

## Chapter LXXXV.

### THE QUORUM.<sup>1</sup>

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1. Provision of the Constitution. Section 2884.
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**2884. A majority of the House constitutes a quorum to do business.**—The Constitution of the United States provides in Article 1, section 5, that—

A majority of each [House] shall constitute a quorum to do business.

**2885. Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constitutes the quorum required by the Constitution.**—On July 19, 1861,<sup>6</sup> Mr. Charles B. Sedgwick, of New York, moved the previous question on the engrossment of a joint resolution to provide for the selection of a site for the Naval Academy. Fifty-two Members having voted in favor of and 41 Members having voted against seconding the same, the Speaker<sup>7</sup> declared that the previous question was seconded.<sup>8</sup>

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<sup>1</sup>A majority of a committee is a quorum. Section 4540 of this volume.

Quorum of Senate sitting for impeachment trial. Section 2063 of Volume III.

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<sup>2</sup>Principle that legislator detained by force may be counted. Section 356 of Volume 1.

<sup>3</sup>See also section 1653 of Volume III.

Illustration of former practice of ascertaining presence of. Section 2733 of this volume.

<sup>4</sup>Elaborate Senate discussion. Section 630 of Volume I.

<sup>5</sup>Oath administered to Members in absence of. Sections 174–178 of Volume I.

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Motion to reconsider in absence of. Sections 5606–5608 of Volume V.

Point of no quorum held dilatory. Sections 5724–5730 of Volume V.

<sup>6</sup>First session Thirty-seventh Congress, Journal, p. 117; Globe, p. 210.

<sup>7</sup>Galusha A. Grow, of Pennsylvania, Speaker.

<sup>8</sup>The previous question no longer requires a second. (See sec. 5443 of Vol. V of this work.)

Mr. Clement L. Vallandigham, of Ohio, made the point of order that no quorum had voted.

The Speaker decided that, inasmuch as 92 Members constituted a majority of the Members chosen, a quorum had voted.<sup>1</sup> In making his decision the Speaker quoted the following sections of the Constitution:

Each House shall be the judge of the election returns and qualifications of its own Members, and a majority of each shall constitute a quorum to do business.

The House of Representatives shall be composed of Members chosen every second year by the people of the several States.

The Speaker then said that there were chosen in this Congress 183 Members. The Chair decided, under that clause of the Constitution, that 92 would be a majority of all the Members chosen, and the majority of a quorum would be 47.

Mr. Vallandigham, said he concurred in the decision, and thought the House consisted only of the Members sworn in. The Chair had no knowledge of any Member unless he appeared here.

The Speaker said that, so far as that point was concerned, he would withhold his decision as to whether the House consisted of those sworn in or of those known to have been elected; but the Chair was clear in his own mind that a majority of those chosen constituted a quorum.

The House acquiesced in the decision.

**2886.** On February 25, 1879,<sup>2</sup> the House was considering the legislative, executive, and judicial appropriation bill, to which was added an amendment relating to the presence of United States deputy marshals at the polls. Mr. Eugene Hale, of Maine, having moved to lay the bill and amendment on the table, the vote was taken by yeas and nays and the result was handed to the Speaker.

The Speaker<sup>3</sup> said:

On this question the Chair votes "no." The vote now stands, yeas 3, nays 144; so the motion of the gentleman from Maine, Mr. Hale, to lay the bill on the table is not agreed to. The Chair desires to state in this connection that with his vote there are 147 Members voting, making a quorum of a full House. But in his own mind he does not think that under present circumstances 147 votes are required for a quorum, as there are two vacancies.

**2887.** On May 10, 1886,<sup>4</sup> a roll call having just been completed, Mr. Thomas M. Browne, of Indiana, asked of the Chair whether or not on the vote just taken there was a quorum without his name.

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

The Chair thinks not. It has been and is now an open question as to whether or not it requires a majority of all the Members who might be elected under the law to the House to constitute a quorum or merely a majority of those who are Members of the House.

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<sup>1</sup>The House numbered in the preceding Congress 237. The secession of Southern States reduced the number.

<sup>2</sup>Third session Forty-fifth Congress, Record, p. 1908.

<sup>3</sup>Samuel J. Randall, Speaker.

<sup>4</sup>First session Forty-ninth Congress, Record, p. 4338.

<sup>5</sup>John G. Carlisle, of Kentucky, Speaker.

**2888.** On September 19, 1890,<sup>1</sup> the question being on the approval of the Journal, there appeared on division 162 yeas and 2 nays.

Mr. Charles F. Crisp, of Georgia, made the point of order that no quorum was present.

The Speaker<sup>2</sup> thereupon proceeded to count the House, and announced the presence of 166 Members—a quorum—although the Chair was of opinion that 164 Members constituted a quorum, there being four vacancies.

Mr. Crisp, by unanimous consent, asked that tellers be appointed by the Speaker, in order that the presence or absence of a quorum might be determined beyond the possibility of a doubt.

The Speaker, without conceding it as a right to be claimed under the rules, appointed Mr. William McKinley, jr., of Ohio, and Mr. Crisp as tellers to count the House, who reported the presence of 164 Members.

The Speaker having stated that this number (164) constituted a quorum, Mr. Crisp raised the question of order that 166 Members constituted a quorum of the House.

After debate on the said question of order, the Speaker made the following statement:

The Chair desires to state to the House his opinion upon this question, so far as he is able to state it now, and he states it with this reservation, that if a careful examination of the question should lead him to a different conclusion he should not feel that the opinion which he now states was one to which he would be obliged to adhere. The Chair feels that we ought to be very careful not to strain a point on account of the situation we find ourselves in to-day. It is very undesirable that any ruling should be made which, in principle, might lead to misfortune hereafter for the country, or for the House of Representatives. The Chair has a very decided impression that the late Speaker Randall once decided that a quorum was a majority of the living Members of the House, and has so carried it in his mind without making any examination, but in the examination which the Chair has been able to make up to the present time he has found no decision which goes to the extent required here.

The decision of Speaker Grow on the 19th of July, 1861, upon examination, does not seem to go as far as the Chair supposed it did and as Members of the House now present think it did. That decision only went to the extent of saying that a majority of the Members originally chosen would constitute a quorum of the House. The question whether the decision should be that, or that a majority of those sworn in should constitute a quorum of the House, was left expressly in abeyance. It will be seen, therefore, that decision does not go so far as the requirements of this situation. All previous decisions had been that a quorum must consist of a majority of the Members that might have been chosen; in other words, in this case, of a majority of 330 Members. The only hesitancy that the Chair has about the matter is his vivid recollection of the opinion which he thinks was entertained by a former Speaker, Mr. Randall. Nevertheless, the Chair does not think that any doubtful decision ought to be made, and will therefore adhere for the present to the rule that 166 Members constitute a quorum.

On March 2, 1891,<sup>3</sup> the Speaker, by unanimous consent, submitted the following statement, which was ordered to be printed in the Journal and Record, viz:

On the 19th of last September the Speaker made a decision with regard to the number then necessary for a quorum, which he desires to comment upon. Prior to 1861 it had always been held that a quorum consisted of a majority of all the possible Members of the House. After the rebellion had caused a large number of constituencies to refuse to elect, it was held (July 19, 1861) that a quorum consisted of a majority of "those chosen." This last decision was cited, but the language "those chosen" seemed for

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<sup>1</sup> First session Fifty-first Congress, Journal, pp. 1059, 1060; Record, p. 10239.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> Second session Fifty-first Congress, Journal, p. 370.

the moment to the Chair to be ambiguous. It was susceptible of two meanings, as the Chair then thought first of Members originally chosen, and, second, of Members chosen then alive. If the first moaning was to be taken, 166 was a quorum; if the latter, 164.

There was some excitement at the time, and the clerks were unable to find the precedents, and the Chair, desirous that the action of the House should be entirely safe, declined to hold that 164 was a quorum. Some days later the precedents were found, and it will be evident that the latter meaning—namely, Members “chosen and living”—was intended, and that, in accordance with the precedent of 1861, 164 was the true quorum. Such was the decision made by the Senate, Reverdy Johnson voting in the affirmative, in 1861–1 and as late as March 24, 1886, that body, on the death of Senator Miller, of California, had its quorum reduced to 38, as will be seen by the Journal of that date. In the September decision the Chair referred to the opinion of Mr. Randall, of which he had a strong impression, and, as he has been able to find it, will cite it as it will be found in the Record of February 25, 1879:

“The Chair desires to state in this connection that with his vote there are 147 Members voting, making a quorum of a full House. But in his own mind he does not thin that under the present circumstances 147 votes are required for a quorum, as there axe two vacancies.”

This was not a decision. It was an opinion. As upon reflection the present Speaker does not desire to be cited as opposed to the opinion under which the most important legislation of the country was passed during critical years, he takes the liberty to add this comment. He does not regret having made the decision with the light he then had, and only makes this statement to comply with the promise of further investigation then made.<sup>1</sup>

**2889. After the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.—**

On March 16, 1906,<sup>2</sup> the House voted on the question of consideration of the bill (H.R. 15744) to abolish the office of Lieutenant General of the Army of the United States, and there appeared yeas 139, nays 32, answering present 21, a total of 192.

There being a question as to the presence of a quorum, Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that 192 constituted a quorum, saying:

Mr. Speaker, the statute fixing the number of Members provides for the election of 386, and I understand that 386 were chosen. Two of those Members, one from Pennsylvania, Mr. Castor, and one from Virginia, Mr. Swanson, are not now Members of Congress, The gentleman from Pennsylvania is dead and the gentleman from Virginia, who was sworn in, has resigned. They are clearly no longer Members of this House. Two persons who were chosen to be Members have never been sworn. They have never qualified. They have not become Members of this House. That, therefore, leaves the membership of this House at 382, of which number 192 constitute a quorum. The Constitution provides that a majority of each House shall constitute a quorum. That, of course, raises the question, What is the “House?” That question has been discussed frequently here in earlier days and in the other Chamber. The question arose during the civil war, when a certain section of the country did not elect and send Representatives to the United States Congress. The statute provided for a much larger number, but only 183 Members had been chosen, of whom 92 were present. Mr. Speaker Grow announced that 92 constituted a quorum. Mr. Vallandigham, of Ohio, made the point of order that it did not, but after debate and after ruling by Mr. Speaker Grow, Air. Vallandigham concurred. Mr. Speaker Grow did not go so far as to decide whether a Member who had been chosen, but had not been sworn, would be considered a, Member of the House. In the ascertainment of a quorum it was necessary that he should decide for the purposes of the case before him, but I understand that after debate it was held in a similar case in the Senate that a person elected but not sworn is not to be considered. The present rule of the Senate, originally adopted upon the recommendation of a committee of very able Senators,

<sup>1</sup>On April 3, 1896 (first session Fifty-fourth Congress, Journal, p. 366), Mr. Speaker Reed ruled that 178 Members were a quorum, although, had there been no vacancies in representation, the quorum would have been 179. In that ruling he restated the reasons given above. (See also Congressional Record, second session Fifty-third Congress, pp. 2003–2006.)

<sup>2</sup>First session Fifty-ninth Congress, Record, p. 3932.

including Senator Edmunds, of Vermont, distinctly specifies that "a majority of Senators duly chosen and sworn" shall make a quorum. Three hundred and eighty-four Members have been "chosen and sworn," but one having died and one having resigned, there are living but 382, and a majority, or 192, constitutes a quorum. Much more might be said, but it seems unnecessary to consume time at this late hour. I submit, Mr. Speaker, that the House now consists of 382 Members and that 192 is a constitutional quorum.

As the Speaker was about to rule, Mr. Adam M. Byrd, of Mississippi, appeared and was recorded. This increased the number to 193, which was a quorum of 384, the number in the House after the deduction of the names of Messrs. Castor, who had died, and Swanson, who had resigned.

Therefore the Speaker did not rule on the question.

**2890.** On April 16, 1906,<sup>1</sup> Mr. Sereno E. Payne, of New York, moved that the House take a recess until tomorrow at 11:30 a. m.

On a division there were, ayes 125, noes 9.

Mr. Jack Beall, of Texas, made the point of order that no quorum was present.

The Speaker pro tempore<sup>2</sup> directed the doors to be closed and the roll to be called, under section 4 of Rule XV, and there were, yeas 165, nays 19, answering present 7.

The Speaker,<sup>3</sup> who had resumed the Chair, said:

The yeas are 165 and the nays are 19; answering "present," 7, a total of 191 voting "yea," "nay" and "present"—in the opinion of the Chair a quorum. The Chair will hand to the Clerk a statement covering the reason the Chair has to assign for holding 191 to be a quorum.

"The Constitution of the United States, in the sections relating to the Congress, specifies that 'a majority of each House shall constitute a quorum to do business.' This brings to the front the question as to what constitutes the 'House,' whether it be all the Members provided for by the apportionment, or whether it be a less number determined by existing accidents or exigencies. During the civil war, when many seats in both House and Senate were vacant, this question assumed great significance and was passed upon in both Houses. On July 19, 1861, Mr. Speaker Grow, after listening to debate, decided that a quorum consisted of 'a majority of those chosen,' but expressly refrained from deciding as to whether the fact of taking or not taking the oath of office should be considered. (See sec. 250 of Parliamentary Precedents.) In 1879 Mr. Speaker Randall intimated that he held the same view; but in 1886 Mr. Speaker Carlisle treated the question as an open one. In 1890 Mr. Speaker Reed, after careful examination of the precedents of the House, held that a quorum was a majority of those 'chosen and living,' such, in his opinion, being the intent of Mr. Speaker Grow's ruling in 1861, although the language of 1861 was not in this respect definite.

"This, therefore, is the status of the question so far as the decisions of the House go. But at the present time another question arises. The apportionment gives this House 386 Members, of whom 194 are a quorum. But two Members have died, and two—Messrs. Patterson, of Tennessee, and Williamson, of Oregon—have not yet been sworn, and Mr. Swanson has resigned. If the rule be that those 'chosen and living' constitute a quorum, without regard to the qualification by taking the oath, then the quorum is 192; but if Members not qualified are not to be counted as part of the House, then the total membership is reduced to 381, and the quorum is 191.

"While the question has never been passed on in the House, it has been the subject of most careful consideration in the Senate, and the result is embodied in a permanent form in Rule III, section 2: 'A quorum shall consist of a majority of the Senators duly chosen and sworn.'

"At first, in 1862, the Senate declined to commit itself to the rule established by the decision of Mr. Speaker Grow in the House in 1861; but in 1864, after thorough debate, by a vote of yeas 26, nays 11, the Senate resolved that 'a quorum of the Senate consists of a majority of the Members duly chosen.'

<sup>1</sup> First session Fifty-ninth Congress, Record, p. 5354.

<sup>2</sup> Charles Curtis, of Kansas, Speaker pro tempore.

<sup>3</sup> Joseph G. Cannon, of Illinois, Speaker.

The question of qualification was brought up in this discussion, but the Senate showed reluctance to bring it into the decision.

“On January 17, 1877, the Senate, in adopting rules, agreed to the rule in its present form, specifying the quorum as ‘a majority of Senators duly chosen and sworn.’ These words were adopted with very little debate, on the statement by the Senator in charge that they were the words of the old rule of 1864. But, in fact, the words ‘and sworn’ were inserted in the revision of 1868,<sup>1</sup> being recommended by a committee composed of Messrs. Henry B. Anthony, of Rhode Island; Samuel C. Pomeroy, of Kansas, and George F. Edmunds, of Vermont. Their report does not explain their reasons for adding these words, and there was no debate on this point when the Senate agreed to the report. The Senate was undoubtedly aware of the change, however, since the words ‘and sworn’ are italicized in the report, indicating that they were an amendment. On October 11, 1893, the Senate discussed the whole rule briefly, and there was an appeal from a decision of the Chair based on the rule. This appeal was laid on the table—yeas 38, nays 5; but this question did not particularly touch the question of qualification.

Such is the status of this question so far as the law of the House and Senate is concerned. The rule of the Senate goes further than the decisions in the House, and does not seem to have been the subject of extended deliberation so far as the qualification feature is concerned. But in view of the learning of the committee who made the report of 1868, and of the reasons which seem to sustain that report, the Chair feels constrained to hold that after the House is once organized a quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.”

A quorum being present, the House stands in recess until tomorrow, at 11:30 o'clock.

**2891. After long discussion the Senate finally decided that a quorum consisted of a majority of Senators duly chosen and sworn.**—On June 30 and July 9, 1862,<sup>2</sup> the Senate argued at length, and with a citation of numerous precedents of both the Senate and the House of Representatives, the question as to the number of Members required under the Constitution to constitute a quorum, in either body. It was proposed to declare that a majority of the Senators duly elected and entitled to seats constituted a quorum; but, the proposition was laid on the table by a vote of 19 to 18. The Judiciary Committee had previously reported against action on such a resolution. President pro tempore, Solomon Foot, of Vermont, expressed a decided opinion that a quorum consisted of a majority of the whole number to which the body would be entitled, and said that had been the decision a decade before when the question was discussed ably and fully by Clay, Berrien, Underwood, Badger, and others.

**2892.** On May 4, 1864,<sup>3</sup> the Senate, after debate and by a vote of yeas 26, nays 11, agreed to the following:

*Resolved,* That a quorum of the Senate consists of a majority of the Senators duly chosen.

The Senate Journal shows that the rule as adopted at this time made no mention of the qualification by oath.

On March 26, 1868,<sup>4</sup> the Senate agreed to a report of a committee appointed to revise the rules of the Senate, Messrs. Henry B. Anthony, of Rhode Island;

<sup>1</sup>By the act of July 19, 1867 (15 Stat. L., p. 4), Congress had declared illegal the reconstructed State governments in Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and persons bearing credentials as Senators-elect from those States were appearing and claiming seats in the Senate at the time this amendment to the rule was agreed to.

<sup>2</sup>Second session Thirty-seventh Congress, Globe, pp. 3021, 3189.

<sup>3</sup>First session Thirty-eighth Congress, Globe, pp. 2082–2087; Senate Journal, p. 401.

<sup>4</sup>Second session Fortieth Congress, Globe, pp. 1628, 2088.

Samuel C. Pomeroy, of Kansas, and George F. Edmunds, of Vermont. This report added the words "and sworn," so that the rule, as the last sentence of Rule I, read: "A quorum shall consist of a majority of the Senators duly chosen and sworn." The report<sup>1</sup> does not explain why the words "and sworn" were added, but as they appeared italicized the Senate must have been aware of the change. When the Senate considered the report this subject was not debated. It is evident, however, that the existence of certain State governments declared illegal<sup>2</sup> by Congress, and the consequent existence of persons elected as Senators but not permitted to take seats, was the reason for the amendment.

**2893.** On January 17, 1877,<sup>3</sup> at the time of a revision of the rules, the Senate again adopted with an addition the rule of 1864, and provided that a quorum should consist of "a majority of the Senators duly chosen and sworn."

The statement was made that this rule was the form of 1864, the fact of the revision of 1868 being overlooked.

**2894.** On October 11, 1893,<sup>4</sup> the Senate discussed briefly the rule of that body establishing the quorum at "a majority of the Senators duly chosen and sworn." The rule was criticised as contrary to the doctrine laid down by Cushing, but was not seriously attacked.

When the Presiding Officer ruled that a less number than the full possible membership was a quorum of the Senate, Mr. Wolcott, of Colorado, appealed; but the appeal was laid on the table, yeas 38, nays 5.

**2895. In 1890 Mr. Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members, present but not voting, thereby establishing a quorum of record.**

**The practice of Members refusing to vote in order to break the quorum had been established many years in the House when discontinued in 1890. (Footnote.)**

On January 29, 1890,<sup>5</sup> Mr. John Dalzell, of Pennsylvania, as a privileged question, reported from the Committee on Elections the contested election case of Smith *v.* Jackson, from West Virginia.

Mr. Charles F. Crisp, of Georgia, raised the question of consideration, and the vote being taken by yeas and nays, there were, yeas 161, nays 1, not voting 166.

The Speaker<sup>6</sup> thereupon directed the Clerk to enter on the Journal the names of the following Members as present and refusing to vote, viz:

Messrs. Blanchard, Bland, Blount, Breckinridge of Arkansas, Breckinridge of Kentucky, Brookshire, Bullock, Bynum, Carlisle, Chipman, Clements, Clunie, Compton, Covert, Crisp, Culberson, Cummings, Edmunds, Enloe, Fithian, Goodnight, Hare, Hatch, Hayes, Holman, Lawler, Lee, McAdoo, McCreary, McRae, Morgan, Oates, O'Ferrall, Pendleton, Quinn, Reilly, Seney, Stewart of Texas, Tarsney, Tillman, and Turner of Georgia.

<sup>1</sup> Second session Fortieth Congress, Senate Report No. 56.

<sup>2</sup> 115 Stat. L., p. 4.

<sup>3</sup> Second session Forty-fourth Congress, Record, pp. 690, 692, 693.

<sup>4</sup> First session Fifty-third Congress, Record, p. 2395.

<sup>5</sup> First session Fifty-first Congress, Journal, pp. 175-177; Record, pp. 949-960, 979-993.

<sup>6</sup> Thomas B. Reed, of Maine, Speaker.

The Speaker thereupon ruled that a quorum was present within the meaning of the Constitution, upon the following grounds:

The Clerk announces the Members voting in the affirmative to be 161 and 2 in the negative. The Chair thereupon, having seen other Members present, having heard their names called in their presence, directed the call to be repeated, and, since gentlemen did not answer when thus called, the Chair directed a record of their names to be made showing the fact of their presence as bearing upon the question which has been raised, namely, whether there is a quorum of this House present to do business according to the Constitution of the United States; and accordingly that question is now before the House, and the Chair purposes to give a statement, accompanied by a ruling, from which an appeal can be taken if any gentleman is dissatisfied therewith.

There has been for some considerable time a question of this nature raised in very many parliamentary assemblies. There has been a great deal of doubt, especially in this body, on the subject, and the present occupant of the chair well recollects a proposition or suggestion made ten years ago by a Member from Virginia, Mr. John Randolph Tucker, an able constitutional lawyer as well as an able Member of this House. That matter was somewhat discussed and a proposition was made with regard to putting it into the rules. The general opinion which seemed to prevail at that time was that it was inexpedient so to do; and some Members had grave doubts whether it was proper to make such an amendment to the rules as would count, as a part of the quorum, the Members present and not voting as well as those present and voting. The evils which have resulted from the other course were not then as apparent as now, and no such careful study had been given to the subject as has been given to it since.

That discussion took place in the year 1880. Since then there have been various arguments and various decisions by eminent gentlemen upon the subject, and these decisions have very much cleared up the question, and it is much more apparent what the rule is. One of the first places in which the question was raised was in the senate of the State of New York. The present governor of New York<sup>1</sup> was then the presiding officer and upon him was devolved a duty similar to that which has been devolved upon me to-day. He met that duty in precisely the same manner. The question there raised was as to the necessity, under their constitution, of the actual participation by voting of the three-fifths constituting a quorum for the passage of certain bills, and he held that that constitutional provision as to a quorum was entirely satisfied by the presence of the members, even if they did not vote, and accordingly he directed the recording officer of the senate to put down certain names as a part of the record of the transaction; that is, to put down the names of the members of the senate who were present and refused to vote in precisely the same manner in which the occupant of this chair has directed the same thing to be done. That decision must be regarded as in no sense partisan, at least as the Chair cites it.

There has also been a decision in the State of Tennessee, where the provisions of the law require a quorum to consist of two-thirds. In the legislature of 1885 the

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<sup>1</sup>David B. Hill.

house had ninety-nine members, of which two-thirds was sixty-six. A registration bill was pending which was objected to by the Republican members of the house. Upon the third reading the Republicans refused to vote, whereupon the speaker, a member of the other party, directed the clerk to count as present those there but not voting, and, a quorum being present, declared the bill passed upon this reading.

These two decisions, made, the first in 1883 and the other in the year 1885, seem, to the present occupant of the chair, to cover the ground; but there is an entirely familiar process which every old Member will recognize which, in the opinion of the Chair, is incontestible evidence of the recognition at all times of the right to regard Members present as constituting a part of a quorum. It has been almost an everyday occurrence at certain stages of the session for votes to be announced by the Chair containing obviously and mathematically no quorum; yet, if the point was not made of no quorum, the bill has always been declared to be passed. That can only be upon a very distinct basis, and that is that everybody present silently agreed to the fact that there was a quorum present, while the figures demonstrated no quorum voting. There is no ground by which under any possibility such a bill could be passed constitutionally, unless the presence of a quorum is inferred. It is inferred from the fact that no one raised the question, and the presence was deemed enough.

All methods of determining a vote are of equal value. The count by the Speaker or Chairman and the count by tellers or a count by the yeas and nays are all of them of equal validity. The House has a right, upon the call of one-fifth of the Members, to have a yea-and-nay vote, and then upon that the question is decided; but the decision in each of the other cases is of precisely the same force and effect.

Again, it has always been the practice in parliamentary bodies of this character, and especially in the Parliament of Great Britain, for the Speaker to determine the question whether there is or is not a quorum present by count. It is a question simply of the actual presence of a quorum, and the determination of that is intrusted to the presiding officer in almost all instances. So that when a question is raised whether there is a quorum or not, without special arrangement for determining it, it would be determined on a count by the presiding officer. Again, there is a provision in the Constitution which declares that the House may establish rules for compelling the attendance of Members. If Members can be present and refuse to exercise their functions and can not be counted as a quorum, that provision would seem to be entirely nugatory. Inasmuch as the Constitution provides for their attendance only, that attendance is enough. If more was needed the Constitution would have provided for more.

The Chair feels very much disposed to cause to be read the action of the present governor of the State of New York, then lieutenant-governor and presiding officer of the senate.

The action of the senate was this: The president put the question whether the senate would agree to the final passage of said bill, and eighteen senators voted in favor thereof, and Messrs. Allen, Bowen, Evans, Holmes, F. Lansing, Lord, Lynde, Pitts, Russell, and Thomas, being present, refused to vote.

Then come the votes. For the affirmative, for the negative. Also the following, pursuant to direction of the president:

“Mr. Allen: Present and not voting.”

And so on down the list. The result having been announced, the president thereupon ruled as follows:

The action of the senate just taken requires a ruling from the chair, and an explanation of that ruling is eminently proper at this time.

The parliamentary question presented is, whether this bill has been duly passed. It has received the votes of a majority of all the senators elected to the senate. It has received all the affirmative votes which the constitution requires to pass such a bill. This bill, so far as the affirmative vote necessary to its passage is concerned, is controlled by section 15 of article 3 of the constitution, which only requires a majority of all the senators elected.

It is, however, a bill by the provisions of which it is claimed a debt or charge is made against the State, and is, therefore, subject to the provisions of section 21 of the same article of the constitution. That section is substantially as follows: "On the final passage in either house of the legislature of any act which \* \* \* creates a debt or charge \* \* \* or makes any appropriation \* \* \* of public money, the question shall be taken by ayes and nays, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall in all such cases be necessary to constitute a quorum therein."

This section is peculiarly and carefully worded. It does not provide that three-fifths of all the senators elected shall vote for the bill, or that such a number shall vote at all upon the bill, but simply that such a number must be present in order "to constitute a quorum" when such a bill is upon its final passage. If it had been intended that more than a majority should vote for such a bill to secure its passage, or that there should be three-fifths voting evidenced by the yeas and nays, it could have been easily so expressed. The plain and only object of this section of the constitution was to provide that there should not only be a majority vote in favor of bills of such importance, which create debts or appropriate public moneys for public purposes, but that when they are finally voted upon in the legislature there should be more than a bare majority present, to wit, three-fifths of all the members elected.

If three-fifths are in fact present they need not necessarily vote upon either side. The constitutional requirement is fully complied with by the fact of their presence. There need not be three-fifths voting, but three-fifths must be present to constitute a quorum when the majority pass the bill. The ayes and noes, as entered upon the journal, may be the evidence of the votes, given upon either side, but it is nowhere made the evidence, much less the only evidences, of the passage of a constitutional quorum. There may be a full senate present, and a majority may vote for such a bill, and the balance for good reasons may be excused from voting, yet nevertheless the bill is legally passed although the record of the ayes and noes will not show that three-fifths voted. Such record is not the sole and only criterion from which to determine who were present. Neither the constitution, the statutes, nor the rules of this senate make it so.

The presence or absence of senators is a physical fact known to the president and the clerk of the senate. It requires only the exercise of their senses to determine the question. If a stranger should intrude himself into a senator's seat and insist upon responding to that senator's name when it was called, it would be the clear duty of the clerk not to record the vote, and the duty of the president of the senate to see that it was not recorded. The presence or absence of a response when the clerk calls the roll, is not therefore absolutely conclusive. Whether the senator is in truth present, or does himself respond, is a question for the observation of the officers of the senate, who are expected honestly and truthfully to determine it.

In fact to-day there are present over three-fifths of all the senators elected. They sit in their seats before me. Rule 14 of the senate requires each senator to vote when his name is called, but a number—more than enough to constitute the requisite three-fifths—refuse to vote at all, either for or against the bill, and remain silent. It is claimed that, therefore, they are to be deemed absent and can not be counted as constituting a quorum. They are not absentees within the meaning of the rules, because they are in fact present. There can be no "call of the house" or other proceedings instituted to compel their attendance, because they are not absent. Their action is in defiance of the rules of this body, factious, and revolutionary.

If, because they refuse to respond to their names when called, they are thereby to be deemed absent, of what use are the rules of this body and the law which gives this body authority to send its sergeant-at-arms for its absent members and forcibly bring them into this chamber, if, when brought

in, they can still refuse to vote and still be deemed absent? It would show that all such provisions in the rules and in the statutes were entirely nugatory and of no force or effect. There is no principle of parliamentary law which permits a senator to be present in his seat and refuse to respond to his name, and then be allowed to insist that he is not present. If he does not want to be regarded as present he must remain away from the chamber. This is common sense, and it is not antagonistic to parliamentary law.

If a senator is in fact present, his refusal to vote, which is a violation of his duty, does not make him absent in a parliamentary sense. He can be counted by the clerk and president as one of the three-fifths necessary to constitute a constitutional quorum. It is peculiarly the duty of the president to see whether or not there is present a requisite quorum. It is made his duty by Rule 6 of this senate to certify the passage of all bills, and to certify the fact whether they are passed by the required vote and with the constitutional quorum present. His certificate is evidence of those facts to the governor, the secretary of state, and to all the world. He is the party held responsible for the truth or falsity of that certificate. He may obtain the information as to the number of senators who are actually present when a bill is passed either from his own observation, or from the tally list, if that shows it, or from the journal kept by the clerk.

There is no precise or prescribed method laid down either in the constitution or law, or in the rules of this body, as to how the presiding officer shall ascertain what number of senators were present. He is bound to know the fact and certify accordingly, the same as he is required to know how many days senators have attended the senate before he gives the certificate which entitles them to draw their pay. There is no law which makes the tally list showing who voted the only evidence as to the number of senators present when a bill is voted upon.

The president of the senate is bound to know and certify as to whether there was present the requisite quorum, and as his certificate is the evidence of such fact the question presented is peculiarly within his province. It is very proper that the journal should show who were present when a bill was passed, not only for the protection of the presiding officer and as evidence corroborative of his certificate, but sometimes for his information. He may have called a senator temporarily to the chair, and a bill like the one in question may have passed in his absence, and upon his return to the chair he may be called upon to sign the certificate of the passage of the bill. It is well in all such cases and for other reasons that the clerk should always keep a record as to what senators are present when a bill is passed.

If they vote, he is bound to make a record of it, and if they are present and refuse to vote, he sees and knows the fact and should make record of that fact also. Then the record will show the exact truth and will harm no one. The presiding officer can make up his certificate to the bill, not only from his own observation, but in addition thereto, from the journal kept by the clerk. It is very clear that this course will answer every requirement of the law and the constitution. The assertion that whether a constitutional quorum is present on the passage of a bill is only to be determined by whether or not a constitutional quorum voted, and by that fact alone and without reference to anything else, has no substantial foundation on which to stand.

The jurat or certificate which the presiding officer of each house has always signed to such bills from time immemorial is that the bill received a majority of the votes of all the senators elected, "three-fifths being present;" not three-fifths voting. The question as to how many voted in addition to a majority is wholly immaterial so long as three-fifths are present. Their presence is not to be determined solely and only by the yeas and nays.

I have accordingly directed the clerk, as he called the names of the senators who are present but who refuse to vote, to mark opposite their names on the tally list kept by him and which is to be entered in the journal, the words "Present, but refused to vote," and he has done so in each case. Therefore, in accordance with the record so made, which shows that there are present over three-fifths of all the senators elected, and which agrees with my own observation, I do hereby declare that this bill, having received the votes of a majority of the senators elected, three-fifths being present, has been duly and legally passed.

*Ordered*, That the clerk. return said bill to the assembly with the message that the senate have concurred in the passage of the same with amendments.

Mr. Crisp having appealed from the decision of the Chair, the appeal was debated at length, until January 30, when, on motion of Mr. William McKinley, jr., of Ohio,

the appeal was laid on the table by a vote of 162 yeas to 0 nays, 167 not voting, a sufficient number of those present and not voting being noted by the Speaker to establish the fact that more than a quorum were present.

So the decision of the Chair was sustained.<sup>1</sup>

**2896. Decisions overruled by Mr. Speaker Reed when he caused Members not voting to be noted present in 1890.**—On February 24, 1875,<sup>1</sup> Mr. John Coburn, of Indiana, called up for consideration House bill No. 4745, to provide against the invasion of States, to prevent the suppression of their authority, and to maintain the security of elections. (Called the force bill.)

There arose dilatory proceedings, and various Members who were present declined to vote, so that there was no quorum voting. Mr. Benjamin F. Butler, of Massachusetts, made the point that there was manifestly a quorum present, and declared that if the Chair would take note of the presence of Mr. Samuel J. Randall, of Pennsylvania, who was participating in the proceedings, but had not voted, and of the Chair himself, there would be found to be a quorum present.

The Chair having declined to take such proceedings, Mr. Coburn raised the point of order more formally in the following language:

I rise to a point of order. It is simply as to the manner of making a record of Members present. One way of making the record is to have the roll called and the names of Members marked as present upon the roll call, whether upon the yeas and nays or on a call of the House. That makes the record but there is another way in which the House can make its record as positively, as absolutely, as undeniably as that, and that is by a Member rising in his place and saying there is present another Member who has not answered to his name, mentioning his name to the House, and asking that it be recorded. The record can be made, and that man is present and voting.

The Speaker<sup>3</sup> said:

The Chair never heard of that being done. He begs to remind the House, whereas that might and doubtless would be true, that there is a quorum in the Hall, the very principle enunciated by the gentleman from Indiana has been the foundation probably for the greatest legislative frauds ever committed. Where a quorum, in the judgment of the Chair, has been declared to be present in the House against the result of a roll call, these proceedings in the different legislatures have brought scandal on their names. There can be no record like the call of the yeas and nays; and from that there is no appeal. The moment you clothe your Speaker with power to go behind your roll call and assume that there is a quorum in the Hall, why, gentlemen, you stand on the very brink of a volcano.

**2897.** On June 9, 1876,<sup>4</sup> a quorum failed to vote on a roll call, and Mr. Wilham M. Springer, of Illinois, made the point of order that, although the roll call dis

<sup>1</sup> On June 1, 1896 (Journal, first session Fifty-fourth Congress, p. 558), it was ruled by Speaker pro tempore Payne that Members coming into the Hall after the point of no quorum is made, may be counted. Members seem to have caused a quorum to fail by declining to vote as early as May 9, 1834 (first session Twenty-third Congress, Debates, p. 4023). On May 30, 1836 (first session Twenty-fourth Congress, Debates, pp. 4086, 4099) there was a discussion over the refusal of certain Members to vote, and we find Mr. John Bell, of Tennessee, saying that "the time might and probably would come, when the order of the House would be broken up by a factious minority." Therefore he was in favor of prompt punishment of those Members who should refuse to vote.

<sup>2</sup> Second session Forty-third Congress, Record, p. 1734.

<sup>3</sup> James G. Blaine, of Maine, Speaker.

<sup>4</sup> First session Forty-fourth Congress, Journal, p. 1078.

closed the absence of a quorum, the Chair should take cognizance of the presence of those gentlemen who, by rising and announcing pairs, had shown their presence.

The Speaker pro tempore<sup>1</sup> overruled the point of order, on the ground that the Chair could not go outside of the record in deciding as to the presence of a quorum.<sup>2</sup>

**2898. Illustrations of the former practices of obstruction by breaking a quorum and by dilatory motions.**—On February 17, 1835,<sup>3</sup> a question was taken on an amendment, and no quorum voted. Thereupon Mr. Thomas F. Foster, of Georgia, called the attention of the Chairman (George N. Briggs, of Massachusetts) to the fact that Members “were pertinaciously keeping their seats, voting neither on one side nor the other.” He hoped that their names would be taken down.

The Chairman thereupon counted and reported a quorum present, whereupon the question was put again.

**2899.** On April 6, 1860,<sup>4</sup> Chairman John U. Pettit, of Indiana, in Committee of the Whole House on the state of the Union, announced that it had repeatedly been held in House and committee that the Chair could not determine officially that a quorum was not present without a division of the House or the committee.

**2900.** On February 18, 1850,<sup>5</sup> Mr. E. Carrington Cabell, of Florida, moved that he be excused from voting, and the question being put, and the yeas and nays ordered, Mr. Albert G. Brown, of Mississippi, moved that he be excused from voting on the motion to excuse Mr. Cabell. Objection was made to this motion, on the ground that the effect was to multiply questions so as to prevent the transaction of business. But Mr. Speaker Cobb decided that the motion was in order, and being in order, the Chair could not do otherwise than entertain it. Thereupon an appeal was taken, and a motion made that the appeal lie on the table. Then a motion was made to adjourn, which was decided in the negative by yeas and nays. The question recurring on the motion to lay the appeal on the table, Mr. George W. Jones, of Tennessee, moved that he be excused from voting on that motion, and the question being put and taken by yeas and nays, the House refused to excuse Mr. Jones from voting. Then a motion to adjourn was offered, and so on dilatory motions were presented and voted on for the entire day. There were during the legislative day thirty-one roll calls, and business was effectually stopped. The subject before the House was a resolution relating to the admission of California to the Union.

**2901.** On February 18, 1850,<sup>6</sup> pending consideration of a resolution relating to the admission of California to the Union, prolonged dilatory proceedings took place. On a call of the roll a quorum failed to vote, although it was evident that a quorum was present.

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<sup>1</sup> Samuel S. Cox, of New York, Speaker pro tempore.

<sup>2</sup> After the Fifty-first Congress this principle was reestablished for a time (see *Journal*, second session Fifty-third Congress, p. 211), but its abandonment was soon found necessary if the public business was to be transacted. For an example of the impossible situation created by the reestablishment of the old principle, see second session Fifty-third Congress, *Record*, pp. 3305, 3331, 3402, 3452, 3545, 3786–3792.

<sup>3</sup> Second session Twenty-third Congress, *Debates*, pp. 1412, 1413.

<sup>4</sup> First session Thirty-sixth Congress, *Globe*, p. 1586.

<sup>5</sup> First session Thirty-first Congress, *Journal*, pp. 545–577; *Globe*, p. 382.

<sup>6</sup> First session Thirty-first Congress, *Journal*, p. 562; *Globe*, p. 380.

Mr. Edward D. Baker, of Illinois, asked whether it was not the duty of the Speaker to make up his own mind from his own observation, whether a quorum of the House was or was not present.

Mr. Speaker Cobb replied that the Chair acted in the present case in accordance with the practice under similar circumstances. Where a vote had been taken by yeas and nays that was the information upon which the Chair must act as to whether a quorum was present or not.

Mr. Robert C. Schenck, of Ohio, proposed a resolution requiring the Speaker to count those present and report the number present and the names of those absent; but the Speaker ruled the resolution out of order.

Mr. Thaddeus Stevens, of Pennsylvania, asked the Speaker to enforce the rule requiring Members to vote. The Speaker replied that the enforcement of this rule had been considered in previous Congresses entirely impracticable.

**2902.** On May 11, 1854,<sup>1</sup> during the struggle over the proposition to close debate in Committee of the Whole House on the state of the Union on the bill (H.R. 236) to organize the Territories of Kansas and Nebraska, prolonged dilatory proceedings took place, and during that legislative day 101 roll calls occurred, principally on dilatory motions, such as for calls of the House, to adjourn, to fix the day to which the House should stand adjourned, to excuse a Member from voting, etc.

**2903.** The extent to which the motion to excuse a Member from voting may be used as an instrument of obstruction was shown on February 5, 1858,<sup>2</sup> during a contest over a message of the President relating to the Lecompton constitution of Kansas. On that day Mr. John Sherman made a point of order on the following motion, submitted by Mr. Muscoe R.H. Garnett, of Virginia:

Mr. Garnett moves to be excused from voting on the motion of Mr. Letcher, to be excused from voting on the motion of Mr. Cobb, to be excused from voting on the motion of Mr. Seward to lay on the table the appeal of Mr. Stanton from the decision of the Chair.

Mr. Speaker Orr said in regard to the point of order:

The Chair is of the opinion that, under the rules of the House, whatever may be the result, it is competent for the gentleman to make the request; the rules allow any gentleman to ask to be excused from voting upon any proposition.

**2904. The decision of Mr. Speaker Reed in counting as part of the quorum Members not voting was sustained by the Supreme Court.**—The action of Mr. Speaker Reed in noting Members present and not voting as part of the quorum necessary for the validity of the vote was sustained in a decision of the Supreme Court of the United States.<sup>3</sup> The case arose out of the act providing for the classification of worsteds, passed by the House on May 9, 1890. On the vote there appeared yeas 138, nays 0, not voting 189. The Speaker thereupon announced the names of 78 Members present and not voting, and announced that those present and refusing to vote, together with those recorded as voting, showed a total of 212 Members present, constituting a quorum present to do business.

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<sup>1</sup>First session Thirty-third Congress, Journal, pp. 735–836; Globe, pp. 1161–1183.

<sup>2</sup>First session Thirty-fifth Congress, Journal, pp. 310–315; Globe, p. 599.

<sup>3</sup>United States v. Ballin, 144 U.S., p. 1. Opinion by Mr. Justice Brewer.

Therefore he declared the bill passed. The validity of this act being questioned, the court rendered a decision, of which the following paragraph gives the substance:

As appears from the Journal at the time this bill passed the House, there was present a majority, a quorum, and the House was authorized to transact any and all business. It was in a condition to act on the bill if it desired. The other branch of the question is whether, a quorum being present, the bill received a sufficient number of votes; and here the general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body.

**2905. The rule for counting Members not voting in determining the presence of a quorum.**

**Form and history of section 3 of Rule XV.**

Section 3 of Rule XV provides:

On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting and be counted and announced in determining the presence of a quorum to do business.

This rule dates from February 14, 1890,<sup>1</sup> when it was adopted as part of the revision of the rules made at that time.<sup>2</sup> It simply put in form of a rule the principle established by Mr. Speaker Reed in his ruling of January 29, 1890.<sup>3</sup> The rule was dropped in the Fifty-second Congress, but in the Fifty-third, on April 17, 1894,<sup>4</sup> was restored in a modified form, as follows:

Upon every roll call, and before the beginning thereof, the Speaker shall name two Members, one from each side of the pending question, if practicable, who shall take their places at the Clerk's desk to tell the names of at least enough Members who are in the Hall of the House during the roll call who do not respond, when added to those responding, to make a quorum. If a quorum does not respond on the roll call, then the names of those so noted as present shall be reported to the Speaker, who shall cause the list to be called from the Clerk's desk and recorded in the Journal; and in determining the presence of a quorum to do business those who voted, those who answered "present," and those so reported present shall be considered. Members noted may, when their names are called, record their votes, notwithstanding the provisions of clause 1 of this rule.

The Fifty-fourth and succeeding Congresses restored the form in use in the Fifty-first Congress.

**2906. Construction of the rule providing for counting a quorum.—**

On May 18, 1906,<sup>5</sup> the House was considering the bill (H. R. 850) for the relief of the estate of Samuel Lee, deceased, when, on the question on agreeing to an amendment, the yea and nay roll call did not disclose a quorum responding.

The Speaker,<sup>6</sup> under clause 3 of Rule XV, noted the presence of certain Members who had not responded.

<sup>1</sup> See Congressional Record, first session Fifty-first Congress, pp. 1173, 1341, 1347.

<sup>2</sup> See House Report No. 23, first session Fifty-first Congress. This revision was reported by the Committee on Rules—Messrs. Thomas B. Reed, of Maine (Speaker); William McKinley, jr., of Ohio; Joseph G. Cannon, of Illinois; John G. Carlisle, of Kentucky, and Samuel J. Randall, of Pennsylvania. The two last dissented from the report of the majority.

<sup>3</sup> See section 2895 of this chapter.

<sup>4</sup> Second session Fifty-third Congress, Record, pp. 3786–3792. (See pp. 3305, 3331, 3402, 3452, 3545, for an example of the difficulties which made the adoption of this rule imperative.)

<sup>5</sup> First session Fifty-ninth Congress, Record, p. 7099.

<sup>6</sup> Joseph G. Cannon, of Illinois, Speaker.

Mr. John S. Williams, of Mississippi, raised a question of order.

The point of order is this, that without any suggestion to the House having been made at all of the absence of a quorum and at a state of the roll call when it was impossible for the Speaker or anybody else to know whether there was going to be disclosed the fact of a quorum or of no quorum, the Speaker in several of these cases noted gentlemen as being present in the Hall at the beginning of the roll call, when there was not only no suggestion of the absence of a quorum, but when the Speaker himself neither knew nor could have known that there would be the absence of a quorum. I recall notably the name of the gentleman from Mississippi [Mr. Bowers] and the gentleman from Missouri [Mr. Clark].

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

Clause 3 of Rule XV the Chair will read, instead of having it read as formerly. It states:

"On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote, shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting and be counted and announced in determining the presence of a quorum to do business."

The Chair has faithfully followed the rule, and again announces, as he announced before— \*  
\* \*

The Chair again announces the result of the vote and the presence of the gentlemen whose names have been noted heretofore and are to go upon the Journal; and those voting "aye" and those voting "no," those answering "present" and those noted literally under clause 3 of Rule XV, number 200—a quorum. The ayes have it.

**2907. A Member noted as present under section 3 of Rule XV may be permitted to vote after the calling of the roll is concluded.**—On June 30, 1898,<sup>2</sup> on a yea and nay vote there were 93 yeas, 70 nays, and 15 answering "present," a total of 178, one less than a quorum. Under direction of the Speaker pro tempore the clerk at the Speaker's table had noted as present several Members who were in the Hall during the roll call, but who had neither voted nor answered "present."

Several so noted as present requested, after their names had been announced, that they be allowed to be recorded on the roll.

Mr. Joseph W. Bailey, of Texas, raised a point of order as to the right of a Member who was marked "present" to cast his vote.

The Speaker pro tempore<sup>3</sup> said:

The Chair will call the attention of the gentleman from Texas to the last clause of section 1 of Rule XV,<sup>4</sup> which provides "the Speaker shall not entertain a request to record a vote or announce a pair unless the Member's name has been noted under clause 3 of this rule."

The rule provides that thereafter the Chair shall not entertain a request for unanimous consent to record a vote or pair unless the Member named has been "noted as present," in which case he may have the privilege of recording his vote under the rule.

**2908. The point of order being made that a Member noted as present under section 3 of Rule XV<sup>5</sup> was actually absent, his name was erased from the list before the announcement of the result.**—On February 20, 1891,<sup>6</sup> the House was considering a resolution reported by Mr. Joseph G.

<sup>1</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>2</sup> Congressional Record, second session Fifty-fifth Congress, p. 6555.

<sup>3</sup> Sereno E. Payne, of New York, Speaker pro tempore.

<sup>4</sup> For sections 1 and 3 of Rule XV, see sec. 6046 of Vol. V of this work.

<sup>5</sup> For section 3 of Rule XV, see sec. 2095 of this chapter.

<sup>6</sup> Second session Fifty-first Congress, Journal, p. 273; Record, pp. 2997, 2999.

Cannon, of Illinois, from the Committee on Rules providing for the consideration of certain bills relating to the courts of the United States.

Mr. James H. Blount, of Georgia, having moved that the resolution be recommitted with instructions, there were yeas 12, nays 150.

The roll call having been recapitulated, the Speaker announced from a list noted and furnished by the Clerk, at the suggestion of the Speaker, the following named Members as present in the Hall when their names were called and not voting:

Messrs. Brunner, Buchanan of Virginia, Candler of Georgia, Catchings, Clunie, Covert, Crisp, Culberson of Texas, Dunphy, Edmunds, Fithian, Geary, Gibson, Henderson of North Carolina, Hooker, Kerr of Iowa, Lawler, McClammy, Oates, O'Ferrall, Perry, Pindar, Rogers, Stockdale, Stump, Turner of Georgia, Vaux, and Whitelaw.

Mr. Benton McMillin, of Tennessee, having made the point of order that Mr. Oates, noted by the Clerk as present and not voting, was not present in the Hall when his name was called, the name of Mr. Oates was ordered to be deducted from the list.

The Speaker<sup>1</sup> thereupon stated that the said Members present and refusing to vote (27 in number), together with those recorded as voting (162 in number), showed a total of 189 Members present, constituting a quorum present to do business, and that, the yeas being 12 and the nays 150, the motion to recommit the resolution with the instructions was disagreed to.

Upon the question of agreeing to the resolution there were, yeas 156, nays 4, whereupon the roll call having been recapitulated, the Speaker pro tempore<sup>2</sup> announced from a list noted and furnished by the Clerk, at the suggestion of the Speaker, the following-named Members as present in the Hall when their names were called and not voting, viz:

Messrs. Bland, Blount, Boatner, Cutcheon, Culberson, Flood, Hansbrough, Kerr of Iowa, McMillin, Post, Rogers, Wickham, and the Speaker.

Mr. McMillin having made the point of order that Mr. Boatner, noted by the Clerk as present and not voting, was not present in the Hall when his name was called, the name of Mr. Boatner was ordered to be stricken from the said list.

The Speaker thereupon stated that the said Members present and refusing to vote (12 in number), together with those recorded as voting (160 in number), showed a total of 172 Members present, constituting a quorum present to do business, and that the yeas being 156 and the nays 4, the said resolution was agreed to.

**2909. Mr. Speaker Reed in 1890 revived the count by the Chair as a method of determining the presence of a quorum at times when no record vote is ordered.**—Mr. Speaker Reed not only counted as present Members who sat silent during the constitutional call of the yeas and nays for entry on the Journal, but he exercised, in the face of much objection, the right to count the Members to ascertain if a quorum were present whenever the point of no quorum was made at a time when no entry of the yeas and nays had been ordered by the House,<sup>3</sup> and

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Lewis E. Payson, of Illinois, Speaker pro tempore.

<sup>3</sup> See, for instances, Journal, first session Fifty-first Congress, pp. 337, 520; second session Fifty-first Congress, pp. 178, 371, 364, 363, 38, 208, 288, 107, etc.; and Congressional Record, first session Fifty-fourth Congress, p. 596.

this right has been exercised by his successors.<sup>1</sup> But when Mr. Speaker Reed began to count in this way in 1890 the practice had become fixed that there was ordinarily no way of ascertaining the presence of a quorum except by a call of the roll, and on October 19, 1888,<sup>2</sup> Mr. Speaker Carlisle denied the power of the Chair to count the House even prior to the reading of the Journal. This view was not, however, in harmony with the earlier practice. While no Speaker had ever, before Mr. Speaker Reed, counted Members not voting to show the validity of a vote wherein an actual quorum did not appear as voting, many Speakers had made the actual count of the Members to ascertain the presence of a quorum on occasions when the validity of a vote was not in issue. Thus counts were made as follows: On February 27, 1807,<sup>3</sup> by Mr. Speaker Macon; on March 1, 1821,<sup>4</sup> by Mr. Speaker Taylor; on December 23, 1830,<sup>5</sup> by Mr. Speaker Stevenson; on March 3, 1835,<sup>6</sup> by Mr. Speaker Bell; on July 5, 1838,<sup>7</sup> by Mr. Speaker Polk; on April 27, 1840,<sup>8</sup> by Mr. Speaker Hunter; on December 29, 1852,<sup>9</sup> and also on another occasion, by Mr. Speaker Boyd, who gave the subject some consideration at the time; on June 9, 1856,<sup>10</sup> by Mr. Speaker Banks; on May 18, 1858,<sup>11</sup> by Mr. Speaker Orr.

On February 27, 1877,<sup>12</sup> Mr. Speaker Randall counted the House “under the rules,” as he expressed it.<sup>13</sup> But when a Member, on another occasion, challenged the count of the same Speaker a motion for a call of the House was entertained.<sup>14</sup>

On June 7, 1878,<sup>15</sup> Mr. Speaker Randall said that if it be the desire he would count the House again to ascertain the presence of a quorum. Mr. John M. Thompson, of Pennsylvania, said: “The Chair has no right to count the House.” The Speaker replied: “The rules make it the imperative duty of the Chair to count the House when it is stated a quorum is not present and a Member makes the demand that the House be counted.” Jefferson’s Manual was quoted in support of the above, but the Speaker explained that on a roll call he could not go outside the roll and count Members not answering. He could merely count when during business it was observed that a quorum did not seem to be present.

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<sup>1</sup> But as late as April 25, 1892 (Congressional Record, first session, Fifty-second Congress, p. 3638), Mr. Speaker Crisp even declined to make the “actual count” required by section 2 of Rule XVII. (See section 5447 of Vol. V of this work.) In this he followed the example of Mr. Speaker pro tempore Hunton (third session Forty-sixth Congress, Journal, p. 502; Record, p. 2053), but on January 23, 1863, third session, Thirty-seventh Congress, Journal, pp. 263, 265; Globe, p. 579), Mr. Speaker Grow made the actual count.

<sup>2</sup> First session Fiftieth Congress, Journal, p. 2945; Record, p. 9607.

<sup>3</sup> Second session Ninth Congress, Annals, p. 655.

<sup>4</sup> Second session Sixteenth Congress, Annals, p. 1270.

<sup>5</sup> Second session Twenty-first Congress, Debates, p. 382.

<sup>6</sup> Second session Twenty-third Congress, Debates, p. 1662.

<sup>7</sup> Second session Twenty-fifth Congress, Journal, p. 1246; also Globe, pp. 405 and 503.

<sup>8</sup> First session Twenty-sixth Congress, Globe, p. 360.

<sup>9</sup> Second session Thirty-second Congress, Globe, p. 168 second session Thirty-third Congress, Globe, p. 287.

<sup>10</sup> First session Thirty-fourth Congress, Globe, p. 1379.

<sup>11</sup> First session Thirty-fifth Congress, Globe, pp. 2164, 2211.

<sup>12</sup> Second session Forty-fourth Congress, Record, pp. 1988, 2024.

<sup>13</sup> Evidently referring to Jefferson’s Manual.

<sup>14</sup> Second session Forty-fourth Congress, Record, p. 2025.

<sup>15</sup> Second session Forty-fifth Congress, Record, p. 4279.

On March 3, 1879,<sup>1</sup> Mr. Speaker Randall again counted the House after a yeas and nays vote had disclosed the absence of a quorum; and the House went on to business before another yeas and nays vote had shown a quorum of record. Later, on February 24, 1881, in the next Congress,<sup>2</sup> a Speaker pro tempore declined to count the House, saying:

The Chair thinks that under the practice of the House the Speaker has counted Members present to ascertain whether there was a quorum; but that has, been in the absence of a recent roll call. When the last thing occurring in the proceedings of the House is a roll call, the Chair is bound to recognize that as determining whether a quorum is present or not.

At this time the following paragraph from the Manual and Digest of the House was read:

The practice of counting the House by the Speaker of late years has frequently been resorted to to ascertain the presence of a quorum, and is a more expeditious method than calling the roll.

**2910. Review of practice and proceedings in the Senate as to Senators present and not voting when a quorum fails.**—The Senate of the United States has not often met difficulties because of the willful refusal of Senators to vote in order to break a quorum, and has not changed the old system of taking into account on a roll call only those voting. But in a few instances complications have arisen. On May 20, 1880,<sup>3</sup> the Senate adjourned because no quorum voted, although those Senators voting and those rising to announce that they were paired constituted a quorum.

**2911.** On March 3, 1881,<sup>4</sup> [really the early morning hours of March 4], in the Senate Mr. Roscoe Conkling, of New York, called for the yeas and nays, and then on the call did not vote, there appearing yeas 33, nays 3, absent 39. Immediately after the vote Mr. Conkling (who was recorded as absent) raised a question of order against the motion of Mr. John S. Williams, of Kentucky, for a call of the Senate. Thereupon Mr. James E. Bailey, of Tennessee, questioned Mr. Conkling's position and asked whether action by one not present could be recognized. On call of the Senate forty Senators responded—a quorum. Mr. Conkling gave notice that if the Senate proposed to act on certain contested nominations he was ready to resist until noon (it was then 3 a. m., March 4, before President Garfield's inauguration).

Mr. Bailey denounced this as a threat. An attempt was made to vote and some Senators did not answer, although present.

The Presiding Officer<sup>5</sup> ruled that in accordance with the precedents it was impossible to compel a Senator to vote.

The Presiding Officer read from a digest, evidently private:

The practice of the Senate in permitting its Members without question or challenge to withhold their votes whenever they have thought fit to do so has been so uniform and unbroken that, so far as precedent can make it so, it has become an absolute parliamentary right, etc.

<sup>1</sup> Third session Forty-fifth Congress, Record, p. 2380; Journal, p. 663.

<sup>2</sup> Third session Forty-sixth Congress, Journal, p. 502; Record, p. 2053. The Journal indicates that this ruling was made by Mr. Speaker Randall, but the Record seems to make it plain that Mr. Eppa Hunton, of Virginia, was in the chair as Speaker pro tempore.

<sup>3</sup> Second session Forty-sixth Congress, Record, pp. 3571, 3572.

<sup>4</sup> Third session Forty-sixth Congress, Record, pp. 2419–2424.

<sup>5</sup> Augustus H. Garland, of Arkansas.

Another attempt to vote resulted yeas 36, nays 0, absent 39. Messrs. Conkling and Ingalls were "absent," although actually participating in the debate, and they with the 36 would have made 38, a quorum.

Mr. Joseph E. McDonald, of Indiana, declared:

The failure of Senators in the Senate Chamber to vote can not withdraw their presence from the Senate Chamber, so as to destroy the quorum. \* \* \* In my State the same difficulty has been encountered, and the legislative rules of the legislature of Indiana now provide for it. They provide for it by requiring the officer who calls the roll to note the Senators present, those voting and those not voting; and if counting those who have voted, either yea or nay, and those present not voting there is a quorum, then the proposition is passed, etc.

There was much confusion, and Mr. Conkling intimated that Mr. McDonald was lecturing the Senate.

A motion for a recess was proposed, and a question arose as to whether it was in order or not, the fact depending on whether there was a quorum present or not.

Mr. Allen G. Thurman, of Ohio, declared that he as Presiding Officer had once counted the Senate.

The Presiding Officer said:

The Chair has counted forty Senators in the Senate Chamber, and as the Chair is advised it has heretofore been the decision in such a case, the Chair will adhere to that decision, and decide that there is a quorum present.

Then the motion for a recess was entertained.

**2912.** February 2, 1883,<sup>1</sup> in the Senate a quorum failed to vote on the pending amendment to the tariff bill. A quorum was present in the Hall, but several Senators announced that they could not, on account of pairs, vote on the pending question. Thereupon Mr. George F. Edmunds, of Vermont, proposed an order that the Sergeant-at-Arms bring in certain named Senators who were actually absent. A question at once arose as to the constitutional power to compel attendance of absentees when a quorum was present, and also as to standing of the order under the rules of the Senate. After considerable debate the order was withdrawn, Mr. Edmunds stating that apparently enough Senators were present to enable them to proceed.

**2913.** The breaking of a quorum by refraining from voting occurred in the Senate on February 17, 1875.<sup>2</sup>

Also on June 18 and 19, 1879,<sup>3</sup> there were prolonged dilatory proceedings in the Senate, the Republican Members declining to vote and thereby breaking a quorum during consideration of the Army bill, which contained a clause relating to use of troops at the polls. Mr. Allen G. Thurman, of Ohio, deplored this as a new procedure in the Senate, and Mr. Benjamin H. Hill, of Georgia, denounced it as revolutionary. Mr. Eli Saulsbury, of Delaware, made the point that, as a quorum was manifestly present, a vote just taken should stand, although a quorum did not vote, but the President pro tempore<sup>4</sup> said:

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<sup>1</sup> Second session Forty-seventh Congress, Record, pp. 1981–1987.

<sup>2</sup> Second session Forty-third Congress, Record, p. 1356.

<sup>3</sup> First session Forty-sixth Congress, Record, pp. 2147, 2175, 2180.

<sup>4</sup> Allen G. Thurman, of Ohio.

That is a question on which the Chair has reflected very considerably and had consultation with some of the most experienced Senators some time ago. The conclusion at which they arrived, and at which the Chair arrived, was that less than a quorum voting could not pass a bill or adopt any measure, unless it was one of those things that can be done by less than a quorum, as to adjourn. If Senators will reflect a moment they will see how that would operate. Suppose all the seventy-six Senators were here, and one of them voted to pass a bill, and the other seventy-five did not vote at all, it would hardly be contended that that bill had passed by one vote. \* \* \* In the opinion of the Chair it requires a majority of a quorum, a quorum voting, to adopt any measure except one of those which may by the rules be adopted by less than a quorum.

**2914.** On June 19, 1879,<sup>1</sup> however, President pro tempore Thurman entertained a motion (which would require a quorum to agree to) after a roll call had just disclosed no quorum voting. He said that he had a right to count the Senate to ascertain the presence of a quorum, since the fact that no quorum had voted was not conclusive evidence that a quorum was not present. It was, he said, the practice of Vice-President King to count the Senate at the commencement of each sitting to see if a quorum was present, and if the rules were observed strictly the Chair would be obliged to do this now.

**2915.** On October 17, 1893,<sup>2</sup> in the Senate, the question of recording Senators present and not voting in order to demonstrate the presence of a quorum was debated at length, and a proposition relating thereto was tabled.

**2916. The Speaker's count of a quorum is not subject to verification by tellers.**—On May 7, 1906,<sup>3</sup> a vote was taken by tellers on a motion to suspend the rules and agree to an order providing for the consideration of certain bills. There appeared on the vote ayes 119, noes 29.

Mr. John S. Williams, of Mississippi, made the point that there was no quorum present. After counting, the Speaker announced 208 present, a quorum.

Mr. John S. Williams, of Mississippi, demanded tellers on the count.

Mr. Sereno E. Payne, of New York, made the point of order that the demand was not in order.

The Speaker<sup>4</sup> sustained the point of order, holding that the demand for tellers was not in order.<sup>5</sup>

**2917. The point of order must be that no quorum is present; not that no quorum has voted.**—On March 3, 1897,<sup>6</sup> the House was considering the conference report on the District of Columbia appropriation bill, and on ordering the previous question there were 111 ayes to 9 noes.

Mr. William E. Barrett, of Massachusetts, raised the point of order that “no quorum voted.”

The Speaker<sup>7</sup> said:

The Chair overrules that point of order. \* \* \* It is the presence of a quorum on which the point of order can be made.

<sup>1</sup> First session Forty-sixth Congress, Record, p. 2175.

<sup>2</sup> First session Fifty-third Congress, Record, pp. 2544, 2575, 2588, 2628, 2649, 2686.

<sup>3</sup> First session Fifty-ninth Congress, Record, p. 6465.

<sup>4</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>5</sup> See section 2888 of this chapter for an instance wherein Mr. Speaker Reed permitted his count to be verified by tellers, although he expressly declined to concede that such verification might be demanded as a right.

<sup>6</sup> Second session Fifty-fourth Congress, Record, p. 2966.

<sup>7</sup> Thomas B. Reed, of Maine, Speaker.

**2918. A line of rulings made under the old theory as to the quorum and since disregarded held that the point of no quorum might not be made after the House had declined to verify a division by tellers or the yeas and nays.**—On July 14, 1890,<sup>1</sup> the House was considering the bill (H. R. 8243) relating to the Baltimore and Potomac Railroad in the District of Columbia, and a question being taken on a motion to lay on the table a motion to reconsider, there appeared on division, yeas 64, nays 55. Mr. James Buchanan, of New Jersey, demanded the yeas and nays;

When Mr. Louis E. Atkinson, of Pennsylvania, made the point of order that no quorum was present.

The Speaker<sup>2</sup> overruled the point of order on the ground that it was made too late.<sup>3</sup>

**2919. On January 26, 1893,<sup>4</sup> Mr. William S. Holman, of Indiana, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering general appropriation bills.**

Upon division, the Speaker announced that the noes have it.

Mr. C. B. Kilgore, of Texas, demanded the yeas and nays; when, one-fifth of the Members failing to concur in the demand, the yeas and nays were refused.

Mr. Kilgore then made the point that no quorum had voted on the motion of Mr. Holman.

The Speaker<sup>5</sup> declined to entertain the point of no quorum, holding that by demanding the yeas and nays; on agreeing to said motion, and the yeas and nays being refused, the right to make the point of no quorum was waived.

**2920.** On September 6, 1893,<sup>6</sup> a question being taken on a division, the Speaker announced the question decided in the negative.

Mr. D. A. De Armond, of Missouri, having demanded the yeas and nays, and not one-fifth of those present concurring in said demand, the yeas and nays were refused.

Mr. De Armond then made the point that no quorum had voted on the division which had been previously taken, and demanded tellers on agreeing to the amendment.

Objection being made to the request for tellers, on the ground that the point of no quorum was waived by the demand for and the action of the House in refusing to order the yeas and nays, the Speaker<sup>5</sup> stated that under the practice of the House the point of no quorum was waived by a demand for and refusal of the yeas and nays, but that inasmuch as no rules had yet been adopted by the House he would entertain the point and would accordingly order tellers.

**2921.** On March 27, 1896,<sup>7</sup> on the motion of Mr. William P. Hepburn, of Iowa, that when the House adjourn it be to meet on Monday next, there appeared on division 123 ayes and 25 noes.

<sup>1</sup> First session Fifty-first Congress, Journal, p. 856; Record, p. 7262.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> It is to be observed that all of this line of rulings took place prior to the ruling of Mr. Speaker Reed on June 30, 1898 (see sec. 2935 of this chapter) that the presence of a quorum is necessary for the transaction of business at all times. The restoration of the old and correct theory of the quorum has caused these rulings to be reversed by later Speakers. (See secs. 2935–2949 of this chapter.)

<sup>4</sup> Second session Fifty-second Congress, Journal, p. 58; Record, p. 834.

<sup>5</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>6</sup> First session Fifty-third Congress, Journal, p. 30.

<sup>7</sup> First session Fifty-fourth Congress, Record, p. 3299.

Mr. Joseph G. Cannon, of Illinois, demanded tellers, which were refused by the House.

Mr. Cannon then demanded the yeas and nays, which were also refused by the House.

Thereupon Mr. Cannon made the point of no quorum.

The Speaker<sup>1</sup> decided that it was too late to make that point.

**2922.** On January 20, 1893,<sup>2</sup> Mr. F. E. Beltzhoover, of Pennsylvania, moved that the House resolve itself into Committee of the Whole House for the purpose of considering business on the Private Calendar; which motion was disagreed to.

After the Speaker had announced the vote by which said motion was lost, but before the result was finally stated, Mr. Beltzhoover demanded tellers on said motion.

The demand for tellers being refused by the House, one-fifth of a quorum not voting therefor, Mr. Beltzhoover then made the point that no quorum had voted on his motion.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that it was too late after refusal of the House to order tellers to make the point of no quorum.

The Speaker<sup>3</sup> sustained the latter point of order.

**2923.** On May 27, 1896,<sup>4</sup> on a motion to concur in a Senate amendment to the sundry civil appropriation bill, the House divided, and there were 41 ayes and 72 noes.

Mr. William L. Terry, of Arkansas, asked for tellers, which were refused by the House.

Mr. Omer M. Kem, of Nebraska, made the point of no quorum.

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

The Chair thinks the point is raised too late, tellers having been demanded and refused.

**2924.** On April 14, 1898,<sup>5</sup> the question was on the passage of the bill (H.R. 4104) regulating the jurisdiction of United States courts, etc., and on a division there were 39 ayes and 23 noes.

Mr. Champ Clark, of Missouri, asked for tellers, which were refused by the House.

Thereupon Mr. Clark made the point of no quorum.

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

The Chair thinks it is too late to make the point of no quorum. In making this ruling the Chair follows two previous decisions upon the same point.

**2925.** On May 21, 1900,<sup>6</sup> the House was considering the bill (H. R. 8665) authorizing and requiring the Metropolitan Railroad Company to extend its lines on old Sixteenth street, and the question being on the passage, there were, on division, ayes 44, noes 42.

Mr. Henry C. Smith, of Michigan, demanded tellers, but tellers were refused by the House, and the Speaker declared the bill passed.

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<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Second session Fifty-second Congress, Journal, p. 53.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> First session Fifty-fourth Congress, Record, p. 5824.

<sup>5</sup> Second session Fifty-fifth Congress, Record, p. 3863.

<sup>6</sup> First session Fifty-sixth Congress, Record, p. 5815.

Mr. Smith made the point of no quorum.

The Speaker<sup>1</sup> held that the point of no quorum could not be made after the demand for tellers.

**2926.** On January 9, 1905,<sup>2</sup> the question was put on a motion to lay on the table the resolution of the House, No. 403, relating to the so-called "beef trust." The House having divided, there appeared ayes 87, noes 57.

Mr. Robert Baker, of New York, demanded tellers.

The Speaker announced that the number in support of the demand for tellers was insufficient and that tellers were refused.

Thereupon Mr. Baker made the point of no quorum.

Objection was made that the point came too late.

The Speaker<sup>3</sup> said:

The Chair thinks not. The Chair will count. [After counting.] Two hundred and thirty-nine gentlemen present—a quorum. The ayes have it; the motion prevails, and the resolution is laid on the table.

**2927. The Journal having been read and approved it is too late to make the point of order that a quorum was not present when it was done.**—On December 23, 1882,<sup>4</sup> the Journal of the preceding session was read and approved.

Thereupon Mr. John D. White, of Kentucky, made the point of order that under section 1 of Rule I<sup>5</sup> it was not in order to approve the Journal in the absence of a quorum, and also made the further point that a quorum was not present.

The Speaker pro tempore<sup>6</sup> overruled the point of order on the ground that the Journal had been read and approved in the usual manner without objection and that it was now too late to raise the question of a quorum.

**2928. The point of no quorum may not be withdrawn after the absence of a quorum has been ascertained and announced by the Chair.**—On January 22, 1897,<sup>7</sup> the House was considering the bill (S. 1128) granting a pension to Isabella Morrow, and the question being taken on an amendment, there were ayes 26, noes 40.

Mr. W. Jasper Talbert, of South Carolina, made the point of no quorum.

The Speaker pro tempore,<sup>8</sup> having counted the House, announced that 151 Members were present—not a quorum.

Then Mr. John F. Lacey, of Iowa, asked unanimous consent that the gentleman from South Carolina be permitted to withdraw the point of no quorum.

The Speaker pro tempore said that he had counted the House and found no quorum present, and the gentleman from South Carolina could not withdraw the point.

<sup>1</sup> David B. Henderson, of Iowa, Speaker.

<sup>2</sup> Third session Fifty-eighth Congress, Record, p. 600.

<sup>3</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>4</sup> Second session Forty-seventh Congress, Journal, p. 134; Record, p. 631.

<sup>5</sup> See sec. 1310 of Vol. II of this work for this rule.

<sup>6</sup> Horace F. Page, of California, Speaker pro tempore.

<sup>7</sup> Second session Fifty-fourth Congress, Record, p. 1077.

<sup>8</sup> Sereno, E. Payne, of New York, Speaker pro tempore.

**2929.** On May 3, 1898,<sup>1</sup> the House was considering the bill (S. 1133) to pay the claim of the Richmond Locomotive and Machine Works, and the previous question having been demanded, there appeared 43 ayes and 35 noes.

Mr. William H. Moody, of Massachusetts, made the point of no quorum.

The Speaker,<sup>2</sup> having counted the House, announced the presence of 132 Members-not a quorum.

Mr. Charles S. Hartman, of Montana, rising to a parliamentary inquiry, asked:

Would it be in order now to submit this proposition for unanimous consent: That the point of "no quorum" be withdrawn, that the ordering of the previous question be vacated, and that at the end of twenty minutes' debate, ten minutes of which shall be controlled by the gentleman from Massachusetts, the previous question may be considered as ordered.

The Speaker said:

That would not be in order now, it appearing that there is not a quorum present.

**2930.** On February 2, 1900,<sup>3</sup> at a Friday evening session, the absence of a quorum had been announced and a call of the House had been ordered.

Mr. John J. Gardner, of New Jersey, asked unanimous consent that the point of no quorum might be withdrawn and that the record of the proceedings relating to the absence of the quorum be expunged, so that the House might proceed to business.

The Speaker pro tempore<sup>4</sup> said:

The record shows that there is not a quorum of the House present. Until a quorum is disclosed the House can take no action except to adjourn or to adopt measures for securing the attendance of a quorum.

**2931.** On February 28, 1907,<sup>5</sup> the question was taken on the engrossment and third reading of the bill (H.R. 22543) granting to the town of Pawnee, in Pawnee County, Okla., certain lands for park, educational, and other purposes, when there appeared on division, ayes 70, noes 10.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that there was not a quorum present.

The Speaker,<sup>6</sup> after inspection of the House, declared that as there was not a quorum present, the doors would be closed and the roll called under section 4 of Rule XV.

During the call of the roll Mr. Mahon asked unanimous consent that the roll call be dispensed with and the point of no quorum be withdrawn.

The Speaker pro tempore<sup>7</sup> said:

The Chair is of the opinion and is advised that such a disposition of the matter in the middle of the roll call is not permissible under the rules of the House, and therefore the roll call will proceed. \* \* \* The Chair will state that it will take the House to decide the matter now pending, and it is now developed that the House is not present. The roll call is proceeding to determine whether or not the House is present. As soon as that condition is developed, then it will be for the House to take such action as it desires.

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<sup>1</sup> Second session Fifty-fifth Congress, Record, pp. 4529, 4530.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> First session Fifty-sixth Congress, Record, p. 1465.

<sup>4</sup> John F. Lacey, of Iowa, Speaker pro tempore.

<sup>5</sup> Second session Fifty-ninth Congress, Record, pp. 4303-4305.

<sup>6</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>7</sup> Adin B. Capron, of Rhode Island, Speaker pro tempore.

**2932. It is necessary that a quorum be present in order for business to be transacted; but when the quorum is present a vote is valid although those participating are less than the quorum.**

**If a quorum be present it is not necessary that a quorum actually participate in a vote by tellers on seconding a motion to suspend the rules.**

**Mr. Speaker Reed held in 1890 that it was the function of the Speaker to determine in such manner as he should deem accurate and suitable the presence of quorum.**

On February 17, 1890,<sup>1</sup> Mr. John W. Candler, of Massachusetts, by direction of the World's Fair Committee, moved to suspend the rules and pass a resolution making the bills H.R. 6883 and 6884 special orders.

A second being demanded, the Speaker appointed, tellers, who reported yeas 114, nays 8, voting thereon.

Mr. C.B. Kilgore, of Texas, made the point of order that no quorum had voted.<sup>2</sup>

The Speaker (after counting the House) announced that 172 Members were present in the Hall, and there being a quorum present, the said motion to suspend the rules was seconded.

Mr. Benton McMillin, of Tennessee, made the point of order that the rule prescribed the method of ascertaining the presence or absence of a quorum and of determining whether or not a majority of the House voted on a motion to second the demand for a suspension of the rules.

After debate on the point of order, the Speaker<sup>3</sup> overruled the same on the following grounds:

The provision of the rule, second clause of the twenty-eighth rule, is somewhat peculiar. It provides that a motion to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers.

Perhaps a, very proper construction might be that those who passed between the tellers axe alone to be considered in the determination of the question of a second, it being immaterial whether or not a quorum expressed an opinion or were present, were it not for the fact that a quorum must be present at all times in order to transact business. Therefore, the question before the House is a question very much like that which has been passed upon already repeatedly by the House of Representatives.

Under the Constitution of the United States it is necessary that a quorum, or a majority of the Members, shall be present in order to transact the public business. Whether it is necessary for them to act or not is a point in dispute. Since that question has come up in the House the matter has been discussed from one end of the country to the other, resulting in a display of precedents and in judgments of courts which can leave no doubt in the mind of anyone who has examined them. The courts of very many of the States and the legislatures of very many of the States have taken that course in regard to the matter, so far as the principle and practice are concerned, which has been indorsed by the House of Representatives.

We must, therefore, in this House at least, consider the question settled, that if a majority are present to do business, their presence is all that is required in order to make a quorum. If they decline to vote, their inaction can not be in the pathway of the action of those who do their duty. The idea

<sup>1</sup>First session Fifty-first Congress, Journal, p. 243; Record, p. 1415.

<sup>2</sup>On January 27, 1875 (second session Forty-third Congress, Record, p. 786), Mr. Speaker Blaine had ruled that when on a vote by tellers less than a quorum voted, the Chair must take notice of the lack of a quorum as well as on a yea and nay vote; but this must be regarded as an extreme ruling, since the figures of a vote by tellers are not recorded in the Journal (first session Thirty-fourth Congress, Globe, p. 1418), and even under the usages of that time a quorum would naturally be assumed to be present, as on a viva voce vote or a division.

<sup>3</sup>Thomas B. Reed, of Maine, Speaker.

that silence can be stronger than a negative vote seems to have been unknown to our ancestors. It seems to be a modern parliamentary fiction which has never been able to stand the examination of courts where business questions were involved. I have yet to see a single decision of a court against the position which has been lately taken by the House of Representatives.

The only question, then, remaining is one of detail: By what method shall the presence of a quorum be ascertained? I think an examination of all the books of parliamentary practice will show that it has been the custom from time immemorial for the presiding officer to determine, in such manner as he deems accurate and suitable, the presence of a quorum. The rules of this House contain nothing derogatory, not to that power, for it is not a power in his hands; it is merely the performance of his duty. He can do it by a count which satisfies him, or, if it is seriously questioned, as it has not been in this case, the fact can be ascertained by other methods.

In truth, in the earlier days of the House of Representatives the determination of a vote was made even by tellers differently from what it is now, there being two tellers to take the affirmative and two other tellers to take the negative vote. If it be suggested that evil is likely to follow from any misconduct on the part of the person who counts, the answer is very simple. It is that whatever officer is intrusted with the duty of taking a count, whether of a vote or of the presence of a quorum, is liable to the same objection, and that objection, which is inherent in all human affairs, is not to prevent action, which always proceeds upon the assumption of the right performance by public officers of their public duties.

Moreover, in the House of Representatives a correction of any material mistake is made very ready and very simple, because if any number of Members, equal to or exceeding one-fifth, have doubt in regard to the transaction, they have the right to demand the yeas and nays upon the passage of the bill, or upon questions arising. Under those circumstances it seems that there can no evil follow from the practice. If Members who are present and who are silent desire to record themselves against a measure they have full opportunity to do so. In this case the Chair had repeatedly counted the House during the vote, and after the voting had ceased and before it was announced, and therefore, being satisfied that a constitutional quorum was present to do business, the Chair announces that the yeas are 114 and the nays 8, and that the motion has been seconded.<sup>1</sup>

**2933. When a count of the House on division discloses a lack of a quorum the pending business is suspended.**—In Section XLI of his Manual Mr. Jefferson has the following rule, derived from the practice of Parliament:

When from counting the House on a division it appears that there is not a quorum the matter continues exactly in the state in which it was before the division and must be resumed at that point on any future day.

**2934. The failure of a quorum necessitates the suspension of even the most highly privileged business.**—On July 3, 1890,<sup>2</sup> the House was considering the conference report on the District of Columbia appropriation bill, when, on a division by tellers, there were 83 yeas and 4 nays.

Mr. Thomas J. Clunie, of California, made the point of no quorum.

The Speaker thereupon counted the House and announced the presence of 133 Members.

Then Mr. Joseph G. Cannon, of Illinois, moved that the House adjourn.

Mr. Louis E. McComas, of Maryland, made the point of order that the motion to adjourn did not take precedence over the vote on a conference report.

<sup>1</sup> An illustration of the extent to which obstruction went under the old theory that only those voting could be counted for the quorum was given on May 17, 1878 (second session Forty-fifth Congress, Record, p. 3522), during a prolonged contest over a proposition to investigate the Presidential election of 1876. Mr. Eugene Hale, of Maine, was appointed a teller on a vote wherein the remaining Members of the side which he represented were declining to vote. When the vote was announced he was reported as casting the solitary negative vote. He protested that he did not vote, and the attempt to count him was given up. So he could not figure, in making up the quorum, although present, acting, and protesting.

<sup>2</sup> First session Fifty-first Congress, Journal, p. 827; Record, p. 6973.

The Speaker<sup>1</sup> overruled the point of order, a quorum not being present.

**2935. According to the earlier and later practice of the House the presence of a quorum is necessary during debate and other business.**—On June 30, 1898,<sup>2</sup> the motion to adjourn had been negatived by a yea-and-nay vote, on which a quorum had not appeared of record.

The reading of the bill which the House had voted to consider (H. R. 10807) relating to the International American Bank was then about to proceed, when Mr. John W. Maddox, of Georgia, made this point of order:

While I know it is not necessary to have a quorum on a motion to adjourn, I raise this point: If a roll call develops that there is no quorum, can we go on with business? I make the point of no quorum present now, and that the bill can not be read.

After debate, the Speaker<sup>1</sup> said:

The question which has been raised by the gentleman from Georgia, Mr. Maddox, is a question which has been a somewhat troublesome one in the House of Representatives on account of the provision in the Constitution which requires one more than one-half of the Members of the House to constitute a quorum. I think it has been for a long time the custom of the House to regard that as a matter to be determined by the record, as "closed by the preceding vote, when that vote requires a quorum.

The present occupant of the Chair recollects that the question was raised in the Fifty-first Congress, and he thinks that the Journal shows a ruling upon the subject as having been made by him, which ruling is incorrectly stated in the Journal. The Record shows very well how the question came up. The then Member from Kentucky, Mr. Breckinridge, having made the point of no quorum just as the Speaker was putting a question to the House, the Speaker said, "That will be determined by the vote," and put the question. The Journal states the decision to be general that the point of no quorum "could only be raised when that fact was established by a division." As Will be seen by the Record of second session Fifty-first Congress, page 1631, no such ruling was made.<sup>3</sup>

Mr. Crisp ruled upon the question that under the practice of the House a Member having been recognized could not be taken off the floor upon the point of no quorum.<sup>4</sup>

"The Speaker hold that under the practice of the House a Member having been recognized could not be taken off the floor upon the point of no quorum, and that after the reading and approval of the Journal the failure of a quorum is only taken notice of when the same is disclosed from the vote upon some question or upon a call of the House."

The Chair does not think that is parliamentary law, although it might be an answer to the gentleman from Georgia. He thinks a quorum of the House is necessary to do business; although perhaps such a quorum may not necessarily be in the Hall itself of the House at the time. The House consists not only of the Hall of the House, but of the cloakrooms and the lobby in the rear as well.

The Chair does not see how the requirement that a majority of Members shall be present to do business can be dispensed with. Such demands for a quorum can not, however, be used for delay only. As there may be some doubt if a quorum is present now, the Chair will proceed to see if there is a quorum present in the House. [After having counted the House.] One hundred and eighty Members are present—a quorum. The clerk will read.<sup>5</sup>

**2936.** On June 13, 1840,<sup>6</sup> Mr. Levi Lincoln, of Massachusetts, called attention to the impropriety of debate proceeding without a quorum, and a call of the House was ordered.

**2937.** On March 7, 1838,<sup>1</sup> during the debate in Committee of the Whole on an appropriation bill, Mr. John Reed, of Massachusetts, said he had some remarks to make, but there was no House to make them to. The Chair then appointed tellers

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Second session Fifty-fifth Congress, Record, p. 6557.

<sup>3</sup> See section 2940 of this chapter.

<sup>4</sup> See section 2941 of this chapter.

<sup>5</sup> Jefferson's Manual, Sec. VI, provides " \* \* \* whenever, during business, it is observed that a quorum is not present, any Member may call for the House to be counted, and being found deficient, business is suspended."

<sup>6</sup> First session Twenty-sixth Congress, Globe, p. 462.

to count the House, when it was found that there were but 72 Members in their seats—not a quorum. So the committee rose and reported the fact to the House.

**2938.** On February 24, 1875,<sup>2</sup> the Speaker,<sup>3</sup> in the course of a decision, said:

If any gentleman raises the question that business is proceeding without the presence of a quorum, it is within the competence of the Chair to decide that a quorum is present; and he will not allow the business of the House to be interrupted by any dilatory proceeding. He assumes the responsibility for that purpose of declaring that a quorum is present, because no business can proceed without a quorum. Even a gentleman speaking is entitled to have a quorum present. If the point be raised, a gentleman addressing the Chair may be taken off the floor by any Member raising the point that no quorum is present.

**2939.** On February 12, 1877,<sup>4</sup> a question of order was raised that debate could not proceed without a quorum.

In the course of the discussion of the question Mr. Nathaniel P. Banks, of Massachusetts, a former Speaker, said:

If any Member states that a quorum is not present, the Speaker counts the House, as he is bound to do, and if a quorum is found not to be present, business is suspended and a motion for a call of the House may be made.

The Speaker<sup>5</sup> said: "The House is not a House without a quorum," and the debate was not permitted to proceed.

**2940.** On Wednesday, January 21, 1891,<sup>6</sup> the Journal of the proceedings of yesterday's sitting having been read, and the question being on its approval,

Mr. William McKinley, jr., of Ohio, demanded the previous question, when Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that no quorum was present.

The Speaker<sup>7</sup> ruled that the point of order that no quorum was present could only be raised when that fact was established by a division.<sup>8</sup>

<sup>1</sup> Second session Twenty-fifth Congress, Globe, p. 224.

<sup>2</sup> Second session Forty-third Congress, Record, p. 1733.

<sup>3</sup> James G. Blaine, of Maine, Speaker.

<sup>4</sup> Second session Forty-fourth Congress, Record, pp. 1488, 1489.

<sup>5</sup> Samuel J. Randall, of Pennsylvania, Speaker.

<sup>6</sup> Second session Fifty-First Congress, Journal, p. 102; Record, p. 1630.

<sup>7</sup> Thomas B. Reed, of Maine, Speaker.

<sup>8</sup> The actual transaction is recorded as follows in the Record:

Mr. MCKINLEY. Mr. Speaker—

The SPEAKER. The gentleman from Ohio [Mr. McKinley] is recognized.

Mr. BRECKINRIDGE, of Kentucky. I raise the question of order—

Mr. MCKINLEY. I move the previous question.

Mr. BRECKINRIDGE, of Kentucky (continuing). That there is no quorum in the House to do business.

The SPEAKER. The gentleman from Ohio [Mr. McKinley] moves the previous question.

Mr. BRECKINRIDGE, of Kentucky. I raise the question of order that there is no quorum present.

The SPEAKER. That will be determined by the vote. As any as are in favor of ordering the previous question will say "aye."

**2941.** On April 12, 1894,<sup>1</sup> the Journal of the proceedings of the previous day was read and approved.

Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, submitted a privileged report from the Committee on Rules.

Before the report was read, Mr. Julius C. Burrows, of Michigan, made the point that no quorum was present.

The Speaker<sup>2</sup> held that, under the practice of the House, a Member having been recognized could not be taken off the floor upon a point of no quorum, and that after the reading and approving of the Journal the failure of a quorum is only taken notice of when the same is disclosed upon a vote on some question or upon a call of the House.<sup>3</sup>

**2942.** On January 3, 1901,<sup>4</sup> Mr. Marlin E. Olmsted, of Pennsylvania, presented, as involving a question of privilege, a resolution relating to the basis of representation of the several States in the House of Representatives and the electoral college.

While the Clerk was reading the resolution, Mr. James D. Richardson, of Tennessee, made the point of order that the resolution was not privileged.

The Chair had responded that he could not determine until the resolution had been read, when Mr. Oscar W. Underwood, of Alabama, made the point that there was no quorum in the House.

The Speaker<sup>5</sup> at once announced that he would count, and after counting announced the number present, not a quorum.

**2943.** On January 4, 1901,<sup>6</sup> Mr. Marlin E. Olmsted, of Pennsylvania, had addressed the Speaker, presumably for the purpose of calling up a pending measure, when Mr. Oscar W. Underwood, of Alabama, made the point of order that there was no quorum present.

The Speaker *pro tempore*<sup>7</sup> at once counted the House.

**2944.** On January 28, 1901,<sup>8</sup> Mr. Joseph W. Babcock, of Wisconsin, called up the motion to reconsider a vote of the House recommitting the bill (H. R. 13660) relating to the Washington Gaslight Company, and for other purposes.

Mr. William P. Hepburn, of Iowa, made the point of order that no quorum was present.

Mr. Babcock raised the question that there had been no vote taken on which to determine whether or not a quorum was present.

The Speaker *pro tempore*<sup>9</sup> said:

The point being made that there is no quorum present, the Chair will ascertain the fact by count.

<sup>1</sup> Second session Fifty-third Congress, Journal, pp. 326, 327.

<sup>2</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>3</sup> This ruling represents a practice of the House at the time the theory prevailed that the only method of ascertaining the presence of a quorum was by the record of the vote. That theory having been overturned, the related theory that the failure of a quorum may be taken notice of only when a vote discloses it naturally falls also, and the House returns to the older practice.

<sup>4</sup> Second session Fifty-sixth Congress, Journal, pp. 81, 82; Record, pp. 517-520.

<sup>5</sup> David B. Henderson, of Iowa, Speaker.

<sup>6</sup> Second session Fifty-sixth Congress, Record, p. 553.

<sup>7</sup> John Dalzell, of Pennsylvania, Speaker *pro tempore*.

<sup>8</sup> Second session Fifty-sixth Congress, Record, p. 1577.

<sup>9</sup> William H. Moody, of Massachusetts, Speaker *pro tempore*.

**2945.** May 12, 1902,<sup>1</sup> while the bill (H. R. 13405) “authorizing the Washington Gaslight, Company to purchase the Georgetown Gaslight Company, and for other purposes,” was under debate, in Committee of the Whole House on the state of the Union, Mr. John W. Gaines, of Tennessee, made the point of order that no quorum was present.

Mr. John J. Jenkins made the point of order that there was no requirement that a quorum should be present during debate.

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

The Chairman will state to the gentleman from Wisconsin that a quorum is necessary at all times.

The Chairman then proceeded to count the committee.

**2946.** On May 28, 1902,<sup>3</sup> while the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12704) to increase the subsidiary silver coinage, and during general debate, Mr. Charles F. Cochran on two occasions raised the question of order that no quorum was present.

In each case the Chairman<sup>4</sup> entertained the point of order, and counted the committee.

**2947.** On February 24, 1903,<sup>5</sup> during the reading of the report of the Committee of Elections No. 2 in the contested-election case of *Wagoner v. Butler*, Mr. Oscar W. Underwood, of Alabama, made the point of order that a quorum was not present.

The Speaker<sup>6</sup> entertained the point of order, and having counted found less than a quorum present.

Thereupon a call of the House was ordered.

**2948.** On the Calendar day of April 28, 1904<sup>7</sup> (the legislative day of April 26), the House was considering the bill (H. R. 12273) granting authority to the President, in his discretion, to appoint certain midshipmen to the naval service.

Mr. John F. Lacey, of Iowa, had been recognized and was proceeding in debate, when Mr. John W. Maddox, of Georgia, made the point of order that there was no quorum present.

Mr. Lacey objected that he might not be taken off his feet by the point of no quorum.

The Speaker pro tempore<sup>8</sup> entertained the point of order and counted the House.

**2949.** On May 3, 1906,<sup>9</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George E. Foss, of Illinois, having the floor in general debate.

Mr. John S. Williams, of Mississippi, interrupting while Mr. Foss still had the floor, made the point that there was no quorum present.

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<sup>1</sup> First session Fifty-seventh Congress, Record, p. 5328.

<sup>2</sup> Kittredge Haskins, of Vermont, Chairman.

<sup>3</sup> First session Fifty-seventh Congress, Record, pp. 6057, 6059.

<sup>4</sup> James A. Tawney, of Minnesota, Chairman.

<sup>5</sup> Second session Fifty-seventh Congress, Record, p. 2589.

<sup>6</sup> David B. Henderson, of Iowa, Speaker.

<sup>7</sup> Second session Fifty-eighth Congress, Record, p. 5839.

<sup>8</sup> Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

<sup>9</sup> First session Fifty-ninth Congress, Record, p. 6330.

Mr. J. Warren Keifer, of Ohio, said:

Mr. Chairman, I make the point of order that the gentleman from Illinois in charge of the bill has the floor, making a speech, and the distinguished gentleman from Mississippi is not entitled to take him off the floor.

After debate the Chairman<sup>1</sup> held:

The Chair is of opinion that a question of order involving the presence of a quorum may be raised, and the Chair will count to ascertain whether a quorum is present.

**2950. A quorum not being present, no motion is in order but for a call of the House or to adjourn.**—On February 5, 1846,<sup>2</sup> the House was in Committee of the Whole House on the state of the Union, considering joint resolution (No. 5) of notice to Great Britain to “annul and abrogate” the convention between Great Britain and the United States of the 6th of August, 1827, relative to the country “on the northwest coast of America, westward of the Stony Mountains,” commonly called Oregon. Finding itself without a quorum, the committee rose. A motion to adjourn having been decided in the negative, on motion of Mr. George W. Jones, of Tennessee, a call of the House was ordered; and the roll having been called as far as the name of Stephen Adams, of Mississippi, a motion was made by Mr. Robert B. Rhett, of South Carolina, that further proceedings in the call be dispensed with. And the question being put, it was decided in the affirmative.

A motion was made by Mr. Howell Cobb, of Georgia, that the House take a recess until 7.30 o'clock.

Mr. Robert C. Winthrop, of Massachusetts, raised the question of order that, a quorum of Members not being present, it was not competent for the Chair to entertain a motion for a recess.

The Speaker<sup>3</sup> decided that, it appearing from the record that there was not a quorum present, no motion was in order except for a call of the House or to adjourn.

In this decision the House acquiesced.

**2951. The absence of a quorum having been disclosed, the only proceedings in order are the motions to adjourn or for a call of the House; and not even by unanimous consent may business proceed.**—On May 24, 1872,<sup>4</sup> the House, while considering the bill of the Senate (No. 569) for the relief of Thomas B. Wallace, of Lexington, Mo., found itself without a quorum on the vote on the passage of the bill. A call of the House was ordered, and then a motion to adjourn was defeated, a yea and nay vote being had on each of these motions.

At this point Mr. James A. Garfield, of Ohio, proposed that by unanimous consent further proceedings under the call be dispensed with, and that the bill be acted on by a rising vote, on the assumption that a quorum was present.

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

The vote upon the passage of this bill by yeas and nays has disclosed the fact that there is not a quorum in the House. The House thereby becomes constitutionally disqualified to do further business,

<sup>1</sup>Edgar D. Crumpacker, of Indiana, Chairman.

<sup>2</sup>First session Twenty-ninth Congress, Journal, p. 355.

<sup>3</sup>John W. Davis, of Indiana, Speaker.

<sup>4</sup>Second session Forty-second Congress, Globe, p. 3855.

<sup>5</sup>Clarkson N. Potter, of New York, Speaker pro tempore.

except that business which the Constitution authorizes the House to do when a quorum is not present, to adjourn, or to order a call of the House, and the proceedings in respect to that bill fell, and the bill, should there be a quorum in the House, must again come before the House for its passage.

**2952. The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business.**—On February 28, 1849,<sup>1</sup> at an evening session, Mr. Caleb B. Smith, of Indiana, moved a resolution to close debate in Committee of the Whole on a bill to establish the Territorial government of New Mexico.

On this motion the question stood, ayes 41, noes 64, no quorum voting. On a motion for a call of the House no quorum voted.

Mr. Samuel F. Vinton, of Ohio, proposed that by common consent they go into committee and take up the amendments of the Senate to the Indian appropriation bill.

The Speaker<sup>2</sup> said the Chair was obliged to state to the gentleman from Ohio that the last two votes showed that there was no quorum present. There must be a quorum of record before the House could proceed to business.

**2953.** On February 11, 1901,<sup>3</sup> Mr. James D. Richardson, of Tennessee, moved that the House adjourn. The yeas and nays being demanded and ordered, there appeared, yeas 59, nays 80, answering present, 6.

The result being announced, Mr. William S. Knox, of Massachusetts, announced his purpose to call up a report of the Committee of the Whole House on the state of the Union, in relation to an occurrence in the committee.

The Speaker said:

The Chair, however, is compelled to take cognizance of the fact that the House is without a quorum and not in a position to do business.

**2954. The absence of a quorum being disclosed, a motion to fix the day to which the House shall adjourn may not be entertained.**

**A motion which was by the rules more highly privileged than the motion to adjourn was not entertained after an affirmative vote on a motion to adjourn.**

On February 21, 1894<sup>4</sup> no quorum appearing, Mr. Richard P. Bland, of Missouri, moved that the House do now adjourn, pending which motion, Mr. J. Fred C. Talbott, of Maryland, moved that when the House adjourn to-day it be to meet on Friday next.

The Speaker<sup>5</sup> declined to entertain the motion of Mr. Talbott, for the reason that a quorum was required to decide it, the roll of the last preceding vote not having disclosed a quorum.

The question being put, Will the House adjourn? it was decided in the affirmative, yeas 141, nays 107.

Before the result of the foregoing vote was announced, Mr. Julius C. Burrows, of Michigan, moved that when the House adjourn to-day it be to meet on Friday next.

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<sup>1</sup> Second session Thirtieth Congress, Globe, p. 624.

<sup>2</sup> Robert C. Winthrop, of Massachusetts, Speaker.

<sup>3</sup> Second session Fifty-sixth Congress, Record, pp. 2286, 2287.

<sup>4</sup> Second session Fifty-third Congress, Journal, p. 188.

<sup>5</sup> Charles F. Crisp, of Georgia, Speaker.

The Speaker declined to entertain the motion, holding as follows:

When the Chair announces the result of this vote two things will appear, one is that there is a quorum present, and the other that the House has decided to adjourn. The record will not disclose the presence of a quorum until at the same moment it discloses that that quorum has decided to adjourn. On this question 141 have voted in the affirmative and 107 in the negative. The ayes have it, and the House stands adjourned until to-morrow at 12 o'clock.<sup>1</sup>

**2955. When less than a quorum is present a motion for a recess is not in order.**—On February 13, 1847,<sup>2</sup> a motion was made that the House resolve itself into Committee of the Whole House on the state of the Union. On this motion no quorum voted. A motion to adjourn having then been decided in the negative, Mr. Howell Cobb, of Georgia, moved that the House take a recess until Monday morning next at 9 o'clock.

After debate on this motion the Speaker<sup>3</sup> decided that a motion to take a recess was not in order, it appearing from the record that there was no quorum present.

**2956.** On February 5, 1846,<sup>4</sup> a quorum of Members not being present, Mr. Howell Cobb, of Georgia, moved that the House take a recess until half past seven o'clock.

Mr. Robert C. Winthrop, of Massachusetts, raised the question of order that, a quorum not being present, it was not competent for the Chair to entertain a motion for a recess.

The Speaker<sup>3</sup> decided that, it appearing from the record that there was not a quorum present, no motion was in order except for a call of the House or to adjourn.

The House acquiesced in this decision.

**2957.** On July 1, 1898,<sup>5</sup> Mr. Sereno E. Payne, of New York, moved that the House take a recess until 8 o'clock.

Mr. Eugene F. Loud, of California, made the point of order that the last vote had shown no quorum.

The Speaker pro tempore<sup>6</sup> decided that he could not entertain the motion when the point of no quorum had been made.

**2958. Less than a quorum may not determine to take a recess, even by unanimous consent.**—On March 3, 1853,<sup>7</sup> Mr. James H. Duncan, of Massachusetts, moved that the rules be suspended so as to enable him to move that the resolution of the Senate (No. 79) "in amendment of a joint resolution relating to the duties of inspectors of steamers, approved January, 7, 1853," be taken from the Speaker's table; which motion was disagreed to, two-thirds not voting in favor thereof.

Mr. Fayette McMullen, of Virginia, moved that the House take a recess until 6 o'clock p. m.

<sup>1</sup> Under the rules as they existed at that time the motion to fix the day to which the House should adjourn had precedence of a motion to adjourn. (See sec. 5301 of Vol. V of this work.)

<sup>2</sup> Second session Twenty-ninth Congress, Journal, p. 343; Globe, p. 421.

<sup>3</sup> John W. Davis, of Indiana, Speaker.

<sup>4</sup> First session Twenty-ninth Congress, Journal, pp. 355, 356; Globe, p. 318.

<sup>5</sup> Second session Fifty-fifth Congress, Record, p. 6602.

<sup>6</sup> John Dalzell, of Pennsylvania, Speaker pro tempore.

<sup>7</sup> Second session Thirty-second Congress, Journal, p. 388.

Pending this, Mr. Frederick S. Martin, of New York, moved a call of the House, which motion was disagreed to.

The question then recurred on the motion of Mr. McMullen, and it being put, no quorum voted.

Mr. McMullen made the point of order that, a majority having voted affirmatively upon his motion for a recess, it was not necessary that a quorum should have voted, and consequently that the House had determined to take a recess.

The Speaker pro tempore<sup>1</sup> overruled the point of order, and decided that less than a quorum could not determine the question as to whether the House should take a recess.

Mr. Robert Toombs, of Georgia, appealed, but the motion for a recess being subsequently withdrawn, the appeal fell.

**2959.** On February 21, 1893,<sup>2</sup> the absence of a quorum having been disclosed, Mr. Charles J. Boatner, of Louisiana, asked unanimous consent that a recess be taken until to-morrow at 10:55 o'clock a. m.

The Speaker<sup>3</sup> declined to entertain the proposition, holding that the last roll call having disclosed the fact that a quorum was not present, and it not having since appeared that a quorum was present, a recess could not be taken, even by unanimous consent.

**2960.** On February 18, 1884,<sup>4</sup> the House was considering a resolution to make a bill relating to pensions for soldiers of the Mexican war a special order, when the absence of a quorum was disclosed on a vote by tellers.

A motion having been made that the House take a recess, Mr. Thomas B. Reed, of Maine, made the point of order that there was no quorum.

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

It will not preclude the taking of a vote on the recess, but a quorum will be required.

A motion to adjourn was then made and took precedence of the motion for a recess.

**2961. The assumption that a quorum was present when the House acted being uncontradicted by the Journal, it may not be overthrown by expressions of opinion by Members individually.**—On January 6, 1893,<sup>6</sup> the the House proceeded to the consideration of the bill (H. R. 6649) to extend the provisions of an act to provide for the muster and pay of certain officers and enlisted men of the volunteer forces, which was heretofore postponed and made a special order for the day.

The bill having been engrossed and read the third time, Mr. C. B. Kilgore, of Texas, made the point of order that when the order was made postponing the consideration of the bill until to-day, it appeared, from statements of Members on the floor, that no quorum was present in the House, and that therefore the order of postponement was void.

<sup>1</sup> Charles E. Stuart, of Michigan, Speaker pro tempore.

<sup>2</sup> Second session Fifty-second Congress, Journal, p. 105.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> First session Forty-eighth Congress, Record, p. 1217.

<sup>5</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>6</sup> Second session Fifty-second Congress, Journal, p. 33; Record, p. 380.

The Speaker<sup>1</sup> overruled the point of order on the ground that when the order was made the absence of a quorum was not disclosed by any proceeding in the House and did not appear in the Journal of the House, and that the statements of Members on the subject were merely expressions of their individual opinions.

**2962. The absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason.**—On June 9, 1856,<sup>2</sup> Mr. George W. Jones, of Tennessee, moved that the Journal of the preceding legislative day be amended by striking out the notice of a bill filed by Mr. Edwards, there being no quorum present on that day.<sup>3</sup>

It was objected in opposition to this motion that the Journal of that day did not show the absence of a quorum; but Mr. Jones urged that it was a matter of common knowledge that there was no quorum present. This was not denied.

Various attempts to dispose of the motion were made, but failed for lack of a quorum until June 20, when Mr. Jones's motion was laid on the table, yeas 89, nays 38.

**2963. When a vote taken by yeas and nays shows that no quorum has voted it is the duty of the Chair to take notice of that fact.**—On June 5, 1884,<sup>4</sup> the House having under consideration a bill forfeiting certain land grants, the yeas and nays were ordered and taken on the passage of the bill. After the vote had been taken the Speaker<sup>5</sup> announced that no quorum had voted and that the bill had not passed.

Upon the question being made by Mr. Poindexter Dunn, of Arkansas, that no Member had made the point that a quorum had not voted, the Speaker decided that when a vote was taken by yeas and nays it would be entered on the Journal of the House, and it was the duty of the Chair to take notice of the fact that a quorum had not voted and that the bill had not passed by a constitutional vote.

**2964. The previous question having been ordered on a bill by unanimous consent in the absence of a quorum, the Speaker on the next day ruled that the action was null and void.**—On February 19, 1873,<sup>6</sup> pending the demand for the previous question on the bill of the House (No. 2354) to provide for the recomputation of the accounts between the United States and the several States growing out of moneys expended by the States in the war of 1812, a quorum failed to vote and a call of the House was ordered. After the roll had been called, the doors closed, and excuses offered, on motion of Mr. Leonard Myers, of Pennsylvania, by unanimous consent, this order was agreed to.

*Ordered,* That all further proceedings under the call be dispensed with, that the previous question shall be considered as seconded, and the main question ordered, upon the bill of the House (H. R. 2354) to provide for the recomputation of the accounts between the United States and the several States growing out of moneys expended by said States in the war of 1812, and that the House shall now adjourn.

The House accordingly, at 12 o'clock m., adjourned.

On the next day, the Journal having been read, Mr. Nathaniel P. Banks, of Massachusetts, made the point of order that the main question on the bill of the

<sup>1</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>2</sup> First session Thirty-fourth Congress, Journal, pp. 1079, 1095; Globe, pp. 1379, 1427.

<sup>3</sup> Formerly bills were introduced by leave, and a previous notice was required.

<sup>4</sup> First session Forty-eighth Congress, Journal, p. 1385.

<sup>5</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>6</sup> Third session Forty-second Congress, Journal, p. 447; Globe, p. 1518.

House (No. 2354), having been ordered while the doors were closed, and, as appeared from the Journal, while less than a quorum was present, the order should be treated as a nullity.

The Speaker sustained the point of order, and in this decision of the Chair the House acquiesced.

The Speaker,<sup>1</sup> in ruling, said:

It is obviously impossible under the rule to do that. Here was the demonstrated, recorded fact that one hundred and forty gentlemen, more than one-half the whole number of Members, were absent from the Hall. The doors were closed. There was no presumption possible by which the presence of a quorum could be inferred. And the gentleman from Massachusetts, Mr. Banks, raises an appropriate point of order, that it is impossible the House could perform a legislative act, under the rules, in the absence of a quorum. Aside from the obvious propriety of the matter, the rule is very distinct upon that point. It is not in order for the House even to take a recess during a call of the House, and indeed no motion except to adjourn, or with reference to the call, is ever entertained during a call. It was no more competent for the hundred gentlemen in the Hall to give their assent to the previous question than it was for them to pass an appropriation bill or do anything else of a legislative character. Therefore the Chair would rule on the point made by the gentleman from Massachusetts that the bill, on which the previous question was ordered merely by a minority of the House, is not before the House.

**2965. The hour fixed by the rules for a recess having arrived, the Speaker declares the House in recess, although less than a quorum may be present.**—On Friday, August 8, 1890,<sup>2</sup> the House was voting by yeas and nays on the passage of a resolution reported from the Committee on Rules for fixing a time for the consideration of the Indian appropriation bill, when the hour of 5 p. m. arrived.

The roll call having been completed, the Speaker<sup>3</sup> stated that no quorum had voted; but that under the rule 4 the House would take a recess until 8 p. m.

**2966. When a quorum falls in Committee of the Whole the roll is called and the committee rises and reports.**

**The quorum of the Committee of the Whole is 100.**

**Form and history of section 2 of Rule XXIII.**

Section 2 of Rule XXIII provides—

Whenever a Committee of the Whole House or of the Whole House on the state of the Union finds itself without a quorum, which shall consist of 100 Members, the Chairman shall cause the roll to be called and thereupon the committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.

It was the early practice of the Committee of the Whole to rise when it found itself without a quorum,<sup>5</sup> and on December 18, 1847,<sup>6</sup> this rule was adopted:

Whenever the Committee of the Whole on the state of the Union, or the Committee of the Whole House, finds itself without a quorum, the Chairman shall cause a roll of the House to be called, and thereupon the committee shall rise and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal.

<sup>1</sup>James G. Blaine, of Maine, Speaker. When the order was made, on February 19, Mr. Luke P. Poland, of Vermont, was in the chair.

<sup>2</sup>First session Fifty-first Congress, Journal, p. 934; Record, p. 8352.

<sup>3</sup>Thomas B. Reed, of Maine, Speaker.

<sup>4</sup>Section 2 of Rule XXVI; see section 3281 of this volume.

<sup>5</sup>Section 2977 of this chapter.

<sup>6</sup>Globe, first session Thirtieth Congress, p. 47.

This was rule No. 106 when the rules were revised in 1880. The Committee on Rules then reported the old rule with a few changes. They omitted the words "the Committee of the Whole on the state of the Union, or."<sup>1</sup> In the revision of 1890 these words were in substance restored; and the important addition was made of the clause fixing the quorum at 100 Members.<sup>2</sup> Previous to that time the quorum of the Committee of the Whole had been held in practice to be the same as that of the House. In the Fifty-second and Fifty-third Congresses the quorum was restored to its old number, but again in the Fifty-fourth and succeeding Congresses the quorum of 100 was restored.<sup>3</sup> The last clause of the rule providing that if a quorum shall appear on the call of the roll the committee shall thereupon resume its sitting was adopted in the revision of 1880, being declaratory of what had been the practice.

**2967. On the failure of a quorum in Committee of the Whole the roll is called but once.**—On March 9, 1894,<sup>4</sup> the Committee of the Whole having risen, because of the failure of a quorum, Mr. Charles J. Boatner, of Louisiana, suggested that the roll of Members had only been called once in the committee and that under the practice of the House it should have been called a second time. He therefore demanded that the Journal should show that he was present when the roll of the committee was called.

The Speakers<sup>5</sup> held that when a Committee of the Whole finds itself without a quorum the rule requires the roll to be called but once, and that such had been the practice of the House.

**2968. When a Committee of the Whole rises and reports the lack of a quorum, the sitting of the committee is resumed upon the appearance of a quorum.**—On March 23, 1842,<sup>6</sup> the Committee of the Whole House on the state of the Union having risen for want of a quorum, and a quorum having subsequently appeared on the vote on a motion to adjourn, a motion was made by Mr. Henry A. Wise, of Virginia, that there be a call of the House.

The Speaker<sup>7</sup> decided that, as the Committee of the Whole on the state of the Union had risen for the want of a quorum, and for no other reason, and as a quorum was now present (as was shown by a vote just taken), it was not in order to move a call, and that the regular course of proceeding was to resume the Committee of the Whole on the state of the Union.

Mr. John Quincy Adams, of Massachusetts, took an appeal, and the Chair was sustained on March 24. And so it was decided that when a Committee of the Whole House shall rise and report that it finds itself without a quorum, and upon a vote or

<sup>1</sup> Congressional Record, second session Forty-sixth Congress, p. 206.

<sup>2</sup> House Report No. 23, first session Fifty-first Congress.

<sup>3</sup> As early as January 13, 1846 (first session Twenty-ninth Congress, Journal, p. 243), Mr. Joseph R. Ingersoll, of Pennsylvania, proposed, and the House instructed the Committee on Rules to consider, the power and expediency of reducing the number of Members necessary for a quorum in Committee of the Whole. And on February 4, 1887 (second session Forty-ninth Congress, Journal, p. 489; Record, p. 1363), Mr. James B. McCreary, of Kentucky, proposed 100 as a quorum; but nothing came of the suggestion.

<sup>4</sup> Second session Fifty-third Congress, Journal, p. 237; Record, p. 2798.

<sup>5</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>6</sup> Second session Twenty-seventh Congress, Journal, p. 589; Globe, p. 350.

<sup>7</sup> John White, of Kentucky, Speaker.

count of the House immediately thereafter it shall be ascertained that a quorum is present, it is not then in order to move a call of the House, but that the Committee of the Whole must be immediately resumed.

**2969. When the roll, which is called in Committee of the Whole when a quorum fails, shows that a quorum responded, the Speaker directs the committee to resume its session, although less than a quorum may have appeared on an intervening motion to adjourn.**

**When the Committee of the Whole, for supposed lack of a quorum, rises and reports a roll call, a motion to adjourn may be admitted before the Speaker, on information of a quorum, directs the committee to resume its sitting.**

On February 15, 1881,<sup>1</sup> the House being in Committee of the Whole House on the state of the Union considering the river and harbor bill, and on an amendment offered by Mr. Nelson W. Aldrich, of Rhode Island, less than a quorum having voted, it was moved that the committee rise. This motion having been defeated, the Chairman ordered the roll to be called, under the rule. The roll having been called over, the names of the absentees were then called.

The committee then rose, and, the Speaker pro tempore having taken the chair, the Chairman reported that the Committee of the Whole House on the state of the Union had had under consideration the river and harbor appropriation bill, and finding itself without a quorum, he had, under the rule, directed the roll to be called, and now reported the names of those Members who had failed to answer.

The Speaker pro tempore<sup>2</sup> then announced:

The Committee of the Whole House on the state of the Union having found itself without a quorum, in obedience to the rule the roll of members was called, and the committee rose and its Chairman reported to the House the names of those not responding when called. A quorum having appeared, there is nothing now for the Chair to do except to announce that the Committee of the Whole will resume its session upon the river and harbor appropriation bill, unless there be made a motion that the House now adjourn.

Mr. Edward K. Valentine, of Nebraska, moved that the House adjourn. This motion was negatived, 81 noes to 38 ayes.

Mr. John Van Voorhis, of New York, made the point that no quorum had voted. The Speaker pro tempore said:

A quorum is not needed to determine the question on a motion to adjourn. The call of the roll, upon the completion of which the Committee of the Whole rose, indicated the presence of a quorum. Under the rule the Committee of the Whole will now resume its session.

The Committee of the Whole accordingly resumed its session.

**2970. Where the report of absentees by the Committee of the Whole, after a call of the roll, discloses a quorum of the committee but not of the House, the Speaker, nevertheless, directs the committee to resume its sitting.**

**In counting to ascertain the presence of a quorum, the Chair counts all Members in sight, whether in the cloakrooms or within the bar.**

<sup>1</sup>Third session Forty-sixth Congress, Record, pp. 1628, 1629.

<sup>2</sup>Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

On February 21, 1907,<sup>1</sup> during proceedings in Committee of the Whole House on the state of the Union, Mr. John S. Williams, of Mississippi, made the point of order that a quorum was not present.

The Chairman<sup>2</sup> proceeded to count, whereupon Mr. James A. Tawney, of Minnesota, asked if Members in the cloakrooms might not be counted.

The Chairman replied:

The Chair has counted the head of every Member looking out of the cloakrooms that is visible, and the Chair finds 80 Members present; not a quorum.

Thereupon the Chairman directed the roll to be called under the rule, and at the conclusion of the call the committee rose, and the Speaker having taken the chair, the Chairman reported the names of the absentees, 268 in all.

The Speaker<sup>3</sup> having received the report, announced that it appeared that a quorum of the Committee of the Whole House on the state of the Union was present, and that the committee would resume its session.<sup>4</sup>

**2971. A Committee of the Whole finding itself without a quorum, and the roll having been called, rose and made a report showing a quorum of the committee but not of the House; whereupon the Speaker directed that the committee resume its sitting.**

**While the Committee of the Whole is dividing on a motion, a new motion may not be made.**

On February 27, 1905,<sup>5</sup> the bill (S. 3343) to authorize the Anacostia, Surrattsville and Brandywine Electric Railway Company to extend its street railway in the District of Columbia was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph W. Babcock, of Wisconsin, moved that the committee rise and report the bill with a favorable recommendation.

The failure of a quorum being demonstrated on this vote, the roll was called under the rule, and the committee rose and reported the names of the absentees.

The Speaker<sup>3</sup> said:

The Chairman of the Committee of the Whole House on the state of the Union reports that that committee found itself without a quorum, and reports the names of the absentees, which will be entered upon the Journal. The roll shows 139, a quorum, and the committee will resume its session.<sup>6</sup>

The Chairman of the Committee of the Whole said, after the committee had resumed its sitting:

The question now is on the motion made by the gentleman from Wisconsin [Mr. Babcock], that the committee do now rise and report the bill to the House with amendments, with a favorable recommendation.

<sup>1</sup> Second session Fifty-ninth Congress, Record, pp. 3571, 3572.

<sup>2</sup> James E. Watson, of Indiana, Chairman.

<sup>3</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>4</sup> It is to be noted that as 190 was a quorum of the House, and 268 were absent, there was not present a quorum of the House when the Speaker made the announcement. But as there was a quorum of the Committee of the Whole, the return to the committee seemed to fulfill the intent of the rule, although at the time that rule was framed the quorum of the Committee of the Whole was the same as the quorum of the House.

<sup>5</sup> Third session Fifty-eighth Congress, Record, pp. 3530, 3531.

<sup>6</sup> The number reported, 139, was a quorum of the Committee of the Whole, although not of the House.

Mr. Charles L. Bartlett, of Georgia, said:

Mr. Chairman, I desire to offer a motion as a substitute for the motion of the gentleman from Wisconsin. I move that the committee rise and report the bill back to the House with the recommendation that it do lie on the table.

Mr. Babcock said:

Mr. Chairman, I make the point of order that the committee has already divided upon the motion that I made to rise with a favorable recommendation.

The Chairman:<sup>1</sup>

The committee was dividing on the motion of the gentleman from Wisconsin at the time the fact of no quorum was developed. The Chair is inclined to think that the motion of the gentleman from Georgia is too late. \* \* \* The Chair understands the gentleman, but the fact that no quorum was present made that vote that was taken null. It did not nullify the proceedings up to that point, and the fact that the committee was divided, so that we now come back to the point where we divided upon the motion which had been made by the gentleman from Wisconsin. But, aside from that, the gentleman from Georgia [Mr. Bartlett] realizes that if the motion of the gentleman from Wisconsin is negative, it amounts to the same thing as if his motion were affirmative, and the tellers having been ordered on this vote the gentleman from Wisconsin [Mr. Babcock] and the gentleman from Georgia [Mr. Bartlett] will take their places as tellers.

**2972. A Committee of the Whole, rising without a quorum, may not report the bills it has acted on.**

**The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a record vote had disclosed a quorum.**

On May 29, 1858,<sup>2</sup> the Committee of the Whole House rose, and the Chairman reported that it had had under consideration the Private Calendar, and finding itself without a quorum he had directed the roll to be called and the names of the absentees to be reported to the House. Thereupon the Speaker announced that only 110 Members had answered to their names.

This not being a quorum, a motion was made to adjourn, and on this motion the Speaker announced 32 yeas and 96 nays, a quorum voting.

The motion to adjourn being decided in the negative, and a quorum being announced as present, the committee resumed its session.

The Committee of the Whole House thereupon voted to rise and report to the House certain bills which it had laid aside with a favorable recommendation.

Thereupon the committee rose, the bills were reported, and passed by the House.

Later in the day the Speaker called the attention of the House to the fact that upon the call of the yeas and nays on the question of adjournment the Clerk had made a mistake of 10 votes in counting, and that in reality a quorum was not present.

A question arose as to the proper course of procedure, and the Speaker<sup>3</sup> held that the bills, having been passed by a quorum in the House, had been properly passed.

<sup>1</sup>James S. Sherman, of New York, Chairman.

<sup>2</sup>First session Thirty-fifth Congress, Journal, p. 971; Globe, pp. 2523 2524.

<sup>3</sup>James L. Orr, of South Carolina, Speaker.

As to the difficulty of the record vote showing no quorum it was obviated by the following entry in the Journal:

After the foregoing result was declared several other Members appeared, and a quorum being present, etc.

**2973.** On June 24, 1842,<sup>1</sup> the Committee of the Whole House was considering bills on the Private Calendar, and had laid aside three to be reported favorably, when a motion was made that the committee rise. On this vote there were ayes 57, noes 48, no quorum voting.

The committee rose, according to the vote, and the Chairman<sup>2</sup> reported to the House the three bills acted on favorably by the committee.

Mr. John Quincy Adams, of Massachusetts, raised the point of order that it was not competent for the committee to report bills when there was no quorum.

The Chairman thereupon stated that it was through inadvertence that the bills were reported, and he begged leave to amend his report, which he did, stating that the Committee of the Whole House, finding itself without a quorum, had risen.<sup>3</sup>

**2974. The Committee of the Whole having voted to rise after a point of no quorum had been made but before the Chair had ascertained, the bills which the committee had acted on were reported to the House.**

**No quorum being present when a vote is taken in Committee of the Whole, that vote is not made valid by the fact that the roll call, prescribed by rule when a quorum fails in committee, discloses a quorum present.**

On January 31, 1896,<sup>4</sup> the Committee of the Whole House was considering the bill (H. R. 995) granting a pension to Kate A. Pitman. The question being taken upon an amendment, there were 14 ayes and 66 noes.

The point of no quorum being made, it appeared on the count of the Chairman that no quorum was present. Therefore he ordered the roll to be called, whereupon the committee rose, and, the Speaker pro tempore having resumed the chair, Mr. Hepburn, as Chairman of the Committee of the Whole, reported that, the committee having found itself without a quorum, he had directed the roll to be called and that the Clerk would report the names of absentees.

The roll call having disclosed the presence of 104 Members, a quorum, the Committee of the Whole at once resumed its sitting.

The Chairman then announced that the question was upon the amendment, whereupon Messrs. G. C. Crowther, of Missouri, and Joseph H. Walker, of Massachusetts, raised the point of order that the question on the amendment had been settled.

The Chairman<sup>5</sup> overruled the point of order, on the ground that the count disclosed no quorum when the vote was taken, and while the roll call disclosed the presence of a quorum now it did not disclose the presence of one then.

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<sup>1</sup>Second session Twenty-seventh Congress, Journal, p. 1010; Globe, p. 680.

<sup>2</sup>John C. Clark, of New York, Chairman.

<sup>3</sup>It should be noted that under the present practice the mere fact that a quorum does not vote is not accepted as conclusive as to the presence of a quorum.

<sup>4</sup>First session Fifty-fourth Congress, Record, p. 1195.

<sup>5</sup>William P. Hepburn, of Iowa, Chairman.

The question on the amendment being again taken, there were 10 ayes, 69 noes,

Mr. W. Jasper Talbert, of South Carolina, made the point of no quorum.

Mr. John A. Pickler, of South Dakota, then moved that the committee rise, which was agreed to. The committee accordingly rose; and Mr. Sereno E. Payne, of New York, having resumed the chair as Speaker pro tempore, Mr. Hepburn reported that the Committee of the Whole, having had under consideration the bill (H. R. 2800) to pension Martha Brooks, had directed that it be reported to the House with a favorable recommendation; and that the committee, having also had under consideration the bill (H. R. 952) granting a pension to Susan B. Wright, had directed that it be reported to the House with an amendment and with the recommendation that as amended the bill be passed.

**2975. The presence of a quorum is not necessary for a motion that the Committee of the Whole rise.**—On February 15, 1881,<sup>1</sup> the House was in the Committee of the Whole House on the state of the union, considering the river and harbor appropriation bill.

Mr. E. B. Finley, of Ohio, moved that the committee rise, and on a division on this question there were ayes 35, noes 91.

Mr. John Van Voorhis, of New York, made the point of order that no quorum had voted.

The Chairman<sup>2</sup> ruled:

The Chair will now decide this point of order, as it is now presented directly. The point of order made is, that it is necessary to have a quorum in order that the committee may rise. The Chair will decide, and in accordance with a large vote of this House in Committee of the Whole during the last session of this Congress, that a quorum is not necessary to rise; which decision the Chair has here before him.

**2976.** On August 6, 1890,<sup>3</sup> the House was in Committee of the Whole House on the state of the Union, considering the general deficiency appropriation bill.

Mr. Joseph H. Outhwaite, of Ohio, moved that the committee rise. Upon a division there were 30 ayes and 52 noes, so the committee determined not to rise.

Mr. John H. Rogers, of Arkansas, made the point of no quorum.

The Chairman<sup>4</sup> ruled:

On a motion that the committee rise it is not necessary that a quorum should be present. It is tantamount to a motion to adjourn, and a quorum is not necessary on such a motion.

**2977. Early practice of the House on the failure of a quorum in Committee of the Whole.**

**Under a former rule the Chair, in counting the House, might not count Members without the bar. (Footnote.)**

**Early instance of obstruction caused by Members refusing to vote in order to break a quorum.**

**Instance wherein a chairman, disregarding the vote of the Committee of the Whole, rose and reported the absence of a quorum. (Footnote.)**

<sup>1</sup>Third session Forty-sixth Congress, Record, p. 1628.

<sup>2</sup>John G. Carlisle, of Kentucky, Chairman.

<sup>3</sup>First session Fifty-first Congress, Record, p. 8249.

<sup>4</sup>Lewis E. Payson, of Illinois, Chairman.

On March 24, 1840,<sup>1</sup> the House being in Committee of the Whole considering the bill (H. R. 18) to provide for issuing Treasury notes, Mr. Daniel D. Barnard, of New York, moved that the committee rise. On a vote by tellers there were 10 in the affirmative and 85 in the negative, "the Whig members generally, sub silentio, refusing to vote." A quorum not having voted, Mr. George C. Dromigoole, of Virginia, said that he was under the impression that there was a quorum present, and he would therefore inquire if it was in order to have a count of the Members who were within the bar.<sup>2</sup>

The Chairman<sup>3</sup> said that as a quorum had not voted, the committee must rise and report that fact to the House. The yeas and nays could not be taken in committee, and there was no way of ascertaining whether a quorum was present but by an actual count.

A question arose as to whether, a quorum not appearing, the committee should rise by order of the Chairman, or by a vote, on motion. The Chair thought that, the quorum failing, the committee must rise and report.<sup>4</sup> Under decision of the Chair the committee rose and reported to the House that there was no quorum voting.<sup>5</sup> In the House a quorum appeared, and again the House resolved itself into committee. Immediately, before any business had been transacted, a motion was made that the committee rise. On this motion there were 11 ayes and 92 noes, the Whigs again generally refusing to vote.

Mr. George M. Keim, of Pennsylvania, asked for an actual count of the committee, and Mr. David Petrikin, of Pennsylvania, made the point that it was the duty of the Chair to make the count. Mr. Aaron Vanderpoel, of New York, thought it very important to settle the question, as the idea was not to be tolerated that the Committee of the Whole was powerless, and it was not to be pretended that when a quorum was sitting about the Chairman could not count.

The Chairman, being thus called on to make a count, said he had ascertained that under a former decision of the House he had the power to count, but he would observe that when he should do so, and announce the result, it was very questionable whether the Members could be compelled to vote. He would now proceed to count those within the bar.

As he began to count the Whigs generally retreated without the bar. A quorum not being found within the bar, the committee rose.

During further proceedings on this day, a quorum not voting in the committee, the Chairman counted and reported that there were 129 Members present, but said

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<sup>1</sup>First session Twenty-sixth Congress, *Globe*, pp. 285, 286, 288.

<sup>2</sup>At that time Rule 36 provided that "upon a division and count of the House on any question, no Member without the bar shall be counted." This distinction is now abolished. Under the present practice the Chairman counts the committee to ascertain the presence of a quorum if the vote does not show a quorum.

<sup>3</sup>William C. Dawson, of Georgia, Chairman.

<sup>4</sup>On June 13, 1840 (1st sess. 26th Cong., *Globe*, p. 462), the Committee of the Whole, under such circumstances, refused by vote to rise; but the Chairman (Mr. Lynn Banks, of Virginia), rose and reported the fact of no quorum to the House.

<sup>5</sup>Earlier reports in similar cases were that the Committee of the Whole, "finding that a quorum was not present, had risen." (See instance on February 19, 1829, 2d sess. 20th Cong., *Journal*, p. 310.)

that he could not act otherwise than to have the committee rise and report that on a division there was no quorum.

**2978.** On April 22, 1834,<sup>1</sup> the House was considering in Committee of the Whole House on the state of the Union the bill (H. R. 283) making appropriations for the civil and diplomatic expenses of the Government for the year 1834, when a motion for the committee to rise was decided in the negative, ayes 37, noes 78. This being less than a quorum<sup>2</sup> the Chairman rose and reported the fact to the House.

Mr. George Evans, of Maine, moved an adjournment, which motion, on a call of the yeas and nays, was decided in the negative, yeas 53, nays 87.

This vote having developed the fact that a quorum was present, and thereupon the chairman of the Committee of the Whole resumed the chair of the committee.

Mr. John Quincy Adams, of Massachusetts, announcing that he intended to move a call of the House, moved that the committee rise. The vote being taken, there were ayes 26, noes 80.

The vote showing the absence of a quorum, the Chairman<sup>3</sup> again rose and reported the fact to the House.

Mr. Adams moved an adjournment, and the yeas and nays being taken on that motion, there were yeas 39, nays 86, a quorum voting.

Mr. Adams thereupon moved a call of the House.

The Speaker pro tempore<sup>4</sup> said that as a quorum had appeared, he considered it his duty to resign, and that the House would resolve itself into Committee of the Whole House on the state of the Union, in which they had been when the committee rose to report the fact that there was not a quorum in attendance. This procedure was in accordance with the practice of the House.

On the succeeding day, April 23, by a motion to amend the Journal, Mr. Adams brought this proceeding into review. After debate the motion to amend the Journal was laid on the table.

**2979.** On January 4, 1809,<sup>5</sup> the Committee of the Whole having risen without a quorum, the Chairman could not report, but on the succeeding day, a quorum of the House being present, reported that on the day before "the committee found themselves without a quorum and thereby dissolved." The resolution which the committee had under discussion was ordered by the House to lie on the table.

On February 13, 1809,<sup>6</sup> the Committee of the Whole rose without a quorum, and the chairman reported that fact to the Speaker.

But the House, without any ascertainment as to the presence of a quorum, resolved itself into Committee of the Whole to consider another bill.

On March 1,<sup>7</sup> in a similar case, the House adjourned.

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<sup>1</sup> First session Twenty-third Congress, Journal, pp. 552-554; Debates, pp. 3757-3770.

<sup>2</sup> The quorum of the Committee of the Whole was then the same as in the House.

<sup>3</sup> Henry Hubbard, of New Hampshire, Chairman.

<sup>4</sup> Jesse Speight, of North Carolina, Chairman.

<sup>5</sup> Second session Tenth Congress, Journal, pp. 439, 441 (Gales and Seaton ed.); Annals, pp. 980, 982.

<sup>6</sup> Journal, p. 521

<sup>7</sup> Journal, p. 577.