the inquiry; and it does not appear that the Judiciary Committee reported to the House that the progress of the investigation had involved the name of any Member.² But on June 5, 1876, Mr. James G. Blaine, of Maine, rising to a question of privilege³ alleged that the investigation had in fact been aimed at him and that certain evidence favorable to him had been suppressed. He therefore offered, as privileged, the following resolution:

Resolved, That the Committee on the Judiciary be instructed to report forthwith to the House whether, in acting under the resolution of the House of May 2 relative to the purchase by the Pacific Railroad Company of seventy-five land-grant bonds of the Little Rock and Fort Smith Railroad, it has sent any telegram to one Josiah Caldwell, in Europe, and received a reply thereto. And, if so, to report said telegram and reply, with the date when said reply was received and the reasons why the same has been suppressed.

After debate, by a vote of 125 yeas and 97 nays, the resolution was referred to the Committee on the Judiciary. On August 3⁴ the report, which was in the nature of a vindication of Air. J. Proctor Knott, of Kentucky, chairman of the committee, was reported by unanimous vote of the committee. But debate arising, and members of the committee expressing divergent views, the report was recommitted.

On August 15⁵ the same report was again presented, accompanied by minority views. The report states that in the course of the investigation authorized under the resolution of May 2 it was developed that Caldwell had made certain statements as to the subject-matter of the investigation. These statements were excluded as evidence, first, because irrelevant, and, second, because Caldwell was in Europe, beyond the reach of the process of the House. Under these circumstances it was determined by the committee that a telegram should be sent by the chairman to Caldwell, asking him to appear before the committee and testify. The report goes on:

After the action of the committee, and before any communication had been had with Caldwell, a telegram purporting to come from him was delivered to the chairman, as follows:

"Have just read in New York papers Scott's evidence about our bond transaction, and can fully corroborate it. I never gave Blaine any Fort Smith bonds, directly or otherwise. I have three foreign railway contracts on my hands, which makes it impossible for me to leave without great pecuniary loss, or would gladly voluntarily come home and so testify. Can make affidavit to this effect and mail it if desired."

The resolution referred to your committee in substance demands that this telegram be made part of the testimony taken by the subcommittee engaged in the investigation under the Tarbox resolution.

If this demand is to be complied with, it must be upon the ground that such telegram is competent evidence in this investigation.

¹First session Forty-fourth Congress, Journal, pp. 906, 907; Record, p. 2884.

²As required by the parliamentary law.

³Mr. Blaine had previously, on April 24, made a personal explanation on this subject. Record, pp. 2724, 2725.

⁴Record, pp. 5123-5132, House Report No. 801; Journal, p. 1376.

⁵Record, p. 5691, House Report No. 842; Journal, p. 1503.

The report concludes that it was not, (1) because not made under oath, although witnesses actually present before the committee were required to testify under oath; (2) because there was not the slightest evidence that Mr. Caldwell sent the telegram, the mere receipt of it not establishing its authenticity in absence of the original message written by the sender;¹ (3) because the copy of the message raised no presumption as to the original and would not have done so even had it been in direct response to a telegram.²

Therefore the telegram was not an instrument of evidence, and the chairman in withholding it did not suppress evidence. The committee also find that the chairman acted in good faith and without a purpose to injure any person involved in the investigation, and therefore recommend the indefinite postponement of the resolution.

The minority dissented from the report because it was brought in during the last hours of the session, because there had not been sufficient investigation, and because a speech of the chairman³ Mr. Knott, made subsequent to the drafting of the report, had cast doubt upon the assertion that he was innocent of the charge.

The report was adopted,⁴ on a vote by tellers, 81 ayes to 39 noes.

1787. A member of the Cabinet who had been implicated by the terms of a resolution creating a committee of investigation was permitted to have witnesses summoned.—In 1878⁵ the select committee of the House created to investigate the Presidential election of 1876 granted the application of the Secretary of the Treasury, John Sherman (who had been accused in the preamble of the resolution creating the committee and who appeared by counsel before the committee), to take certain testimony.

Thus, on June 21, 1878,⁶ Thomas H. Jenks was sworn as a witness called in the interest of Mr. Sherman.

1788. Latitude permitted by an investigating committee to the counsel of an executive officer who had been implicated by the terms of the resolution creating the committee.—In 1878⁷ the House select committee on Alleged Frauds in the Presidential Election of 1876 permitted John Sherman, Secretary of the Treasury, whose conduct had been impeached in the preamble of the resolution creating the committee of investigation, to be represented before the committee by counsel (Mr. Shellabarger), but the counsel was not permitted to ask questions, and questions that the counsel desired to ask were required to be communicated to the witness through some member of the committee.

¹The following cases are cited in support: *Matterson v. Noyes*, 25 Ill., 59; *Williams v. Buckell*, 37 Miss., 682; *Durke v. Vermont Central R. R. Co.*, 29 Vt., 39; *Hawley v. Whipple*, 48 N. H., 487.

²Here is cited case of *Hawley v. Whipple*, 48 N. H., 487.

³The chairman being personally concerned, Mr. Eppa Hunton, of Virginia, made the report.

⁴Record, p. 5691; Journal, p. 1503.

⁵Third session Forty-fifth Congress, House Report No. 140, p. 43; House Miscellaneous Document No. 31, p. 1469, vol. 4.

⁶Third session Forty-fifth Congress, House Miscellaneous Document No. 31, Vol. I, p. 279.

⁷Third session Forty-fifth Congress, House Miscellaneous Document No. 31, page 11. For preamble and resolution reflecting on Mr. Sherman, second session Forty-fifth Congress, Journal, p. 1072.

1789. Instance wherein an investigating committee permitted a person implicated by testimony already given to appear and testify.—On February 8, 1879,¹ while the select committee appointed to investigate the alleged frauds in the Presidential election of 1876 were investigating the cipher dispatches, a letter was received from Samuel J. Tilden, taking

the liberty of requesting that before you leave [the committee were sitting in New York] an opportunity be permitted me to appear before you to submit some testimony which I deem pertinent to the inquiry with which you are charged.

Mr. Tilden's name had been implicated in testimony already given.

The committee gave him leave to appear, and he appeared and testified.

1790. When the House desires the testimony of Senators it is proper to ask and obtain leave for them to attend.—On March 29, 1816,² Mr. Hugh Nelson, of Virginia, offered this resolution, which was agreed to:

Resolved, That a committee be appointed to inquire into the official conduct of Matthias B. Tallmadge, one of the district judges for the State of New York, and to report their opinion whether the said Matthias B. Tallmadge hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House, and that the said committee be authorized to send for persons, papers, and records.

Mr. Nelson was appointed chairman of this committee, and on April 8³ reported from the committee a resolution which was agreed to by the House, as follows:

Resolved, That the Senate of the United States be requested to permit the attendance of the Honorable Nathan Sanford, a Member of their body, before the committee of the House of Representatives appointed to inquire into the official conduct of Judge Tallmadge, to be examined touching the subjects contained in the preceding report relating to the alleged misconduct of Judge Tallmadge in his office as one of the judges of the district court for the State of New York.⁴

On April 12, 1816,⁵ the Senate passed a resolution permitting the attendance of Mr. Sanford, as requested by the House, and informed the House of that fact by message.

On April 17⁶ the House resolved to postpone further proceedings in the inquiry until the next session of Congress.

1791. On April 19, 1832,⁷ during the trial of Samuel Houston at the bar of the House for assault on a Member of the House because of words spoken in debate, the accused sent to the Chair a request that the House pass the proper order to enable him to obtain the attendance of Senators Felix Grundy and Alexander Buckner to testify. A Member of the House requested that the names of two other Senators, Thomas Ewing and John Tipton, be added.

¹Third session Forty-fifth Congress, House Miscellaneous Document No. 31, pt. 4, p. 262.

²First session Fourteenth Congress, Journal, p. 544; Annals, p. 1290.

³Journal, p. 605; Annals, p. 1349.

⁴In a similar manner the House on Jan. 27, 1819, asked and obtained permission that Senators Daggett and Hunter should testify before a committee of the House. Second session Fifteenth Congress, Journal, pp. 212, 216.

⁵Journal, p. 637; Annals, p. 310.

⁶Journal, p. 669.

⁷First session Twenty-second Congress, Journal, p. 613.

The House then agreed to the following:

Ordered, That a message be sent to the Senate, informing the Senate that the House of Representatives request the attendance of Felix Grundy, Alexander Buckner, Thomas Ewing, and John Tipton, Members of the Senate, to give evidence before the House of Representatives, now sitting on the trial of Samuel Houston, accused of a breach of the privileges of the House of Representatives by assaulting and beating Mr. Stanbery, a Member of that House.

The message having been delivered to the Senate by the Clerk, the Senators therein named appeared, and were conducted by the Sergeant-at-Arms to the seats which had been prepared for them within the Hall.

When the message of the House was received in the Senate,¹ Mr. Daniel Webster, of Massachusetts, said that as this was a case of emergency he would move that the pending bill be laid aside. This being done, Mr. Webster moved that leave be given the Senators named to attend the House of Representatives. This motion was agreed to.

The Senators were sworn, like other witnesses, when they testified before the House.²

1792. A committee of the House having summoned certain Senators by subpoena, the summons was either disregarded or obeyed under pro test.—In 1837³ in the course of an investigation into the condition of the Executive Departments of the Government, a select committee, of which Mr. Henry A. Wise, of Virginia, was chairman, summoned to appear and testify before it the following Members of the Senate: John C. Calhoun, of South Carolina, and Hugh L. White and Felix Grundy, of Tennessee. It does not appear that the House had previously obtained from the Senate the customary permission to ask their attendance.

Mr. Calhoun neither attended on the committee nor replied to their call.⁴

Messrs. White and Grundy appeared and announced their willingness to testify, but filed protests, which were entered on the journal of the committee.

Mr. White's protest, filed January 28, 1837, is as follows:

I now appear before your committee at the time specified in the subpoena, but not in obedience to its mandate. I am a Member of the Senate of the United States, now in session, and in the daily discharge of my duties as a Senator, and while I am thus engaged do deny that any committee of the House of Representatives has the power, by its mandate, to compel me to absent myself from the body of which I am a Member. I do therefore protest against the power assumed by your committee in the issuance and service of said subpoena; but at the same time that I feel it my duty thus to protest against the exercise of a power which I believe is not vested in your committee, I assure them that I will at all times, when my duties as Senator do not compel me to be elsewhere, voluntarily attend and give them, upon oath, all the information I possess in relation to any of the matters which may come within the range of their investigation. I respectfully ask that this protest may be entered on the journal of your proceedings lest hereafter it may be thought I have sanctioned the exercise of a power which, it is easy to foresee, may be so used as to destroy that body of which I am an humble Member.

¹ Debates, p. 802.

² Journal, p. 659.

³ Second session Twenty-fourth Congress, House Report No. 194; Journal of Committee, pp. 26, 27, 44, 45.

⁴ Report No. 194, p. 14. The committee, in fact, by an entry on their journal, explained that the subpoena summoning Mr. Calhoun was inadvertently issued; and by the terms of their explanation seem to disclaim any right to take a Senator from his duties. (Journal of the Committee, pp. 40, 41.)

Mr. Grundy's protest, which was filed on February 7, says:

I can not recognize the authority of your committee to call a Senator from his duties in that body of which he is a Member to appear and give testimony before them. Reserving to the Senate, however, of which I belong, the entire control of each of its Members in relation to their respective duties, I will, if notified when the committee wish to examine me (should I not at the time be engaged in the business of the Senate), voluntarily wait upon the committee and give testimony upon the subjects of inquiry directed by the House of Representatives.

1793. In 1878,¹ in the select committee to investigate the Presidential election of 1876, a letter of Stanley Matthews, of Ohio, a Member of the Senate, declining the invitation of the committee to appear before it and testify, was read, and caused discussion as to the right of the House to subpoena a Senator. Messrs. B. F. Butler, of Massachusetts, and S. S. Cox, of New York, discussed it particularly. Mr. Butler said:

The President of the Senate pro tempore (the late acting Vice-President), acting in obedience to an invitation much less formal, has sat in that chair within the last fifteen minutes. Members of the Senate have frequently and always attended when called upon. From a knowledge of public affairs reaching back thirty years, I can say (and I have had occasion to examine the matter before) that never has that invitation been refused during the existence of this Government. I have sat on committees before which Mr. Sumner appeared on invitation. I have sat on committees before which other Senators have appeared. In this very room the Vice-President of the United States, Mr. Colfax, attended on the invitation of a committee (in the Credit Mobilier investigation). Senator Patterson, of New Hampshire, appeared here on the invitation of that committee. Members of the House appeared here. The Speaker of the House came here and was a witness before that committee. And the question is to be determined now, if it is raised, whether that invitation can be, with due respect to us and the House which we represent, slighted.

The committee, on motion of Mr. Butler, voted to issue a subpoena for Mr. Matthews.

On June 10, 1878,² the chairman of the committee, Mr. Potter, sent the subpoena to Mr. Matthews with a courteous note. The above proceedings took place before the adjournment of Congress.

On August 12, 1878³ (after Congress had adjourned), the committee then being in New York, the chairman stated that a summons had been issued to Mr. Matthews and had been served on him and a return made, but Mr. Matthews had not appeared and had indicated that he would not appear. Mr. Butler thought a minute to report him to the House should be made on the records of the committee.

On August 16,⁴ on motion of Mr. Butler, the entry was made on the records of the committee.

1794. A Senator having neglected to accept an invitation or respond to a subpoena requesting him to testify before a House committee, the House by message requested that the Senate give him leave to attend.

The Senate neglected to respond to a request of the House that a Senator be permitted to attend a House committee.

Form of subpoena issued to secure the attendance of a Senator.

¹Third session Forty-fifth Congress, House Miscellaneous Document No. 31, pp. 148–153.

²P. 160 of Miscellaneous Document No. 31.

³P. 874 of Miscellaneous Document No. 31.

⁴P. 956 of Miscellaneous Document No. 31.

On June 17, 1878,¹ Mr. Benjamin F. Butler, of Massachusetts, from the committee appointed to investigate the electoral count in Florida and Louisiana, submitted a report setting forth that the committee had invited Hon. Stanley Matthews, a Senator from the State of Ohio, to appear before them and give testimony, believing him to be a material witness to certain facts necessary and important to be known and relating to the subject-matter of the investigation. In response to this invitation Mr. Matthews had written to the chairman of the committee a letter setting forth that he had, on June 5,² called the attention of the Senate to the testimony given before the House committee tending to implicate him in certain alleged frauds and wrongs in connection with the election in Louisiana, and the Senate had referred the subject to a committee of investigation. Mr. Matthews asserted that he had no knowledge whatever of any matter relating to the subject, except in so far as appeared in the evidence before the House committee, and he reserved that for explanation before the Senate committee. Therefore, without intending any disrespect for the House or its committee, he felt constrained by a sense of duty toward the Senate and himself to decline the invitation. The report, in the form of the recitation of a preamble, goes on to state that the committee on June 10 ordered the issue of the following subpoena:

By authority of the House of Representatives of the Congress of the United States of America.
JOHN G. THOMPSON, ESQ.,

Sergeant-at-Arms, or his Special Messenger:

You are hereby commanded to summon the Hon. Stanley Matthews to be and appear before the special investigating committee of the House of Representatives of the United States, of which the Hon. Clarkson N. Potter is chairman, in their chamber, in the city of Washington, on Tuesday, June 11, 1878, at the hour of 10 a. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this Summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 10th day of June, 1878.

[SEAL.]

SAMUEL J. RANDALL, *Speaker.*

Attest:

GEORGE M. ADAMS, *Clerk.*

At the same time, and with this summons, a letter was handed to Mr. Matthews from the chairman of the committee, assuring him that the committee did not intend to cause him inconvenience in the discharge of his duties as Senator.

The preamble and resolution then continue:

And whereas the said Matthews failed to appear in answer to said summons at the time and place named before your committee or at any other time and place; and

Whereas it may be that the duties of said Matthews as Senator and the exigencies of the public service require the presence of said Matthews in his place as Senator, so that he could not appear in answer either to the invitation or summons of your committee as aforesaid, of which exigencies the Senate alone can judge: Therefore,

Be it resolved, That the House of Representatives do send the following message to the Senate of the United States in this behalf:

IN THE HOUSE OF REPRESENTATIVES, *June 17, 1878.*

Resolved, That the House of Representatives do request the Senate to give leave to Hon. Stanley Matthews, Senator from the State of Ohio, to attend before the committee of the House of Representatives

¹Second session Forty-fifth Congress, Journal, pp. 1383–1387; Record, pp. 4765–4767.

²See Record, p. 4119.

now charged with the investigation of the frauds in the electoral vote of the States of Louisiana and Florida, to give such evidence of facts concerning the subject-matter of said investigation as may be in his knowledge or possession as he may be required.

Mr. Butler explained that the resolution was in the exact form laid down by May's Parliamentary Practice.

The resolution was agreed to, yeas 104, nays 18.

On June 18¹ in the Senate the message from the House was taken up, and Mr. William A. Wallace, of Pennsylvania, proposed the following resolution:

Resolved, That the Senate, in compliance with the resolution of the House of Representatives of yesterday, do allow the attendance of Hon. Stanley Matthews, a Member of this House, before the committee of the House of Representatives now charged with the investigation of alleged frauds in the electoral votes of the States of Louisiana and Florida, for the purpose of giving such evidence of facts concerning the subject-matter of said investigation as may be in his knowledge or possession.

Ordered, That the Secretary notify the House of Representatives accordingly.

Objection being made to the immediate adoption of this resolution, it was referred to the Committee of Privileges and Elections.²

1795. An instance wherein a committee of the House took the testimony of a Senator, although consent of the Senate had not been obtained. (Footnote.)

A Member having stated that a portion of a House document had been suppressed, the House, on request of the printers, ordered an investigation.

On January 21, 1823,³ the Speaker laid before the House a letter from Messrs. Gales and Seaton, printers of the House, asking an investigation of a charge, made in the Washington Republican (newspaper), that as printers of the House they had suppressed portions of a public document relating to the relations of Secretary of the Treasury Wm. H. Crawford with certain banks.

It was urged that the House should not proceed on mere newspaper rumor to an investigation; but a Member, Mr. John W. Campbell, of Ohio, having stated that his own investigations had shown a suppression of a portion of a House document, the matter was referred to a select committee.

That committee reported on January 30. They stated that, while they had been sensible of the importance of the charge as affecting Messrs. Gales and Seaton, they had also been mindful that it involved a contempt of the authority and dignity of the House.

To the investigation of such a subject [says their report], involving at once the confidence which this House and the nation shall repose in the information upon which it acts, the character of one of the first officers of the Government, and the fidelity of the public printers, your committee have not proceeded without the most cautious inspection of the documents submitted to them, and the most solemn sanction to the testimony of the witnesses, upon which their opinion was to be founded.

¹ Record, p. 4809.

² Senate Journal, p. 762. It does not appear that the committee reported the resolution. See also Third session Forty-fifth Congress, House Miscellaneous Document No. 31, pp. 148-153, 160, 874, 956.

³ Second session Seventeenth Congress, Annals, pp. 652-656, 735-739.

The committee, having found that the printers were not responsible for the suppression, recommended:

The interesting nature of the present inquiry has suggested to your committee the propriety of submitting to the House the expediency of appointing some Member or Members of its own body, in every ewe, to superintend the publication of all documents which may hereafter be printed by order of the House.

On February 5,¹ Mr. Campbell offered a resolution which, after long debate, was agreed to, providing for an investigation to ascertain by whom the suppression was made.

On February 27² the committee reported the results of an exhaustive examination, including testimony given under oath by witnesses, including Members of the House and Senate.³ The report included no recommendations for action.

1796. The House, by resolution, authorized its Clerk to produce papers and its Members to give testimony before a court of impeachment.—On July 6, 1876,⁴ Mr. Scott Lord, of New York, from the managers on the part of the House to conduct the impeachment of William W. Belknap, reported this resolution, which was agreed to:

Resolved, That the Clerk of this House, on the request of the managers to conduct the impeachment against William W. Belknap, appear before the Senate, sitting as a court of impeachment, with such papers of the House as the managers may require, and that the members of the Committee on Expenditures in the War Department have permission to appear and testify in such court in regard to such impeachment, and to produce such papers in relation thereto as the managers may require.

1797. The Secretary of the Senate obeyed a subpoena duces tecum, of a House investigating committee.—On June 5, 1878,⁵ George C. Gorham, secretary of the Senate, obeying a subpoena duces tecum of the House of Representatives, appeared before the select committee to investigate the Presidential election of 1876, and being sworn, produced the papers called for and testified.

1798. The Senate has not considered that its privilege forbade the House to summon one of its officers as a witness.—On June 27, 1832,⁶ in the Senate, Mr. John Holmes, of Maine, offered this resolution:

Resolved, That the assistant doorkeeper of the Senate be permitted to attend as a witness before a committee of the House of Representatives, agreeably to his summons.

Mr. Holmes said that the doorkeeper had been summoned by a document under the signature of the Clerk, with the seal of the House, and that the resolution conformed with the practice of the British Parliament.

Mr. Henry Clay, of Kentucky, did not concur that the constitutional privileges of Senators extended to the officers of the body. On his motion the resolution was laid on the table.

¹Journal, p. 198; Annals, pp. 829, 860–885.

²Annals, p. 1126.

³Senator Ninian Edwards, of Illinois, was a witness, but it does not appear that the House obtained of the Senate the usual permission to summon him.

⁴First session Forty-fourth Congress, Journal, p. 1221; Record, p. 4422.

⁵Third session Forty-fifth Congress, Miscellaneous Document 31, Vol. I, p. 63.

⁶First session Twenty-second Congress, Debates, p. 1127.

1799. A telegram from the chairman of a committee making investigations in a distant place, addressed to the Speaker and on the subject of contumacious witnesses, was held in order as a communication of high privilege.—On December 16, 1876,¹ the Speaker laid before the House a telegram from Mr. William R. Morrison, of Illinois, chairman of the select committee investigating affairs in Louisiana, addressed to the Speaker, and informing the House through him that the efforts of the committee to obtain testimony had been resisted, and that the process of the House would be needed.

Mr. George F. Hoar, of Massachusetts, raised the question of order that a telegraphic dispatch sent by a particular Member was not a proper mode of communicating to the House, and not a proper mode of submitting a report from a committee.

The Speaker² ruled that the communication could be received as a question of high privilege. It came addressed to the Speaker as Speaker, and through the ordinary telegraphic channel.

Mr. Hoar did not appeal, but stated that after reflection it seemed to him that the decision of the Chair was right.

1800. A Sergeant-at-Arms, serving subpoenas for a committee, makes his return and it is entered on the journal of the committee.—When the Sergeant-at-Arms, who is serving a committee having power to send for persons and papers, is unable to find the person whom he has been commanded to produce, he makes a return of that fact to the committee and it is entered on the journal of the committee. Thus, on February 15, 1857,³ the Sergeant-at-Arms made a return which appears as follows on the journal of the select committee appointed to investigate certain alleged corrupt combinations among Members:

The Sergeant-at-Arms returned that he had diligently sought Horace Greely in the city of New York, and learned that he (Mr. Greely) had gone to the West, probably to Ohio or Iowa, and that the time of his return was uncertain.

1801. The House may confer upon the subcommittees of a committee the power to send for persons and papers.

A general investigation having been conducted by subcommittees, the several reports were made to the committee and appended to its general report.

Minority views may accompany the report of a subcommittee made to the committee.

By the resolution adopted December 4, 1876, three special committees were each authorized to detail subcommittees, each subcommittee to have power to send for persons and papers in making investigation. The mode of proceeding is illustrated by the report of the select committee on the recent election in Louisiana. That report⁴ was made to the House by Mr. William R. Morrison, of Illinois, its chairman, on February 1, 1877. It was signed by himself and nine of his associates. Appended to it were the reports⁵ of four subcommittees, which had conducted

¹ Second session Forty-fourth Congress, Record, p. 244.

² Samuel J. Randall, of Pennsylvania, Speaker.

³ Third session Thirty-fourth Congress, House report No. 243, p. 52.

⁴ Second session Forty-fourth Congress, Report No. 156, Part I.

⁵ Part I, pp. 21, 55, 117, 143.

examinations in different localities. The members of the subcommittee concurring in one of these subcommittee reports generally, but not in every case, appended their signatures.

The minority of the main committee also filed their views,¹ appending their signatures thereto, and appended to this statement of minority views, were the views of the minority of each subcommittee,² generally signed by the member making it.

1802. A committee not being able to decide the question of issuing certain subpoenas, authorized a member of the committee to exhibit its journal, so that the House might act.—On June 1, 1860,³ Mr. Warren Winslow, of North Carolina, a member of the select committee appointed to investigate the alleged influence of the Executive in the House, and corruption in elections, submitted⁴ a paper containing a statement of certain proceedings of the committee in regard to a subpoena for certain witnesses. The paper was the journal of the committee, and it showed that Mr. Winslow had moved that subpoenas be issued for certain witnesses, and that on this motion the vote was ayes 2, noes 2. So the motion failed. The journal of the committee also showed that the committee voted that Mr. Winslow be allowed to have, for use in the House, the journal of the committee for the record of the action on the motion to issue the subpoenas.

Mr. Winslow thereupon presented to the House the following resolution:

Resolved, That the Speaker be directed to issue his warrant, directed to the Sergeant-at-Arms, ordering him to summon the following-named persons to appear forthwith before the select committee, etc.

On June 2, after debate, this resolution was agreed to, yeas 166, nays 4.

1803. The committee regulates the summoning of its witnesses.—On June 2, 1860,⁵ in the select committee appointed to investigate the subject of Executive influence over legislation, corruption in elections, etc., it was—

Ordered, That hereafter witnesses shall be summoned pursuant to the order of the committee; and that the Clerk shall enter upon the journal of this committee the name of the witnesses so ordered to be summoned, at the time such order shall be made.

Protests had previously been made that witnesses had appeared who had not been summoned by order of the committee.

1804. A Committee of the Whole, charged with an investigation in 1792, was given the power to send for persons and papers.—On November 13, 1792,⁶ the House—

Resolved, That the Committee of the Whole House, to whom is referred the report of the committee appointed to inquire into the causes of the failure of the expedition under Major-General St. Clair, be empowered to send for persons, papers, and records for their information.

It does not appear that the Committee of the Whole availed itself of this permission.

¹ Report No. 156, Part II.

² Part II, pp. 27, 31, 43.

³ First session Thirty-sixth Congress, Journal, pp. 972, 983; Globe, pp. 2543, 2571.

⁴ The Journal does not indicate whether by unanimous consent, or as privileged. The Globe shows that Mr. Winslow claimed privilege, although on what ground does not appear. He had simply been authorized by the committee to use a certain paper in the House.

⁵ First session Thirty-sixth Congress, House report No. 648, p. 86.

⁶ Second session Second Congress, Journal, p. 619 (Gales & Seaton ed.); Annals, p. 685.

1805. A question as to issuing a warrant for the arrest of a person who has avoided a summons by seeking a foreign country.—On February 8, 1875,¹ a proposition was made to cause the issue of a warrant for the arrest of William S. King, who was alleged to have avoided the summons of the House to appear and testify by going to Canada. A copy of the summons, had been mailed to him in Canada, but an officer of the House had been unable to serve the summons on him on American soil. It was urged against the procedure that a man could not be in contempt who had not had a process legally served on him, and that it would be impossible to arrest him in Canada. In behalf of the resolution, it was urged that its adoption would be a precautionary measure, enabling the witness to be obtained should he return to this country. The proposition was not pressed to a decision.

1806. The Speaker may be authorized and directed to issue subpoenas during a recess of Congress.—On July 30, 1861,² the House adopted a resolution allowing the select committee empowered to ascertain and report the number and names of disloyal persons employed by the Government to sit and take testimony during the coming recess of Congress, and as a part of this leave adopted the following:

Resolved, That the Speaker of the House, during the recess of Congress, is hereby authorized and directed to issue subpoenas, upon the request of the committee, in the same manner as during the session of Congress.

1807. Form of subpoena for summoning witnesses to testify before a committee of the House, and of the return thereon.—Subpoenas issued by the Speaker for summoning witnesses to appear before a committee are as follows in form:

By authority of the House of Representatives of the Congress of the United States of America.

TO THE SERGEANT-AT-ARMS, or his SPECIAL MESSENGER:

You are hereby commanded to summon _____ to be and appear before the _____ committee of the House of Representatives of the United States, of which the Hon. _____ is chairman, in their chamber in the city of Washington, on _____, at the hour of _____, then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this _____ day of _____, 19____,

_____, *Speaker*.

Attest: _____, *Clerk*.

On the back of the printed form of subpoena is the form for the return:

Subpoena for _____ before the Committee on the _____.
Served _____,

_____, *Sergeant-at-Arms, House of Representatives.*

¹Second session Forty-third Congress, Record, p. 1070.

²First session Thirty-seventh Congress, Journal, p. 180.

1808. Forms of subpoenas used at different times.—On January 21, 1839,¹ the select committee chosen to investigate the defalcations in the custom-house at New York adopted the following form of the warrant for the summoning of witnesses to appear before said committee:

By authority of the House of Representatives of the United States.

The select committee appointed by the House of Representatives to investigate the defalcations of public officers, to _____, greeting:

You are hereby commanded to summon _____ to appear before said committee, at _____, in the city of _____, on _____ instant, at _____ o'clock _____, to testify, and the truth to speak, touching or concerning the subjects of investigation before said committee.

Witness, James Harlan, chairman of said committee, at _____, in the city of _____, this _____ day of January, in the year 1839; and in the 63d year of the independence of the United States.

_____, *Chairman.*

1809. On January 25, 1837² in the select committee appointed to investigate the Executive Departments of the Government, Mr. Henry A. Wise, of Virginia, proposed, and the committee unanimously agreed to, the following form of subpoena to witnesses:

To the Sergeant-at-Arms of the House of Representatives:

You will cause _____ to be summoned to appear before the committee of investigation appointed under a resolution of the House of the 17th day of January, at _____ o'clock, on _____, to testify, and the truth to say, touching the matters of inquiry before the said committee.

HENRY A. WISE, *Chairman.*

1810. Instance of the authorization of a subpoena by telegraph.—On June 11, 1879,³ the Senate, without debate, agreed to the following:

Resolved, That E. R. Wheeler, of Spencer, Mass., be summoned by telegraphic subpoena to appear without delay before the Committee on Post-Offices and Post-Roads to give evidence in a matter pending before said committee.

1811. The House has, by resolution, demanded of certain of its Members the production of papers and information.

A paper presented in the House by a Member in response to the order of the House is mentioned in the Journal, but not printed in full.

On January 7, 1808,⁴ during consideration of a proposition relating to a proposed investigation of the conduct of the General of the Army of the United States, Mr. William A. Burwell, of Virginia, proposed this resolution:

Resolved, That Mr. John Randolph, Representative in Congress from the State of Virginia, and Mr. Daniel Clark, Delegate from the Territory of Orleans, be requested to lay upon the clerk's table all papers and other information in their possession in relation to the conduct of Brig. Gen. James Wilkinson, while in the service of the United States, in corruptly receiving money from the Government or agents of Spain.

Considerable debate arose over this resolution, involving, however, rather the merits of the proposed investigation than the power of the House to compel its Members to give testimony, although the latter subject was touched on somewhat.⁵

¹Third session Twenty-fifth Congress, House Report No. 313, p. 294.

²Second session Twenty-fourth Congress, House Report No. 194, journal of the committee, p. 13.

³First session Forty-sixth Congress, Record, p. 1910.

⁴First session Tenth Congress, Journal, pp. 114, 117, 121, 122. (Gales & Seaton ed.) Annals, pp. 1313–1357, 1387–1391.

⁵Annals, p. 1262.

The resolution was agreed to, yeas 90, nays 19.

On January 8 Mr. Clark presented to the House a certain document, and on January 11 Mr. Clark presented a written statement, sworn to by himself and properly attested by the chief judge of the circuit court of the District of Columbia.¹

1812. In 1876, after examination and discussion, the House declared its right through a subpoena duces tecum to compel the production of books, papers, and especially telegrams.—On December 16, 1876,² the Speaker laid before the House a telegraphic message from Mr. William R. Morrison, of Illinois, chairman of the select committee investigating affairs in Louisiana, informing the House that the efforts of the committee to obtain testimony had been resisted, and that the process of the House would be required. Accompanying the message was a communication from William Orton, president of the Western Union Telegraph Company, stating that the company had decided to instruct its employees not to produce before committees of either House of Congress messages received or sent by representatives of either of the two parties, or at least not to produce such telegrams until after Congress should have approved the subpoenas of the committee.

This communication from Mr. Morrison was referred to the Committee on the Judiciary with instructions to report what action the House should take.

On December 20 the committee, through Mr. William P. Lynde, of Wisconsin, reported:

That the communication fails to inform the House of the names of the person or persons who refuse to produce papers and telegrams, or the circumstances under which the refusal was made. The House has the power to compel the production of books, papers, and telegrams mentioned in the investigation before the committee, and any witness who shall refuse to produce such papers or telegrams when required should be brought to the bar of the House to answer a violation of the privilege of the House.

The committee report the following resolutions and recommend their adoption:

Resolved, That whenever any witness duly subpoenaed to appear before any committee of investigation of the House refuses to appear before such committee or refuses to produce any books, papers, or telegrams in his possession or under his control, when required, the committee shall report the name of such witness, and the facts and circumstances relating to such refusal, for the action of the House.

Resolved, That whenever a witness has been duly subpoenaed to appear before a committee of this House any person who shall tamper with such witness in regard to the evidence to be given by him before the committee, or who shall interfere with or prevent the attendance of such witness before the committee to give testimony, or interfere with or prevent, or endeavor to intimidate or prevent, such witness from producing any books, papers, or telegrams required by the committee, on the facts being reported to the House such person shall be brought to the bar of the House to answer for a breach of the privileges of the House.

This report gave rise to a lengthy debate as to the proper practice and the rights and powers of the House in the matter to compelling the production of papers. A proposition of Mr. Frank H. Hurd, of Ohio, was offered as an amendment in the form of an additional resolution, as follows, and was disagreed to, yeas 93, nays 122:

Resolved, That the subpoenas issued by House committees commanding telegrams, books, papers, and other documents to be produced should describe them with such convenient particularity as may be, in order that they may be made capable of identification; and in cases where telegrams are ordered to be produced they should be described by reference to the names of the parties sending and receiving the same, the general subject-matter of their contents, and the date, as near as may

¹The presentation of this document is mentioned in the Journal, but it is not printed in full there.

²Second session Forty-fourth Congress, Journal, pp. 90, 117–120; Record, pp. 244, 324–330.

be, of their transmission; but the committees charged with the inquiry shall not be required to make such description when, after having determined that they have reasonable ground to believe that telegrams are material to such inquiry, they shall be ignorant of the parties to such telegrams, of their contents, and dates; but any description which will enable such telegrams to be identified shall be deemed sufficient.

Another view was embodied in two resolutions offered by Mr. J. Proctor Knott, of Kentucky, as a substitute for the resolutions of the committee. This substitute was agreed to, yeas 116, noes 33, as follows:

Resolved, That there is nothing in the law rendering a communication transmitted by telegraph any more privileged than a communication made orally or in any other manner whatever; that this House has the power through its subpoenas, under the hand and seal of the Speaker, to require any person to appear before any committee to which it has given authority to examine witnesses, and send for persons and papers, and bring with him such books or papers, whether the paper be telegraphic messages or others, for the inspection of such committee, as such committee may deem necessary to the investigation with which such committee may have been charged; and that such committee may order and direct any witness who may be brought before it to produce to the committee any book or paper, whether such paper be a telegraphic despatch or other, which may appear to be in his possession or under his control, which said committee may deem necessary to the investigation with which it may have been charged; and that any person upon whom such subpoena shall have been served who shall disobey the same, or, having appeared as a witness, shall disobey the order of such a committee to produce any book or paper which he shall have been ordered by such committee to produce, should be brought to the bar of the House upon a report of the facts by the committee to answer for a contempt of the authority of the House and dealt with as the law under the facts may require.

Resolved, That any person who shall prevent, or attempt to prevent, any person who shall have been subpoenaed to appear before any committee of this House from so appearing or from testifying before said committee, or from producing any book or paper which such witness may have been required to produce, or prevent or attempt to prevent any such witness from speaking the truth before such committee, should, upon a report by the committee of all the facts, be brought to the bar of the House to answer for a contempt, and dealt with as the law under the facts may require.

The resolutions as amended were then adopted.

1813. Instance wherein the House empowered the Ways and Means Committee to send for persons and papers in any matter arising out of business referred to the committee.—On February 13, 1873,¹ Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, presented the following resolution, which was agreed to without division:

Resolved, That the Committee of Ways and Means be, and they are hereby, authorized to send for persons and papers in any matter of examination pending before said committee arising out of business referred to it by the House of Representatives.

The committee took testimony under this resolution.²

1814. The Senate has authorized the compulsory attendance of witnesses in legislative inquiries.—On January 18, 1882,³ in the Senate, Mr. James Z. George, of Mississippi, from the Committee on Claims, offered the following:

Resolved, That the Committee on Claims be empowered to summon and examine witnesses to testify in regard to the claim of J. M. Wilbur for relief, now pending before said committee, etc.

This resolution was agreed to, Mr. Justin S. Morrill, of Vermont, asking if it did not introduce a novel procedure into legislation, but making no further opposition.

¹Third session Forty-second Congress, Journal, p. 387; Globe, p. 1322.

²Journal, p. 461.

³First session Forty-seventh Congress, Record, p. 471.

1815. On June 7, 1860,¹ Mr. James A. Bayard, of Delaware, from the Committee on Judiciary of the Senate, made a report concerning the sufficiency of a warrant issued for the arrest of a witness who had disregarded the summons of the committee appointed to investigate the circumstances of the raid of John Brown at Harpers Ferry. In the course of this report the assumption is made that the Senate does have power to summon witnesses to give testimony for legislative purposes.

1816. The House, after extended discussion, assumed the right to compel the attendance of witnesses in an inquiry entirely legislative in its character.

In a debate as to the right of the House to compel the attendance of witnesses for a legislative inquiry, the precedents of Parliament were considered.

On December 31, 1827,² Mr. Rollin C. Mallary, of Vermont, by direction of the Committee on Manufactures, submitted the following resolution:

Resolved, That the Committee on Manufactures be vested with the power and authority to send for persons and papers.

Mr. Thomas J. Oakley, of New York, proposed an amendment striking out the words

vested with power and authority to send for persons and papers,

and inserting as follows:

empowered to send for and to examine persons, on oath, concerning the present condition of our manufactures, and to report the minutes of such examination to this House.

An extended debate arose over this proposition. It was stated in its favor that the committee, in framing the tariff bill,³ found many conflicting memorials before them. and that the truth could be arrived at best by oral testimony. This course had been pursued by the House of Commons. The power asked for could not be considered dangerous, for the subject deeply affected the interests of the people, and it was proposed merely to compel the attendance of witnesses, a power exercised in the most insignificant cases of litigation between persons. The viva voce examination was much more satisfactory than the written memorials. The common law of Parliament should dictate that the legislature must possess the power requisite to procure the information needed in order to act understandingly. Committees of investigation enjoyed the power. Indeed, it seemed true that committees already had the power to examine under oath, the statutes conferring on the chairmen the power to administer oaths.

In opposition it was argued that no one could cite a case in the House of Representatives where a demand for like powers had been made by a committee whose duties were similar to those of the Committee on Manufactures. The power to send for persons and papers had hitherto been exercised by the committees having judicial functions and exercising the judicial power of the House. To send the

¹First session Thirty-sixth Congress, Senate Report No. 262.

²First session Twentieth Congress, Journal, pp. 101, 102; Debates, pp. 862, 890.

³At this period the Committee on Manufactures sometimes reported revenue bills.

Sergeant-at-Arms to all parts of the country to compel citizens to attend and testify on a tariff matter would be an extraordinary exercise of a power hitherto used only in cases of contested elections and impeachments. The powers of the House of Representatives could not be compared with those of the House of Commons, since the latter was restrained by no written constitution. And it had not been made plain that the House of Commons had ever issued a compulsory process in such a case.

It appears from the debate that Mr. Oakley's amendment was intended to authorize the committee to send for and examine witnesses, but not to compel their attendance against their will.

The amendment was agreed to, 100 ayes to 78 noes. The resolution as amended was then agreed to, yeas 102, nays 88.

1817. On April 4, 1828,¹ Mr. James Hamilton, of South Carolina, from the Select Committee on Retrenchment in the Expenses of the Government, reported this resolution:

Resolved, That the select committee on the subject of retrenchment be empowered to send for persons and papers, for the purpose of continuing and completing the examination.

Objection was made to this resolution by several Members, notably Messrs. Silas Wood and Henry R. Storrs, and James Strong, of New York, who urged that so great a power should always be under the control of the House, and should not be delegated except for certain specified purposes. Mr. Strong thought that the witnesses and documents wanted ought to be named.

Mr. Hamilton having stated to the House the objects to which the power was to be applied, the resolution was agreed to by the House.

1818. On January 16, 1844,² on motion of Mr. Cave Johnson, of Tennessee, by leave,, the following resolution was presented and agreed to:

Resolved, That a subpoena issue to Col. Charles K. Gardner, the secretary of the commissioners for adjusting Cherokee claims, for the purpose of giving evidence before the Committee on Indian Affairs; and that he bring with him all records and papers connected with said business.

1819. On March 7, 1844,³ the House, on motion of Mr. Cave Johnson, of Tennessee,

Ordered, That a subpoena be issued to summon Gen. John H. Eaton to appear as a witness before the Committee on Indian Affairs.

1820. On June 14, 1882⁴ the House, by resolution, authorized the issuance of a subpoena summoning Frank Kraft, a stenographer, to appear before a subcommittee of the Committee of Elections and present his notes in order to compare them with the printed depositions before the committee, there being a question as to an alleged alteration of the testimony. The House at the same time authorized the subcommittee to administer oaths.

¹First session Twentieth Congress, Journal, p. 474; Debates, p. 2157.

²First session Twenty-eighth Congress, Journal, p. 242; Globe, p. 153.

³First session Twenty-eighth Congress, Journal, p. 534; Globe, p. 363.

⁴First session Forty-seventh Congress, Journal, p. 1475; Record, p. 4913.

1821. An instance wherein the chairman of an investigating committee administered the oath to himself and testified.—On January 27, 1837,¹ in the select committee appointed to examine into the condition of the Executive Departments of the Government, and of which Mr. Henry A. Wise, of Virginia, was chairman, Mr. Abijah Mann, of New York, moved that Mr. Wise be sworn, as he wished to propound to him certain questions.

Mr. Wise was sworn by reading himself the oath and kissing the book.

1822. Form of oath administered to witnesses before a committee.—On January 27, 1837,¹ in the select committee appointed to examine into the condition of the Executive Departments of the Government, Mr. Henry A. Wise, of Virginia, the chairman, submitted, and the committee agreed to unanimously, the following form of oath to be administered to witnesses:

You do solemnly swear that the evidence you shall give touching the subjects of investigation of this committee shall be the truth, the whole truth, and nothing but the truth; so help you God.

1823. The authority to administer oaths should be given by law rather than by rule of either House.—On April 5, 1876,² at the time of the impeachment of Secretary Belknap, Mr. George F. Edmunds, of Vermont, called attention to the fact that the rule of the Senate provided that the presiding officer of the Senate should administer the oath to the Members of the Senate sitting as a court. Mr. Edmunds said that he found no law which authorized the President of the Senate to administer this oath, and it seemed to him to stand on the rule alone. Therefore a doubt arose as to the constitutional requirement for the oath. That meant a legal and binding oath, of course, and it was understood that a legal oath was one administered by someone having authority under law to administer oaths. Therefore Mr. Edmunds proposed that the Chief Justice of the United States be invited to administer the oath. This motion was agreed to, and the oath was so administered.

1824. On February 5, 1884,³ Mr. Nathaniel J. Hammond, of Georgia, from the Committee on the Judiciary, made a report on the bill to authorize the chairman of a subcommittee of any committee of the House to administer oaths. The report says:

It may be true that chairmen of such subcommittees have frequently before administered oaths. But the authority is wanting, in the opinion of this committee; and even if it be doubtful, this act should pass, because in every indictment for perjury the indictment must set forth, among other things, by what court and before whom the oath was taken, averring such court or person to have competent authority to administer the same.⁴

1825. The rules provide for the rate of compensation of witnesses summoned to appear before the House or either of its committees.

Present form and history of Rule XXXVII

Rule XXXVII provides:

The rule for paying witnesses subpoenaed to appear before the House or either of its committees shall be as follows: For each day a witness shall attend, the sum of \$2; for each mile he shall travel in coming to or going from the place of examination, the sum of 5 cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

¹Second session Twenty-fourth Congress, House report No. 194; Journal of the committee, p. 14.

²First session Forty-fourth Congress, Record, p. 2212.

³First session Forty-eighth Congress, House Report No. 194.

⁴Revised Statutes, section 5396.

This is the form adopted in 1880. It was taken from old Rule 138, which dated from May 31, 1872,¹ and is practically the same, except that the rule of compensation was then \$4 a day instead of \$2. The debate on February 27, 1880,² shows that \$2 was fixed as being the rate paid witnesses in United States courts.³

The compensation of a witness residing in the District of Columbia was before the adoption of this rule fixed by statute at a sum not exceeding \$2 a day.⁴

1826. Reference to the statute providing for taking testimony in private claims pending before a committee.—The statutes provide for the taking of testimony before masters in chancery on private claims pending before committees of the house.⁵

¹Second session Forty-second Congress, Cong. Globe, p. 4090.

²Second session Forty-sixth Congress, Record, p. 1206.

³On February 2, 1804 (first session Eighth Congress, Journal, p. 564; Annals, p. 966), the House by resolution provided that witnesses summoned before any committee during that session should be paid, out of the contingent fund, at the rate of \$2.50 a day and 12½ cents mileage; and for every messenger sent after witnesses, \$3 for every 20 miles.

⁴19 Stat. L., p. 41.

⁵20 Stat. L., p. 278.