

Chapter CXXIX.

THE VOTE BY YEAS AND NAYS.

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6011. The Constitution provides that the yeas, and nays shall be entered on the Journal at the desire of one-fifth of those present.⁵—The Constitution of the United States, in section 5 of Article I, provides:

The yeas and nays of the Members of either House on any question shall, at the desire of one-fifth⁶ of those present, be entered on the Journal.

In section 7 of Article I, which provides for the return of bills from the President of the United States with his objections and their consideration, this requirement is made:

But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House, respectively.⁷

¹ Demand for yeas and nays not to be held dilatory. (Sec. 5737 of this volume.)

Not to be demanded in Committee of the Whole. (Secs. 4722–4724 of Vol. IV.)

Votes by yeas and nays in impeachment trials. (Sec. 2094 of Vol. III.)

² Rule combining call of the House with a vote by yeas and nays. (Sec. 3041 of Vol. IV.)

³ See also section 3010 of Volume IV.

⁴ As to reconsideration of vote ordering yeas and nays. (Secs. 5689–5693 of this volume.)

⁵ See section 5689 of this volume for decision as to ordering the yeas and nays on a motion to reconsider a vote ordering the yeas and nays.

⁶ In the Continental Congress the yeas and nays were, by rule, ordered at the demand of a single Member. (Journal, May 26, 1778.)

⁷ The House for a time had a rule that the yeas and nays should be taken on the passage of every general appropriation bill, but in 1886 it was repealed as useless. (First session Forty-ninth Congress, Journal, p. 1156.)

6012. According to the latest practice the yeas and nays are taken on questions arising before the organization of the House.—On December 6, 1839,¹ at the organization of the House, the call of the roll by States for the ascertainment of a quorum had been suspended at the State of New Jersey, and a controversy had arisen as to who were entitled to be called as the occupants of five of the seats of that State. Mr. John Quincy Adams, of Massachusetts, had been chosen to preside as chairman of the meeting of the Members-elect, and the Members were proceeding to determine who, if any, should be allowed to vote as the five Members from New Jersey.

A vote being about to be taken on an appeal from a decision of the Chair, Mr. Alexander Duncan, of Ohio, inquired if the yeas and nays could be taken on the question before the House.

The Chairman replied that, at the present state of organization of the House, the yeas and nays could not be taken, the House being not yet constituted.

On December 11, in the course of the effort to determine the status of the contestants, the question was put as to each one of them, whether or not he should be permitted to vote, and decided.

After this, the yeas and nays being demanded on a pending question, the Chairman stated that, on a former occasion, he had decided that the roll of the Members of the House not being complete, the yeas and nays could not be taken; but that now, considering that many of the obstructions existing in the organization of the House had been partially removed by the decisions of the House of this day as to the votes of certain Members whose right to vote had been contested, the yeas and nays might be taken by general consent.²

No objection being made, the yeas and nays were taken.

6013. On December 4, 1849,³ before a Speaker had been elected or rules adopted, Mr. Christopher H. Williams, of Tennessee, moved that the House adjourn until the hour of 12 to-morrow.

Mr. Thomas H. Bayly, of Virginia, demanded the yeas and nays on the motion to adjourn.

The Clerk⁴ decided that the demand for the yeas and nays was not in order.

Mr. Bayly appealed, urging that the body of Members-elect was a House before organization, and was proceeding according to the directions laid down for the House by the Constitution. They were keeping a journal and electing a Speaker, as required by the Constitution to do. The mandate as to the yeas and nays applied to them.

The Clerk thereupon said that he would withdraw the decision, and would submit the question to the House. Thereupon Mr. Bayly withdrew his appeal, and the Clerk declared that the question was on taking the yeas and nays.

¹First session Twenty-sixth Congress, Journal, pp. 7, 14; Globe, pp. 27, 40.

²On December 11, the House being still unorganized, the Chairman decided that the yeas and nays could not be called without the consent of all present. (Globe, p. 42.)

³First session Thirty-first Congress, Journal, pp. 32, 147–156; Globe, pp. 4, 6.

⁴Thomas J. Campbell, Clerk.

A question then arose as to whether the vote of a majority was required to order the yeas and nays, and pending this discussion Mr. Williams withdrew his demand.

On December 5 and 22 the yeas and nays were taken several times, and in each case the Journal specifically states that they were demanded by one-fifth.

6014. When a ye-and-nay vote on a bill fails for lack of a quorum, the order for the yeas and nays remains effective whenever the bill again comes before the House.—On May 10, 1886,¹ a District of Columbia day, the House was considering the bill (H. R. 7083) to incorporate the trustees of the Young Women's Christian Home, in Washington, D. C., and on the passage, the yeas and nays having been ordered, there were 145 yeas, 1 nay; no quorum.

The House then adjourned.

On June 14, 1886, District of Columbia business being again in order, Mr. John S. Barbour, of Virginia, called the bill up again, and a proposition for debate was made.

The Speaker² said:

The yeas and nays were ordered on the passage of the bill and they were taken, but no quorum appeared. If the yeas and nays are dispensed with, it must be by unanimous consent.

6015. On August 28, 1890,³ the Speaker stated the pending question to be on the appeal of Mr. William E. Mason, of Illinois, from the decision of the Chair, made on the 26th instant, that the bill of the House (H. R. 11568) defining "lard," also imposing a tax upon and regulating the manufacture and sale, importation and exportation of compound lard, was the pending business before the House, on which appeal the yeas and nays had been ordered, and on which no quorum voted.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that this day having been assigned to the Committee on Labor the bill named should go over as unfinished business until to-morrow or Monday, or such subsequent time as unfinished business might be properly considered.

The Speaker⁴ declined to entertain the point of order on the ground that the question raised was the one pending and to be now voted on.

The question being again put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative, yeas 130, nays 46.

6016. In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way.—On April 30, 1852,⁵ the House having under consideration a bill for the relief of Osborn Cross, the question was taken on the engrossment and third reading.

Mr. Orlando B. Ficklin, of Illinois, having demanded the yeas and nays, there were, ayes 22, noes 58, no quorum voting.

¹First session Forty-ninth Congress, Journal, pp. 1566, 1885; Record, pp. 4342, 5679, 5680.

²John G. Carlisle, of Kentucky, Speaker.

³First session Fifty-first Congress, Journal, p. 998; Record, p. 9277.

⁴Thomas B. Reed, of Maine, Speaker.

⁵First session Thirty-second Congress, Globe, p. 1220; Journal, pp. 651, 652.

Mr. George W. Jones, of Tennessee, submitted that it did not require that there should be a quorum present to call the yeas and nays, and quoted the provision of the Constitution that “the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.”¹

The Speaker² said:

That is the constitutional provision, but the construction which the Chair puts upon the provision in reference to this subject is this: That it is competent for the House to adjourn with less than a quorum from day to day, but it is not competent for less than a quorum to pass a bill. There is another provision of the Constitution, the gentleman will remember, which requires a quorum to be present to do business, and, therefore, for the purpose of doing business, less than one-fifth of a quorum, in the judgment of the Chair, can not call the yeas and nays. * * * We can not pass a bill with less than a quorum, and the yeas and nays would be idle, therefore, less than a quorum being present.

On appeal this decision was sustained.

6017. On December 28, 1852,³ the House was voting on a resolution relating to the reports of committees, when the Speaker announced that no quorum voted on the pending motion.

Mr. Alexander H. Stephens, of Georgia, demanded the yeas and nays.

The Speaker² decided, in conformity with his decision of the last session and which was sustained by the House, that less than a quorum could not act upon a demand for the yeas and nays any more than upon any other business; and consequently that the demand for the yeas and nays was not now in order. He thought that, taking the clause of the Constitution authorizing “one-fifth of the Members present to cause the yeas and nays to be entered on the Journal,” in connection with that requiring “a majority of the Members to constitute a quorum to do business,” it was clearly intended that the “Members present,” one-fifth of whom may order the yeas and nays, should amount to a quorum. It would be different if the pending motion was to adjourn or for a call of the House, as less than a quorum was competent to act on either of those motions.

Mr. Alexander H. Stephens having appealed, on the next day the decision of the Chair was sustained by the withdrawal of the appeal by Mr. Stephens.

Again, on January 18, 1853,⁴ Mr. Stephens raised the same point of order, and the Speaker affirmed his previous decision. Mr. Stephens appealed, and, after debate on the meaning of the constitutional provision, the appeal was laid on the table, ayes 96, noes 23.

6018. On January 28, 1863,⁵ during prolonged dilatory proceedings over a bill relating to negro soldiers, a motion was made to fix the day to which the House should adjourn, and the previous question was moved. On this latter motion the yeas and nays were demanded. On a vote by tellers there were 23 ayes and 3 noes.

¹Not long after this, on May 24, 1852 (first session Thirty-second Congress, Journal, p. 727; Globe, pp. 1458, 1459), Mr. Jones, who made the point of order, was in the chair as Speaker pro tempore when the same question arose again. Those voting on ordering the yeas and nays not being a quorum, he decided that a quorum was not necessary, thus overruling the decision of Mr. Speaker Boyd. On appeal Mr. Jones's ruling was sustained.

²Linn Boyd, of Kentucky, Speaker.

³Second session Thirty-second Congress, Journal, p. 87; Globe, pp. 163, 164.

⁴Journal, p. 145; Globe, pp. 334, 335.

⁵Third session Thirty-seventh Congress, Globe, p. 573.

Mr. William S. Holman, of Indiana, made the point that there was no quorum present, as disclosed by the vote.

The Speaker¹ ruled that a quorum was not required to order the yeas and nays.

An appeal from this decision was laid on the table, 96 yeas to 2 nays; so the Chair was sustained.

6019. On December 1, 1877,² Mr. Roger Q. Mills, of Texas, moved to suspend the rules and adopt the following resolution:

Resolved, That the Committee on Ways and Means be instructed to so revise the tariff as to make it purely and solely a tariff for revenue and not for protecting one class of citizens by plundering another.

On this motion the yeas and nays were ordered, yeas 27, nays 57.

Mr. John H. Baker, of Indiana, made the point of order that a quorum had not voted on the demand.

The Speaker³ overruled the point of order on the ground that a quorum was not necessary to order the yeas and nays.

6020. On March 3, 1881,⁴ the House was considering the Senate bill for the relief of Hardie Hogan Helper, and on the question of ordering the bill to be read a third time there were 109 yeas, 2 noes.

Mr. James W. Singleton, of Illinois, made the point of no quorum.

Mr. Alexander H. Coffroth, of Pennsylvania, demanded the yeas and nays.

Mr. Charles E. Hooker, of Mississippi, made the point of order that he had moved a call of the House before the yeas and nays were ordered, and that a motion for a call or to adjourn was the only motion in order.

The Speaker³ said:

The Chair overrules the point of order. The House has the right by a further proceeding to find out whether there be a quorum present. * * * The tellers' count did not show a quorum; but the House may desire a yea-and-nay vote, and the yeas and nays have been demanded to ascertain if there is a quorum. When a count by tellers does not show a quorum, it is in order for the House further to test the fact by a yea-and-nay vote. The question is on ordering the yeas and nays.

6021. On January 11, 1889,⁵ the House was dividing on the question of adopting a conference report, and Mr. Stephen V. White, of New York, demanded the yeas and nays.

Mr. J. B. Weaver, of Iowa, raised the point that a quorum must be present to order the yeas and nays.

The Speaker⁶ ruled as follows:

The Chair is somewhat familiar with the question which was raised by the gentleman from Iowa to-day, and is aware of the fact that there have been two or three decisions in the House to the effect that under the Constitution it requires the presence of a quorum to order the yeas and nays. That was upon the ground that the ordering of the yeas and nays was the transaction of business; and in one case at least the decision, as stated by the gentleman from Iowa, was appealed from and was sustained by the House. But for more than thirty-five years the decisions have been all the other way, and the uniform practice of the House has been constantly the reverse of that.

¹ Galusha A. Grow, of Pennsylvania, Speaker.

² First session Forty-fifth Congress, Journal, p. 290; Record, pp. 811, 812.

³ Samuel J. Randall, of Pennsylvania, Speaker.

⁴ Third session Forty-sixth Congress, Journal, p. 596; Record, p. 2446.

⁵ Second session Fiftieth Congress, Record, pp. 679, 681.

⁶ John G. Carlisle, of Kentucky, Speaker.

If the ordering of the yeas and nays is the transaction of business, of course the ordering of tellers is the transaction of business. In each case the proceeding relates merely to the manner of taking the vote of the House, the method by which the sense of the House shall be ascertained on a matter of business. * * * Under the rules of the House one-fifth of a quorum may order tellers, but it is easy to be seen that one-fifth of a quorum, which is 33 Members, may be all the Members present, and much less than a quorum; and if the point of the gentleman is well taken, that the yeas and nays can not be ordered without the presence of a quorum, manifestly neither of these methods of taking a vote of the House could be resorted to, nor could any other method of taking a vote upon any question, because they are all proceedings of the same character. The Chair is unable to see how the House could even divide on a question, because it is as much the transaction of business as taking a vote by tellers or the call of the roll on the vote by yeas and nays. The Chair thinks, therefore, that the later practice is the better practice, and that the three decisions alluded to, which seem to stand alone, are not now the law of the House.

The Chair overrules the point of order.¹

6022. On July 29, 1890², Mr. Joseph G. Cannon, of Illinois, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the amendments of the Senate to the bill of the House (H. R. 10884) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1891, and for other purposes, and the question being put, there appeared on division, yeas 57, nays 40.

Mr. William D. Bynum, of Indiana, made the point of order that no quorum was present.

The Speaker thereupon proceeded to count the House, when Mr. Daniel Kerr, of Iowa, demanded the yeas and nays.

Mr. James D. Richardson, of Tennessee, made the point of order that the demand was not in order, for the reason that the last vote disclosed the fact that a quorum was not present.

The Speaker³ overruled the point of order on the ground that a quorum was not required to order the yeas and nays, and also on the ground that the demand for the yeas and nays was a constitutional right, and that the ordering of the yeas and nays as stated in the ruling of Speaker Carlisle in the last Congress was "a proceeding relating merely to the method by which the sense of the House is ascertained on a matter of business." The yeas and nays is the final vote of the House on a pending question.

6023. On August 23, 1890,⁴ Mr. William E. Mason, of Illinois, having appealed from a decision of the Speaker pro tempore, and the question having been put to the House, "Shall the decision of the Chair stand as the judgment of the House?" it was decided (on division) in the affirmative.

Mr. Mason demanded the yeas and nays, which were refused, one-fifth of the Members present not voting in favor thereof.

Mr. Mason made the point of order that no quorum had voted on ordering the yeas and nays.

¹Mr. Weaver on this occasion cited the precedent in the first session of the Thirty-second Congress, also a similar one in the second session of the same Congress, where Mr. Speaker Boyd reaffirmed his position.

²First session Fifty-first Congress, Journal, p. 903; Record, p. 7861.

³Thomas B. Reed, of Maine, Speaker.

⁴First session Fifty-first Congress, Journal, p. 984.

The Speaker pro tempore¹ overruled the point of order on the ground that a quorum was not required to order the yeas and nays.

6024. On November 3, 1893,² Mr. James D. Richardson, of Tennessee, introduced a joint resolution (H. Res. 86) to pay session and other employees, and per diem employees, and that they be retained during the coming recess.

The question being put, Shall the joint resolution be engrossed and read a third time?

Mr. Joseph C. Hutcheson, of Texas, demanded that the yeas and nays of those voting be entered on the Journal.

Eleven Members concurred in the demand and 128 Members refused to concur. So the demand for the yeas and nays was refused.

Mr. Hutcheson thereupon made the point that, inasmuch as no quorum had voted on the demand for the yeas and nays, there was no quorum present to transact business.

The Speaker³ held as follows:

The Constitution of the United States provides that one-fifth of the Members present may have a yea-and-nay or record vote. Even if there were not more than 20 or 25 Members present, one-fifth of them could order the yeas and nays upon any question, and there must always be a quorum voting for the transaction of business. The adoption of that resolution is business, and if the gentleman makes the point that no quorum votes upon the resolution, the Chair thinks the point is well taken. The ruling which the Chair has just made was upon the question of ordering the yeas and nays and not upon the question of agreeing to the joint resolution.

6025. On May 9, 1898,⁴ the House was considering the conference report on the bill (S. 1316) to provide for organizing a naval battalion in the District of Columbia. The question being on agreeing to the conference report, there were, on a division, 71 ayes and 45 noes.

Mr. Joseph W. Bailey, of Texas, made the point of no quorum, and the Speaker pro tempore proceeded to count the House.

Before the count was completed Mr. William H. Moody, of Massachusetts, demanded the yeas and nays.

Mr. Bailey made the point of order that while the point of no quorum was pending it was not in order to demand the yeas and nays.

After debate, the Speaker pro tempore⁵ held:

The Chair is ready to rule upon the question. When the suggestion is made that no quorum is present, the rule provides that the Chair shall count the House to ascertain whether a quorum is present or not; but, in addition to that, the Constitution provides that at any time one-fifth of those present may order the yeas and nays upon any subject. Now, the House has not yet ascertained that no quorum is present in this case. No quorum voted on the last vote, but it does not appear that no quorum is present. The House, under the constitutional right, may override the rule of simply counting to ascertain if a quorum is present and order the yeas and nays. On that vote it will appear whether a quorum votes upon that question. If it does not, of course then the point of order is still good that no quorum is present. Now, this matter has been ruled upon before.⁶ The Chair overrules the point of order.

¹ Lewis E. Payson, of Illinois, Speaker pro tempore.

² First session Fifty-third Congress, Journal, p. 172; Record, pp. 3120, 3121.

³ Charles F. Crisp, of Georgia, Speaker.

⁴ Second session Fifty-fifth Congress, Record, p. 4744.

⁵ Sereno E. Payne, of New York, Speaker pro tempore.

⁶ Here the Speaker pro tempore cited the decision of the Fifty-first Congress.

6026. On March 2, 1903¹ (the legislative day of February 26), the House met after a recess. Previous to the recess the previous question had been ordered on the question of agreeing to the conference report on the bill (H. R. 12098) "extending the homestead laws and providing for a right of way for railroads in the district of Alaska."

When the House met after the recess Mr. James D. Richardson, of Tennessee, at once made the point of order that no quorum was present.

Mr. Sereno E. Payne, of New York, demanded the yeas and nays; on the pending question.

Mr. Richardson insisted that a quorum should be present.

The Speaker² said:

The gentleman must bear in mind that the thing that the gentleman from New York asks does not need a quorum. The Chair must overrule the point of order. * * * Speaker Randall and Speaker Carlisle both held that a quorum was not needed to order the yeas and nays. * * * And the present occupant of the Chair so holds, and overrules the point of order. The question is on ordering the yeas and nays.

6027. On March 3³ (still the legislative day of February 26) the House again met after recess, the pending question being on agreeing to the conference report on the immigration bill (H. R. 12199), on which the previous question had been ordered previous to the recess.

Mr. Richardson again made the point of order that no quorum was present.

Mr. Payne demanded the yeas and nays on the pending question.

Mr. Richardson objected that the first thing in order was to ascertain whether or not a quorum was present.

The Speaker said:

The gentleman overlooks the fact that you can order the yeas and nays with or without a quorum. The yeas and nays have been demanded. If there turns out to be a quorum, that will be sufficient. If there are not sufficient here to make a quorum, we will have to get them in. That is all. The Chair overrules the point of order.

6028. On January 23, 1833,⁴ Mr. Jesse Speight, of North Carolina, demanded the yeas and nays on a motion to adjourn.

Tellers were called for to ascertain whether one-fifth of the House demanded the yeas and nays. The ayes being 23, the noes 78, it appeared that no quorum had voted.

The Speaker⁵ decided that the yeas and nays should be called.

Mr. Charles F. Mercer, of Virginia, appealed from this decision, but subsequently withdrew the appeal.

6029. The yeas and nays having been once refused may not be again demanded on the same question.

A motion to reconsider the vote ordering the yeas and nays is in order.

On February 28, 1849,⁶ at an evening session, the House was considering a bill of the Senate (No. 343) entitled "An act to provide for carrying into effect the fifth

¹ Second session Fifty-seventh Congress, Record, p. 2912.

² David B. Henderson, of Iowa, Speaker.

³ Record, pp. 3010-3011.

⁴ Second session Twenty-second Congress, Debates, p. 1225.

⁵ Andrew Stevenson, of Virginia, Speaker.

⁶ Second session Thirtieth Congress, Globe, p. 623.

article of the treaty between the United States and the Mexican Republic for establishing the boundary line between them." Mr. Robert C. Schenck, of Ohio, had offered an amendment, and after debate, when the question was put on its adoption, the yeas and nays were called for. Less than one-fifth voting in favor thereof, the yeas and nays were refused.

The question was then being taken by a division, when Mr. George Ashmun, of Massachusetts, asked the yeas and nays.

The Speaker¹ I stated that they had been refused and could not again be called for.

Mr. George W. Jones, of Tennessee, asked as a constitutional right that the vote be again taken on ordering the yeas and nays.

The Speaker said the Chair was of opinion that the yeas and nays could be demanded but once upon the same question; otherwise the call might be renewed every day during the session upon the same question. A motion might be made, however, to reconsider the vote by which the House refused to order the yeas and nays.

On motion of Mr. Jones, the vote was reconsidered, and the question recurring on ordering the yeas and nays, they were ordered.

6030. It is not in order during the various processes of a division to repeat a demand for the yeas and nays which has once been refused by the House.—On February 3, 1846² Mr. Jacob Collamer, of Vermont, presented a resolution requesting the President to communicate to the House correspondence between the Governments of the United States and Great Britain in relation to the country west of the Rocky Mountains, and moved a suspension of the rules to enable the resolution to be offered. Mr. George Ashmun, of Massachusetts, called for the yeas and nays, which the House refused to order.³

Tellers were then asked for and appointed on the motion to suspend the rules, and the affirmative side having been taken and declared, Mr. Collamer called for the yeas and nays.

The Speaker⁴ said the demand was not in order, as the yeas and nays had already been refused.

The completion of the vote by tellers then occurred.

6031. On May 26, 1854,⁵ the House resumed the consideration of the amendments of the Senate to the bill of the House (H. R. 271) to supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1854. The yeas and nays having been once refused on the question of agreeing to the forty-ninth amendment.

Mr. George W. Jones, of Tennessee, claimed as a constitutional privilege that it should again be submitted to the Members present to ascertain whether one-fifth desired the yeas and nays to be entered on the Journal.

¹ Robert C. Winthrop, of Massachusetts, Speaker.

² First session Twenty-ninth Congress, Globe, p. 304.

³ The Constitution specifies how the yeas and nays may be ordered.

⁴ John W. Davis, of Indiana, Speaker.

⁵ First session Thirty-third Congress, Journal, p. 939; Globe, p. 1323.

The Speaker¹ decided that less than one-fifth of the Members present having demanded the yeas and nays, it was not in order to repeat the demand upon the same question.

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

6032. The constitutional right to demand the yeas and nays does not exist as to the vote to second a motion when such second is required by the rules.—On June 20, 1898,³ Mr. Thaddeus M. Mahon, of Pennsylvania, moved that the rules be suspended and that the amendments of the Senate to the "omnibus claims bill" (H. R. 4936) be nonconcurrent in and a committee of conference be asked.

Mr. Eugene F. Loud, of California, demanded a second.

The House divided and the tellers reported ayes 90, noes 2.

Mr. Loud made the point of no quorum.

Mr. Mahon demanded the yeas and nays.

The Speaker⁴ said:

This can not be taken by yeas and nays. It is taken by tellers only. This is not a motion. It is the seconding of a motion, and the constitutional right to demand the yeas and nays does not exist as to a second.

6033. On May 21, 1906,⁵ Mr. De Alva S. Alexander, of New York, moved to suspend the rules and pass the bill (S. 5533) to appoint an additional judge for the southern district of New York.

A second being demanded, on a vote by tellers there appeared ayes 129, noes 0.

Mr. John S. Williams, of Mississippi, made the point of order that no quorum was present.

The Speaker, after counting, announced the presence of a quorum.

Mr. Williams then demanded the yeas and nays.

The Speaker⁶ said:

The yeas and nays can not under the rule be had on ordering a second. That is expressly provided in the rules.

6034. On February 6, 1827,⁷ Mr. John Woods, of Ohio, called for the previous question on a motion relating to the bill "for the alteration of acts imposing duties on imports."

When the Speaker put the question to ascertain whether the call was seconded by a majority of the House,⁸ Mr. Forsyth, of Georgia, demanded that the question be taken by ayes and noes.

¹ Linn Boyd, of Kentucky, Speaker.

² See, however, sections 3053–3055 of Vol. IV of this work.

³ Second session Fifty-fifth Congress, Record, p. 6172.

⁴ Thomas B. Reed, of Maine, Speaker.

⁵ First session Fifty-ninth Congress, Record, p. 7186.

⁶ Joseph G. Cannon, of Illinois, Speaker.

⁷ Second session Nineteenth Congress, Journal, p. 493.

⁸ The second is no longer required for the demand for the previous question.

The Speaker¹ decided that the motion of Mr. Forsyth was not in order.

Mr. Forsyth appealed, but subsequently withdrew his appeal, and the decision of the Chair was acquiesced in by the House.

6035. On July 16, 1840² when the rule provided that the previous question should only be admitted when demanded by a majority of the Members present, Mr. Speaker Hunter decided that, as the yeas and nays could not be taken in ascertaining whether the previous question were demanded by a majority of the Members present or not, the yeas and nays could not be taken on a motion to reconsider that demand.

6036. On May 27, 1856,³ during consideration of the bill (H. R. 172) making a grant of public lands to the State of Michigan, the previous question was moved, and the motion was seconded on a vote by tellers, in accordance with the requirement of the rule as it was at that time.

Mr. George W. Jones, of Tennessee, moved to reconsider the vote whereby the second was ordered.

Thereupon Mr. Jones proposed to demand the yeas and nays on the motion to reconsider.

The Speaker⁴ said:

The Chair decides that, inasmuch as it is the practice of the House to decide that question by tellers, the House should follow the same mode on a motion to reconsider the vote by which the previous question was seconded.

6037. During proceedings to secure a quorum it was held that the yeas and nays might not be demanded on a motion to lay on the table a motion to reconsider the vote whereby the yeas and nays were ordered.⁵

The House having reconsidered the vote whereby the yeas and nays were ordered, and having again ordered them, a second motion to reconsider was held out of order.

On May 15, 1896,⁶ at a Friday evening session, a quorum not being present, Mr. John A. Pickler, of South Dakota, moved to reconsider the vote by which the yeas and nays were ordered.

Messrs. Roswell P. Bishop, of Michigan, and William L. Terry, of Arkansas, made the point of order that the order of the yeas and nays might not be reconsidered.

The Speaker pro tempore⁷ held that the motion to reconsider was in order.

Mr. Alfred Milnes, of Michigan, moved to lay on the table the motion to reconsider the order of the yeas and nays.

On Mr. Milnes's motion Mr. H. Henry Powers, of Vermont, demanded the yeas and nays.

¹John W. Taylor, of New York, Speaker.

²First session Twenty-sixth Congress, Journal, p. 1288.

³First session Thirty-fourth Congress, Globe, p. 1314.

⁴Nathaniel P. Banks, of Massachusetts, Speaker.

⁵See, however, section 5689 of this volume.

⁶First session Fifty-fourth Congress. Record, p. 5318.

⁷John Dalzell, of Pennsylvania, Speaker pro tempore.

The Speaker pro tempore said:

The Chair will suggest to the gentleman from Vermont that this is a mere question of the method of taking a vote in the House in which there is no quorum, and the Chair is of the opinion that the yeas and nays are not properly demanded.

Mr. Powers thereupon withdrew the demand.

The question then being taken on the motion to reconsider the vote whereby the yeas and nays were ordered, it was decided in the affirmative—yeas 62, noes 48.

The question recurring on the demand for the yeas and nays, they were ordered by one-fifth of those present.

Thereupon Mr. Pickler moved to reconsider the vote whereby the yeas and nays were ordered.

The Speaker pro tempore said:

The Chair holds that motion to be out of order.

6038. The yeas and nays may be demanded while a vote by tellers is being taken.—On January 10, 1845,¹ the Speaker² announced that the first business in order was the resolution offered on a previous occasion by Mr. Jacob Thompson, of Mississippi, to change the hour of meeting to 11 o'clock; to which Mr. David L. Seymour, of New York, had submitted an amendment as a substitute providing for an evening session.

Mr. Richard Brodhead, of Pennsylvania, moved the previous question, and on the question, "Shall the main question be now put?" the vote was ordered to be taken by tellers. Messrs. John P. Hale, of New Hampshire, and Robert C. Winthrop, of Massachusetts, were appointed tellers, and they reported 61 in the affirmative.

Mr. George W. Hopkins, of Virginia, rose while the negative votes, which were evidently a minority, were being counted and demanded the yeas and nays.

The yeas and nays were ordered,³ and being taken resulted, yeas 90, nays 86. So the main question was ordered to be now put.

6039. The yeas and nays may be demanded while the Speaker is announcing the result of a division.—On February 24, 1846⁴ Mr. John W. Tibbatts, of Kentucky, moved that the House resolve itself into Committee of the Whole House on the state of the Union, his intention being to get consideration of the bill making appropriations for harbors and rivers.

The Speaker⁵ put the question and there was clearly a majority voting against the motion, and the Speaker was so announcing, when Mr. Tibbatts demanded the yeas and nays, which were ordered.⁶

¹ Second session Twenty-eighth Congress, Globe, p. 121.

² John W. Jones, of Virginia, Speaker.

³ This is a proceeding and not a ruling, the Journal making no mention of it, but it was referred to for many years in the Digest and Manual, and is in accordance with the fixed practice of the House.

⁴ First session Twenty-ninth Congress, Globe, p. 420.

⁵ John W. Davis, of Indiana, Speaker.

⁶ This is a proceeding and not a ruling, but it was referred to in the Digest and Manual for many years, and the practice of the House has conformed to it.

6040. The yeas and nays may be demanded even after the announcement of a vote if the House has not passed to other business.—On February 4, 1850,¹ Mr. Joshua R. Giddings, of Ohio, offered these resolutions:

Resolved, That we hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with the inalienable rights of life and liberty, and that all governments are instituted to maintain these rights.

Resolved, That in constituting government in any Territory of the United States it is the duty of Congress to secure to all people thereof, of whatsoever complexion, the enjoyment of the rights aforesaid.

Mr. Samuel W. Inge, of Alabama, moved that the resolutions be laid upon the table.

The question was taken, and was declared by the Speaker to have been rejected, when Mr. Joseph M. Root, of Ohio, demanded the yeas and nays.

Mr. Thomas L. Clingman, of North Carolina, submitted that after the House had acted on the motion to lay on the table, had rejected it, and after that decision had been announced by the Chair, it was not in order for a gentleman to insist upon a second vote being taken by a demand for the yeas and nays. Each Member had a constitutional right to call for the yeas and nays, but he must do so before the question had been determined. The House could not be compelled in this matter to vote a second time.

The Speaker² said that the practice adopted by his immediate predecessor, and in the propriety of which he concurred, drew a distinction between a demand for the yeas and nays and other cases. When a demand for the yeas and nays was made the question was entertained at any time before the House had passed to other business. The Chair entertained the motion.

On February 28, 1849,³ Mr. Robert C. Schenck, of Ohio, moved a suspension of the rules to consider a bill for the relief of the captors of the frigate *Philadelphia*.

Two-thirds not voting in the affirmative, the rules were not suspended, and the Speaker announced that the bill would be committed to the Committee of the Whole House on the state of the Union, in accordance with the requirements of the rules.

Mr. Schenck at this point demanded the yeas and nays on his motion to suspend the rules.

Mr. Frederick P. Stanton, of Tennessee, made the point of order that, the decision having been announced, it was too late for the gentleman from Ohio to call for the yeas and nays.

The Speaker⁴ said that it was the constitutional privilege of every Member, upon the vote of one-fifth of the Members, to have the yeas and nays. Nothing had intervened. If anything had intervened, the Chair would not entertain the motion.

¹First session Thirty-first Congress, Globe, p. 277.

²Howell Cobb, of Georgia, Speaker.

³Second session Thirtieth Congress, Globe, p. 615.

⁴Robert C. Winthrop, of Massachusetts, Speaker.

6041. On February 15, 1901,¹ a motion was before the House to reconsider the vote whereby the bill (S. 2245) "directing the issue of a duplicate lost check drawn by William H. Comegys," etc., had been passed, and Mr. James D. Richardson, of Tennessee, moved to lay the motion on the table.

On a vote by tellers there were ayes 113, noes 117, and the Speaker announced the result.

Mr. William H. Moody, of Massachusetts, had then arisen and addressed these words to the Chair:

Mr. Speaker, I understand that debate is now in order,

when Mr. Richardson arose and demanded the yeas and nays on his motion to lay on the table.

The Speaker² said:

The Chair, while not clear upon the matter, think that the demand for recognition by the gentleman from Massachusetts to debate this question would probably cut off the demand for yeas and nays as coming too late; but on a question involving a great constitutional privilege like the yeas and nays, the Chair is very loth to make a ruling of that kind where the two demands come very close together. The Chair will therefore take the sense of the House on ordering the yeas and nays.

6042. After the Speaker has announced the result of a division on a motion, and is in the act of putting the question on another motion, it is too late to demand the yeas and nays on the first motion.—On January 23, 1852,³ Mr. George S. Houston, of Alabama, moved that the House resolve itself into the Committee of the Whole House on the state of the Union.

Pending this, Mr. John R. Daniel, of North Carolina, moved that the House resolve itself into a Committee of the Whole House for the consideration of private bills, and the question being first put on the latter motion (this being private bill day), it was decided in the negative.

The Speaker had announced the result of the last vote, and was in the act of putting the question on the motion submitted by Mr. Houston, when Mr. Edward C. Cabell, of Florida, demanded the yeas and nays on the motion submitted by Mr. Daniel, claiming as a constitutional right that he have the opportunity to record his vote.

The Speaker⁴ decided that the demand came too late, as the motion had passed from before the House, saying in response to Mr. Cabell's claim:

Would it be in order to call the yeas and nays on a question passed on yesterday? If not, they can not be called upon a question that has passed from before the House to-day.

Mr. Cabell having appealed, the decision of the Chair was sustained.

6043. In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand.—On May 23, 1906,⁵ Mr. Robert Adams, Jr., of Pennsylvania, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the diplomatic and consular appropriation bill. The question being taken, on division the Speaker announced, ayes 192, noes 3.

¹Second session Fifty-sixth Congress, Record, p. 2479.

²David B. Henderson, of Iowa, Speaker.

³First session Thirty-second Congress, Journal, p. 254; Globe, p. 371.

⁴Linn Boyd, of Kentucky, Speaker.

⁵First session Fifty-ninth Congress, Record, p. 7301.

Mr. John S. Williams, of Mississippi, having immediately demanded the yeas and nays, 35 Members voted to sustain the demand, and the Speaker announced that this was not a sufficient number.

Mr. Williams demanded that those opposed to ordering the yeas and nays should be required to stand and be counted, claiming that this course was prescribed by the rules.

The Speaker¹ held:

It requires one-fifth of those present to order the yeas and nays, and the House has just divided and been counted.

* * * All the Speaker has to find out, in the preservation of this constitutional right, is whether one-fifth of those present have demanded the yeas and nays. One-fifth have not demanded the yeas and nays.

* * * The Chair begs the gentleman's pardon. The rule is silent. The Constitution alone speaks, and it requires one-fifth of those present.

6044. The right to demand the yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House.—On January 26, 1906,² the House was considering a resolution reported from the Committee on Rules, when a division was had on a motion for the previous question, and the Speaker announced the vote.

Mr. John S. Williams, of Mississippi, made the point that no quorum was present.

The Speaker ascertained and announced the presence of a quorum.

Thereupon Mr. Williams called for the yeas and nays.

The Speaker¹ at first intimated that the demand came too late, but presently said:

The Chair finds on consulting the precedents that the demand is in time.

6045. After the House, on a vote by tellers, has refused to order the yeas and nays, it is too late to demand the count of the negative on an original rising vote.—On July 25, 1868,³ the House was considering the bill (H. R. 1460) regulating the duties on copper, and a vote was taken viva voce on a motion to lay the bill on the table.

The Speaker stated that the noes had it, when the yeas and nays were demanded.

The Speaker announced that 20 Members had voted for the yeas and nays, and that not being one-fifth of the vote last taken, the yeas and nays were not ordered.

Mr. Charles A. Eldridge, of Wisconsin, then demanded, and the House refused to order tellers on the yeas and nays.

Mr. Nathaniel P. Banks, jr., of Massachusetts, then demanded a count of the negative on the original demand for the yeas and nays.

The Speaker⁴ decided that, inasmuch as he had decided, on the original demand, that the yeas and nays were refused, and as the House had refused to revise by tellers the said count, it was not now in order to demand a count of the vote in the negative.

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Fifty-ninth Congress, Record, pp. 1603, 1604.

³ Second session Fortieth Congress, Journal, p. 1208; Globe, p. 4496.

⁴ Schuyler Colfax, of Indiana, Speaker.

Mr. Banks having appealed, the decision of the Chair was sustained, yeas 121, nays, 1.

6046. On a roll call for a vote or a call of the House the names of the Members are called alphabetically by surname.

After the roll has been called through once the names of those not responding are called again.

After the roll call is completed the Speaker is forbidden to entertain a request to record a vote unless in a case wherein a Member's presence has been noted in ascertaining a quorum.

The Speaker is forbidden to entertain a request for the announcement of a pair at a time other than that in which such announcements are in order.

By practice founded on a former rule the names of those not voting on a roll call are recorded in the Record.

Present form and history of section I of Rule XV.

Section 1 of Rule XV provides:

Upon every roll call¹ the names of the Members shall be called alphabetically by surname,² except when two or more have the same surname, in which case the name of the State shall be added; and if there be two such Members from the same State, the whole name shall be called; and after the roll has been once called, the clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote³ or announce a pair⁴ unless the Member's name has been noted under clause 3 of this rule.⁵

This rule is in substantially the form adopted in the revision of 1880.⁶ Since that date provision has been made for calling the whole name when Members from the same State have the same surname, and for designating other Members of the same name by their States. In 1890 also was added the provision which enables a Member's name to be recorded after the second roll call is finished, in case it has been noted among the names of those present and not voting.

The original form of the rule, as adopted on April 7, 1789⁷ was:

Upon calls of the House, or in taking the yeas and nays on any question, the names of the Members shall be called alphabetically.

In 1880 the second call for those not answering on the first call was instituted.

On June 8, 1864,⁸ on motion of Mr. Henry Winter Davis, of Maryland, a rule was adopted that on any call of the yeas and nays the names of the Members not voting should be recorded in the Journal and Globe immediately after the names of

¹The roll call at the organization of the House and at the beginning of subsequent sessions to ascertain the presence of a quorum is by States, and not alphabetically.

²On June 20, 1848 (first session Thirtieth Congress, Journal, p. 927; Globe, p. 856), the House considered, but laid on the table, a proposition to have the yeas and nays taken by machinery.

³When a member states that he was present and listening when his name should have been called and failed to hear it, the Speaker entertains his request that his vote be recorded, the supposition being that his name was not called.

⁴Pairs are announced at the conclusion of the roll call and before the announcement of the result.

⁵See section 2905 of Volume IV of this work.

⁶Second session Forty-sixth Congress, Record, p. 206.

⁷First session First Congress, Journal, p. 10.

⁸First session Thirty-eighth Congress, Globe, p. 2809.

those voting in the affirmative and negative. This rule disappeared in the revision of 1880, but the practice of recording in the Record those not voting has continued.¹

In early years in the House a practice existed² whereby Members absent on a roll call might still have their votes recorded. On August 28, 1852,³ Mr. Speaker Boyd, in a decision sustained by the House, held that a Member might not, as a matter of right, have his name recorded on a roll call taken during his absence on a committee of conference. On May 27, 1870,⁴ the House adopted a rule that the Speaker should not entertain the request of a Member to record his vote after the announcement of the result, nor should a Member be allowed to record his vote on a question if he was not present when the vote was taken. In the revision of 1880 this rule was merged in the portion of the present rule, which forbids the Speaker to entertain a request of a Member to record his vote after the second call of the roll.

6047. Since 1879 the Clerk, in calling the roll, has called Members by the surnames, with the prefix "Mr.," instead of calling the full names.—On May 1, 1879,⁵ the House, on report from the Committee on Rules, adopted a rule that on all roll calls the Clerk should call only the surname of Members, with the prefix of "Mr." Before this the Clerk had called the full name. The change was urged on the score of economy of time, while it was opposed on the ground that it would take from the minority a privilege of obstruction.

6048. The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal.—On April 18, 1906,⁶ after the reading of the Journal, the Speaker⁷ said:

The Chair desires to state to the House, pending the approval of the Journal, that on Monday's session, which was extended into the calendar day of Tuesday, the Chair held that 191 Members constituted a quorum of the House. Mr. Williamson, of Oregon, and Mr. Patterson, of Tennessee, Members-elect, under the certificates of the governors of their respective States, have not qualified, and the Chair held that they should not be counted to make a quorum. The Chair, in the preparation of the Journal, instructed the Journal clerk to leave their names from the roll that is called. Members understand that, under the statute, from necessity, until organization and qualification under oath, the House organizes itself from the Clerk's roll, but from Jefferson's Manual, as well as sound parliamentary precedents, in the judgment of the Chair, the name of the Member-elect, after the organization and until he has taken the oath, should not be upon the roll from which the yeas and nays are called. Therefore the Chair directed the correction of the roll as it appears in the Journal; and hereafter, in case this Journal shall be approved with the correction just described by the Chair, in calling the roll the names of Messrs. Patterson and Williamson will not be called until they shall have taken the oath, respectively.

* * * There is in the organization of the House what is known as the "Clerk's roll," and upon that roll the House organizes itself. No doubt it would have the power to organize itself even in the absence of statutory provision, but the whole proceeding is controlled by statutory provision. Now, the House being organized, the yeas and nays are called by virtue of the Constitution. The Chair holds that, the House being organized, the roll should contain the names only of those who have taken the oath.

¹ As to recording in the Journal the names of those not voting, see sec. 2739 of Vol. IV.

² See section 6076–6079 of this chapter.

³ First session Thirty-second Congress, Journal, p. 1110; Globe, p. 2412.

⁴ Second session Forty-first Congress, Journal, p. 866; Globe, p. 3870.

⁵ First session Forty-sixth Congress, Journal, pp. 191, 223; Record, pp. 741, 1017.

⁶ First session Fifty-ninth Congress, Record, p. 5485.

⁷ Joseph G. Cannon, of Illinois, Speaker.

The Journal¹ was thereupon approved.

6049. A Member may not, as a matter of right, demand a recapitulation of a yeas-and-nays vote; but if the vote be close the Speaker usually orders it.—On January 26, 1891,² the question being on the approval of the Journal, Mr. William McKinley, jr., of Ohio, demanded the previous question. The yeas and nays, being ordered, were taken on this motion, and were, yeas 142, nays 108.

Mr. Richard P. Bland, of Missouri, having asked for a recapitulation of the vote by which the previous question was ordered, the Speaker³ declined to order the recapitulation.

6050. On May 13, 1896,⁴ during the consideration of the contested-election case of Rinaker *v.* Downing, from Illinois, the yeas and nays were taken on a motion to adjourn, and there were yeas 60, nays 162.

Mr. Albert J. Hopkins, of Illinois, demanded, as a matter of right, that the vote be recapitulated.

The Speaker³ denied the right to demand it, and did not order it.

The question being next taken on a motion to recommit the case, there were on the roll call 139 yeas, 35 nays, answering "present" 2, a total of 176, 3 less than the quorum voting. In addition there were noted as present and not answering several gentlemen, who were recorded with those voting as the quorum present.

Mr. Hopkins having requested a recapitulation, the Speaker directed it to be made, as the vote was very close from the standpoint of the quorum.

6051. After the call of the yeas and nays has begun it may not be interrupted even for a question of personal privilege.

The Speaker has declined, during a call of the yeas and nays, to entertain an appeal from his decision that the roll call might not be interrupted.

On August 8, 1890,⁵ Mr. Joseph G. Cannon, of Illinois, presented from the Committee on Rules a resolution relating to the consideration of the Senate amendments to the Indian appropriation bill.

The previous question was ordered, and the question being on agreeing to the resolution, the yeas and nays were ordered.

¹At the first session of the Fifty-sixth Congress (first session Fifty-sixth Congress, Record, pp. 1673, 1905; Journal, pp. 247, 269) the name of Mr. Joseph Wheeler, of Alabama, was on the Clerk's roll at the organization of the House. It was also carried for some time on the roll of Members called when the yeas and nays were ordered. Mr. Wheeler, who was absent in the Philippines, serving as an officer of the Army, did not appear in the House to take the oath, and about February 9, 1900, the Clerk, by advice of the Speaker (David B. Henderson, of Iowa, Speaker), omitted Mr. Wheeler's name from the list of Members. On the roll call of February 9 Mr. Wheeler's name appears in the list of Members not answering. On the next roll call, that of February 17, 1900, his name does not appear, having been stricken off. This action was taken on the theory that the oath is necessary to enable a Member to vote.

²Second session Fifty-first Congress, Journal, p. 182; Record, p. 1832.

³Thomas B. Reed, of Maine, Speaker.

⁴First session Fifty-fourth Congress, Record, pp. 5206, 5207.

⁵First session Fifty-first Congress, Journal, pp. 936, 937; Record, pp. 8345, 8352, 8373.

On the roll call there were 94 yeas, 44 nays—not a quorum. The hour of 5 o'clock arriving the House took a recess under the special rule¹ providing for a special class of business on Friday evening.

On August 9 the Speaker announced as the regular order of business the question on agreeing to the resolution from the Committee on Rules, on which the yeas and nays had been ordered, and on which the roll call had begun on the previous day.

Thereupon Mr. Benjamin A. Enloe, of Tennessee, claimed the floor on a question of personal privilege, which the Speaker² declined to entertain on the ground that a roll call had been ordered and begun.

Mr. John H. Rogers, of Arkansas, appealed from the said decision of the Chair, which appeal the Speaker declined to entertain.

The roll call then proceeded.³

6052. On August 28, 1850,⁴ the House was considering the bill of the Senate (No. 307) relating to the boundary of Texas, and a point of order arose as to an amendment proposed by Mr. Linn Boyd, of Kentucky. The Chair having rendered a decision, there was an appeal, on which the yeas and nays were ordered. The Clerk had commenced to call the roll when Mr. Robert C. Schenck, of Ohio, said he wished to say a few words on the appeal.

The Speaker⁵ said that the gentleman was not in order, as the Clerk had commenced to call the roll and a gentleman had answered to his name.

Mr. Schenck said that he had addressed the Chair before the call commenced, but the Speaker said that the gentleman had not been recognized until after the call had commenced.

6053. A motion to adjourn may not interrupt a call of the yeas and nays.—On February 16, 1882,⁶ during consideration of a bill relating to the apportionment of Representatives, the yeas and nays were ordered, and the call of the roll had begun, when Mr. Charles M. Shelley, of Alabama, moved that the House adjourn.

The Speaker⁷ said:

The roll call can not be interrupted by a motion to adjourn.⁸

6054. A roll call is not interrupted by the arrival of an hour fixed for a recess by rule or prior vote of the House.—On August 8, 1890,⁹ a Friday, the hour of 5 o'clock arrived while a roll call was still in progress.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that, under the rule, the House must take a recess until 8 o'clock p. m.

¹ See section 3281 of Vol. IV of this work for rule relating to Friday evenings.

² Thomas B. Reed, of Maine, Speaker.

³ The roll call is interrupted, however, for messages from the President and the other House; and it is conceivable that a question of privilege might arise, such as an assault or an accident within the Hall which might justify an interruption.

⁴ First session Thirty-first Congress, Globe, p. 1686.

⁵ Howell Cobb, of Georgia, Speaker.

⁶ First session Forty-seventh Congress, Journal, p. 597; Record, pp. 1238, 1245.

⁷ J. Warren Keffer, of Ohio, Speaker.

⁸ Roll calls have been interrupted in some instances by final adjournment.

⁹ First session Fifty-first Congress, Journal, p. 934; Record, p. 8352.

The Speaker¹ overruled the point of order and held that the roll call must be concluded.²

6055. On Friday, January 21, 1898,³ the yeas and nays had been ordered on the motion of Mr. John Dalzell, of Pennsylvania, that the House do adjourn.

Mr. Joseph W. Bailey, of Texas, rising to a parliamentary inquiry, asked:

If the hour of 5 o'clock should arrive during the roll call, will the roll call be completed or will the House, under the rule, take a recess until 8 o'clock?

The Speaker¹ said:

The roll call will be completed, and unless the House should by this vote determine to adjourn a recess will be taken upon the completion of the roll call until 8 o'clock this evening.

6056. A roll call may not be interrupted because of the arrival of the time fixed by the rules for another order of business.—On February 9, 1892,⁴ the yeas and nays had been ordered on ordering the previous question on the engrossment and third reading of the bill (H. R. 566) to amend the internal-revenue laws, and for other purposes.

During the roll call, at 1 o'clock and 30 minutes p. m., Mr. William H. Hatch, of Missouri, made the point of order that the hour for the consideration of bills under clause 4, Rule XXIV,⁵ having expired, it was not in order to further continue the call of the roll.

The Speaker⁶ overruled the point of order on the following ground:

So far as the Chair is informed and believes, it has always been held that when the roll call has been commenced it can not be interrupted either by a standing order of the House that at a given hour the House shall adjourn, or by the expiration of the morning hour, or by any other similar case. The gentleman is aware of the fact that frequently it has happened that when, under the order of the House, the hour of 5 o'clock on Friday has arrived and the House should take a recess until 7.30, a roll call was in progress, and when the hour of 5 o'clock arrived the roll call would not be completed, but would be continued to completion, although it may have extended fifteen or twenty minutes beyond the hour of 5 o'clock.

The Chair will hold, therefore, that where a roll call has begun before the expiration of the morning hour it must be completed, although its completion extends beyond the hour.

6057. A roll call may not be interrupted even to admit the Senate to a joint meeting for counting the electoral vote.—On February 10, 1869,⁷ during the proceedings incident to the electoral count, the House was in session considering objections to counting the electoral vote of the State of Georgia. A motion had been made to reconsider the action of the House in relation thereto; the yeas and nays were ordered. During the roll call a message was received from the Senate informing the House that that body had resolved that the objections to the electoral vote of Georgia were not in order.

¹Thomas B. Reed, of Maine, Speaker.

²In 1879 (third session Forty-fifth Congress, Journal, p. 188) Mr. Speaker Randall declined to interrupt a roll call because of the arrival of the hour fixed for a recess, because the roll call was on a motion to adjourn, whereby the House might change its mind as to the recess. He intimated that had the roll call been on the pending bill he might have interrupted it to declare the House in recess.

³Second session Fifty-fifth Congress, Record, p. 847.

⁴First session Fifty-second Congress, Journal, pp. 61, 62; Record, p. 976.

⁵The morning hour at present does not necessarily expire in sixty minutes.

⁶Charles F. Crisp, of Georgia, Speaker.

⁷Third session Fortieth Congress, Globe, p. 1062.

Mr. Fernando Wood, of New York, moved that the roll call be suspended for the purpose of admitting the body of the Senate.

The Speaker¹ said:

The House has ordered the roll to be called. Upon the entrance of the Senate the Speaker would be obliged to vacate the chair, but even that can not interrupt the roll call; nothing can interrupt it but the close of a session of Congress.

6058. The roll call may not be interrupted either for a parliamentary inquiry or a question of personal privilege.—On April 7, 1902,² a roll call was being taken on a bill (S. 176) to provide for the extension of the charters of national banks, when Mr. Thomas H. Ball, of Texas, asked recognition for a parliamentary inquiry.

The Speaker³ declined to allow the roll call to be interrupted for a parliamentary inquiry.

Then Mr. Ball asked recognition for a question of personal privilege.

The Speaker declined to allow the roll call to be interrupted.

6059. On February 6, 1844,⁴ the roll had been called on a motion relating to the title of certain Members to their seats, and before the result had been announced, a question of order was raised as to whether or not the Members whose title to their seats was questioned were entitled to vote. The Speaker pro tempore⁵ ruled on the question, an appeal was taken, and the Chair was sustained on a yea-and-nay vote. After the vote sustaining the Chair had been announced, the Speaker proceeded to announce the result on the previous roll call.

6060. A Member who has answered “present” on a roll call may change the answer to “yea” or “nay,” but the Speaker may not entertain the request of a Member who has not answered at all to record his vote.—On May 13, 1897,⁶ the question before the House was a motion by Mr. William L. Terry, of Arkansas, that Mr. Jerry Simpson, of Kansas, be allowed to proceed in order in his remarks upon the question of approving the Journal.

On a yea-and-nay vote the motion of Mr. Terry was defeated, yeas 83, nays 96, answering “present” 14.

Mr. Marriott Brosius, of Pennsylvania, who was one of those who had answered “present” when his name was called, asked, after the roll call had been completed but before the result was announced, that he be allowed to change his response of “present” to vote “no.”

The Speaker⁷ decided that he might do this, the proceeding being exactly the same as changing a vote from “aye” to “no,” which had always been allowed.⁸ In this connection the Speaker also said:

The Chair will take this opportunity to call the attention of the House to the terms of the rule with regard to voting. The rule does not permit the Speaker to even ask unanimous consent for the

¹ Schuyler Colfax, of Indiana, Speaker.

² First session Fifty-seventh Congress, Record, p. 3810.

³ David B. Henderson, of Iowa, Speaker.

⁴ First session Twenty-eighth Congress, Journal, pp. 353–356; Globe, pp. 240, 241.

⁵ Samuel Beardsley, of New York, Speaker pro tempore.

⁶ First session Fifty-fifth Congress, Record, pp. 1068–1069.

⁷ Thomas B. Reed, of Maine, Speaker.

⁸ It is not the practice, however, to allow a Member to be recorded “present” after the roll call is completed, unless proceedings are taking place for securing a quorum.

recording of a vote which has not been given in accordance with the rules. The object of that rule was to promote attention by Members and secure a more speedy calling of the roll, so that time might be saved. That is one of the improvements in the methods of voting which reduced the time of calling the roll nearly 30 per cent. The Chair desires that the House shall take notice of this matter, so that there may not be any misunderstanding hereafter.

6061. Where a vote actually given fails to be recorded it is the right of the Member to have the proper correction made before the approval of the Journal.

The duty of the Speaker to give a casting vote may be exercised after the intervention of other business when a correction of the roll call reveals a tie not before ascertained.

On January 8, 1849,¹ as soon as the Journal of the preceding session had been read, the Speaker² said:

The House will remember that the vote on the passage of the bill for the relief of the representatives of Antonio Pacheco was originally made up by the Clerk, yeas 90, noes 89, and this record having been handed to the Speaker and by him announced to the House, the Speaker proceeded to make some remarks upon the bill, preparatory to giving the vote contemplated in such cases by the rules³ of the House. While in the act of explanation, the Speaker was interrupted by the Clerk, who stated that, on a more careful count, the vote was found to be, ayes 91, noes 89. The intervention of the Speaker was therefore no longer allowable, and the bill was declared to have passed the House.⁴

The Chair takes the earliest opportunity to state to the House this morning that, upon a reexamination of the yeas and nays, the Clerk has ascertained that in error still existed in the announcement of the vote on Saturday. The vote actually stood, ayes 89, noes 89. The correction will now accordingly be made in the Journal; and a case is immediately presented, agreeably to the twelfth rule of the House, for the interposition of the Speaker's vote.

At this stage of the proceedings the Speaker was interrupted by Mr. John W. Farrelly, of Pennsylvania, who rose and called for a further correction of the Journal, stating that he voted in the negative on Saturday last, and his vote appeared not to have been recorded.

The Speaker decided that it was the right of the gentleman from Pennsylvania to have his vote recorded, if he voted on Saturday last, and the correction was accordingly made.

The vote was then finally announced, yeas 89, nays 90.

The Speaker stated that he came into the House with the full expectation of giving his vote upon this bill, and prepared to give his reasons for the vote. But as the question now stood, although it might be in his power to vote agreeably to the letter of the twelfth rule, it was, in his opinion, not within the contemplation or intention of the rule that he should vote. The rule contemplated that the Speaker should be allowed to vote whenever he could make a difference in the result, by passing or preventing the passage of the proposition before the House. Under present circumstances the Speaker's vote could not in any way affect the decision of the House. The bill was already lost by the vote as it stood. A vote

¹ Second session Thirtieth Congress, Journal, p. 211; Globe, p. 172.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ For rule at that time relating to vote of the Speaker, see section 5964 of this work.

⁴ The Globe (p. 187) quotes from the debate a statement that the first vote ever given by a Speaker in the House was under these circumstances. Apparently the first tie on which a Speaker voted was September 28, 1789, and the Journal of that date does not indicate the conditions referred to.

against the bill would only increase the majority by which it was defeated, while a vote in favor of the bill would only make a tie, and the bill would still be lost. The Speaker therefore did not consider himself called upon to give any vote on the subject.

6062. The Journal of Wednesday, December 22, 1847,¹ has the following entry:

The Journal of yesterday having been read, Mr. Ligon arose and stated that he was present yesterday and voted in the affirmative upon the question of laying upon the table the petition presented by Mr. Giddings in regard to slavery in the District of Columbia, and asked that the Journal be amended by recording his vote thereon in the affirmative.

The Journal was amended accordingly.

The record of debates quotes the Speaker² as saying that under repeated precedents in similar cases, the gentleman had a right to have his name recorded. It does not appear that the question of amending the Journal in this case was put to the House at all. The record of debate shows that the vote before the addition of Mr. Ligon's name, stood yeas 97, nays 97. The addition of his vote made it 98 to 97, and so changed the result, but the Speaker voted in the negative, thus restoring the tie. The Journal of December 22 does not record these facts, but the Journal of the 21st, as corrected, shows the Speaker voting, and the motion disagreed to.

6063. On March 4, 1862,³ Mr. James A. Cravens, of Indiana, stated that he had voted in the negative and not the affirmative, as recorded, on the question of laying on the table the resolution submitted on the previous day by Mr. Holman, in regard to the "present unfortunate, civil war," and by unanimous consent the Journal was corrected accordingly.

The Speaker⁴ then announced that the vote should have been declared yeas 59, nays 59, and as this presented a case where by the rules he was required to vote, he should vote in the affirmative. So the resolution was laid on the table.

6064. The vote of a Member having failed to be recorded, he may insist that it be recorded even after the Chair has declared the result, and the Chair then makes a new declaration.

There being a dispute among Members as to whether or not a Member whose name was recorded was present when his name was called, the Speaker held that in the absence of the Member the Clerk's record must stand.⁵

The usage as to the recapitulation of a yea and nay vote does not permit it to be done after the announcement of the result, except by unanimous consent.

On March 24, 1892,⁶ while the House had under consideration the bill (H. R. 4426) for the free coinage of silver, for the issue of coin notes, and for other purposes, and the question was on a motion to reconsider the vote whereby the House had refused to lay the bill on the table.

¹ First session Thirtieth Congress, Journal, pp. 139, 140, 144; Globe, p. 63.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ Second session Thirty-seventh Congress, Journal, p. 399; Globe, p. 1061.

⁴ Galusha A. Grow, of Pennsylvania, Speaker.

⁵ See also sections 6095–6099 of this chapter.

⁶ First session Fifty-second Congress, Journal, pp. 113–115; Record, pp. 2548, 2549.

The yeas and nays having been taken, the Speaker announced the result as yeas 148, nays 148, and that the motion to reconsider was disagreed to.

A recapitulation of the vote having been demanded, and objection being made thereto, the Speaker¹ held that it was too late after the announcement of the result to insist on a recapitulation of the vote just taken.

By unanimous consent it was then ordered that the vote be recapitulated.

Then Mr. Adolph Meyer, of Louisiana, and Mr. George F. Huff, of Pennsylvania, stated that they had voted in the affirmative.

By direction of the Speaker, their votes were recorded in the affirmative.

There were then yeas, 150; nays, 148; not voting, 32. So the motion to reconsider the vote by which the House refused to lay the bill on the table was agreed to.

The question recurring on the motion to lay the bill on the table, and being put, there were yeas, 145; nays, 148.

The vote being recapitulated, objection was made to recording the vote of Mr. Donovan, who appeared as voting in the negative, it being asserted on the one part that he was not in the Hall during the roll call or when his name was called, and on the other that he was present during a portion of the roll call.

The Speaker held that in the absence of the gentleman whose vote was in dispute the vote as recorded by the Clerk must stand.

On March 28, in accordance with a communication from Mr. Donovan, the Journal was corrected by striking his name from the list of those voting in the negative.

6065. On April 28, 1864,² the House was considering the amendments to the bill (H. R. 405) to provide internal revenue to support the Government and to pay interest on the public debt.

The vote having been taken by yeas and nays on an amendment, the Speaker announced the vote 71 yeas, 72 nays.

Then Mr. Charles Upson, of Michigan, stated that he had voted in the affirmative and that his vote was erroneously omitted from the count.

The Speaker then announced the vote on the said amendment—yeas, 72; nays, 72—when Mr. Philip Johnson, of Pennsylvania, made the point of order that it was too late to correct the former announcement of the vote.

The Speaker³ overruled the point of order, causing to be read the following from the Digest:

All proceedings of the House subsequent to the erroneous announcement of a vote, which would have been irregular if such vote had been correctly announced, are to be treated as a nullity and are not to be entered on the Journal.

And saying—

The Chair thinks that when a gentleman is present and votes he has a right to have his vote recorded.

Mr. Samuel J. Randall, of Pennsylvania, suggested that an amendment had been voted on after the announcement of the vote. The Speaker said:

The Chair thinks that it is not too late for the gentleman to have his vote recorded. If the motion to reconsider had been made and it had been laid upon the table the Chair might have doubt, but at present he has no doubt that the gentleman has the right to record his vote.

¹ Charles F. Crisp, of Georgia, Speaker.

² First session Thirty-eighth Congress, Journal, pp. 586, 587; Globe, p. 1941.

³ Schuyler Colfax, of Indiana, Speaker.

Mr. Johnson having appealed, the decision of the Chair was sustained.

6066. A Member who has failed to respond when his name was called, may not, as a constitutional right, demand that his vote be recorded before the announcement of the result.—On April 13, 1874,¹ when a roll call had been completed, but before the announcement of the result, Mr. James Monroe, of Ohio, stated that he had stepped out of the House a few moments, and found on his return that the roll call had been completed. He asked if his vote might be recorded.

The Speaker² held that the rule prohibited the Member from voting.

Mr. James A. Garfield, of Ohio, made the point of order that before the announcement of the vote, and while the measure was still pending, a gentleman had a right, under the Constitution, to vote, and that the rule was unconstitutional.

The Speaker said:

The Chair does not think this rule violates the constitutional right of any Member. * * * This rule operates equally and impartially upon every Member. There is no selection of one Member and placing a disability on him. The roll call must cease at some time, and the House has determined it shall cease at a particular point. But if the House should say by rule that the Representative of the Third District of Maine should not vote, or the Representative of any other district who happened to be a Member of the House and elected Speaker, that presents a different case, because that attempts to disfranchise a single Member from a right enjoyed by all other Members, and therefore operates without equal and exact justice. This does not, in the opinion of the Chair, present that point. * * * The question presented rests on two constitutional points. The yeas and nays are to be called on the demand of one-fifth of the Members present, and the House has the right to determine the rule under which they shall be called. If the House should decide that the roll should be called through, and when called through that the vote shall be announced and the absentees on the roll call should not have the right to vote, the Chair thinks it would be an entire compliance with the Constitution in every respect.

6067. On February 8, 1878,³ at the conclusion of the roll call, but before the announcement of the result, Mr. Thomas T. Crittenden, of Missouri, stated that he had been engaged in committee work while the roll was being called, and demanded his right to vote under the Constitution and the rules.

The Speaker⁴ said:

There is a clause of the Constitution giving Members the right to vote; but another clause provides that "each House may determine the rules of its proceeding;" and that rule-making power has been exercised with reference to this question of voting. * * * The Constitution gives to every Member the right to vote; but it also provides that each House may make such rules for its government as it may see fit. Under the rules and under the practice the gentleman from Missouri, not having been in the House during the roll call, has not the right to vote.

6068. On December 19, 1883,⁵ at the conclusion of a roll call, Mr. Melvin C. George, of Oregon, stated that he had been giving attention but did not hear his name called. Therefore he asked that he might vote.

¹ First session Forty-third Congress, Record, pp. 3046, 3047.

² James G. Blaine, of Maine, Speaker.

³ Second session Forty-fifth Congress, Record, p. 871.

⁴ Samuel J. Randall, of Pennsylvania, Speaker.

⁵ First session Forty-eighth Congress, Record, p. 189.

The Speaker¹ said:

It has been the practice of the House to allow a gentleman to have his vote recorded after the second roll call if he states he did actually vote or that he was giving attention but did not hear his name called.

Mr. Samuel J. Randall, of Pennsylvania, objected to allowing the name to be recorded.

There was debate as to the constitutional right of a Member to vote under such circumstances, but the Speaker held to a rigid construction of the rule, and, unanimous consent being refused, Mr. George was not allowed to vote.

6069. The Speaker may not entertain the request of a Member to answer "present" at the conclusion of the roll call provided for by section 1 of Rule XV.—On May 16, 1900,² there had been a yea-and-nay vote on a motion for the previous question on the bill (S. 2931) to incorporate the American National Red Cross Association, etc., when Mr. Phanor D. Breazeale, of Louisiana, who had not been in the Hall when his name was called asked that he be recorded as "present."

The Speaker³ said:

That is the same as voting, and it is not within the Chair's power to admit the request.

6070. It is not permissible to entertain the request of a Member to record his vote after he has failed to respond because his attention was distracted when his name was called.—On March 10, 1902,⁴ the yeas and nays had been taken on a motion to recommit the bill (H. R. 11728) relating to the free rural delivery service.

Mr. Joseph T. Johnson, of South Carolina, stated that just as the Clerk called his name a gentleman spoke to him, distracting his attention so that he did not respond to his name.

The Speaker³ said:

The gentleman was listening to the gentleman who spoke to him and not to the Clerk, and the Chair thinks he can not be allowed to vote on the question.

6071. A Member who is listening when his name should be called and fails to hear it, is permitted to vote at the end of the roll call; but under no other circumstances may the Speaker entertain a Member's request to be recorded.—On June 6, 1896,⁵ at the conclusion of a call of the yeas and nays, Mr. Farish C. Tate, of Georgia, requested that his vote might be recorded. He said he had been present in his seat and did not hear his name.

The Speaker having asked if he was listening when his name should have been called, and failed to hear it, Mr. Tate did not respond in the affirmative, except to say that he was "present and failed to hear."

¹ John G. Carlisle, of Kentucky, Speaker.

² First session Fifty-sixth Congress, Record, p. 5620.

³ David B. Henderson, of Iowa, Speaker.

⁴ First session Fifty-seventh Congress, Record, p. 2605.

⁵ First session Fifty-fourth Congress, Record, p. 6220.

The Speaker¹ said:

The Chair desires to say that in matters of this kind he simply enforces the rule of the House. The exception under which gentlemen are allowed to have their votes recorded after the roll call rests upon the idea that by some mistake the name was not called. The object of the rule is to command the attention of Members during the vote. * * * The Chair thinks that the gentleman can not vote under the rule.

6072. On March 24, 1896,² at the conclusion of a roll call, Mr. Loren Fletcher, of Minnesota, announced that he desired to vote.

The Speaker having interrogated him as to whether or not he was listening when his name should have been called, and failed to hear it, Mr. Fletcher could not say further than that he did not hear his name.

Thereupon the Speaker¹ said:

The Chair ought to say to the House that attention has been called to the rule³ in regard to the recording of names after the roll call. * * * The practice in the Fifty-first Congress, when the same rule prevailed, was to ask a Member if he was listening at the time his name should have been called, and failed to hear it, so as to meet the possible contingency that the calling of the name had been omitted. That is the condition of the rule as it stands at present.

6073. The fact that a Member was absent on the service of the House does not justify the Speaker in submitting a request that his name be recorded after the yea-and-nay call is finished.—On February 20, 1889,⁴ after a yea-and-nay vote had been concluded, Mr. Joseph G. Cannon, of Illinois, announced that he had been absent at the session of a conference committee until after his name had been called for the last time and requested that his vote might be recorded.

The Speaker⁵ said:

According to the letter of the rule no Member can vote, nor can the Speaker entertain a request for unanimous consent that the Member be allowed to vote, after the completion of the second roll call; but inasmuch as there is at all times more or less noise on the floor, and it frequently happens that a gentleman fails to hear his name called or the Clerk fails to hear his response, it was thought to be manifestly unjust that a Member should be deprived of his vote under such circumstances. * * * Inasmuch as it might lead to a very great inconvenience if there should be a still further relaxation of the rule, the Chair thinks the gentleman had better content himself with stating how he would have voted.

6074. In the earlier practice of the House Members were allowed often to record their votes after the close of the roll call, sometimes on the next day, even.—On March 1, 1845,⁶ by the unanimous consent of the House, Mr. John Campbell, of South Carolina, was permitted to have his name recorded on the question taken on the preceding day,

Will the House agree with the Senate in their amendment to the resolution of the House (No. 46) entitled, "A joint resolution for annexing Texas to the United States?"

¹ Thomas B. Reed, of Maine, Speaker.

² First session Fifty-fourth Congress, Record, p. 3140.

³ Section 1 of Rule XV. (See section 6046 of this chapter.)

⁴ Second session Fiftieth Congress, Record, p. 2106.

⁵ John G. Carlisle, of Kentucky, Speaker.

⁶ Second session Twenty-eighth Congress, Journal, p. 532; Globe, p. 383.

6075. On February 3, 1863,¹ several Members were permitted by unanimous consent to have their votes recorded on the bill passed the day previous relative to the enlistment of negro soldiers. The Journal has no reference to this.

6076. On May 12, 1834,² after the list of yeas and nays had been called, and before the decision had been pronounced, Mr. William Allen, of Ohio, asked to have his vote taken, having been out of the House when his name was called, attending to his duties as a member of the Committee on Indian Affairs, which committee had leave to sit during the sitting of the House. The request of Mr. Allen, under the circumstances of his case, was granted by a vote of the House.

6077. On December 23, 1836,³ the House suspended the rules in order to give permission to Mr. George N. Briggs, of Massachusetts, to record his vote on the roll call just taken, he having stated that he had been absent on the service of his committee, which had leave to sit during the sessions of the House.

6078. On July 28, 1854,⁴ the House made an order that members of the Committees on Ways and Means and Enrolled Bills, who should find their duties keeping them away from the sitting of the House, should be allowed to record their names on roll calls taken during their absence, provided such recordings would not change any announced results.

6079. On March 16, 1864,⁵ the Committee on Rules made a futile attempt to break up the practice of allowing Members to vote who did not respond on the call, if they could respond to the Speaker's interrogatory as to their presence within the bar when the name was called. It was proposed to take away from the Speaker the power to submit request for leave to vote. Mr. Speaker Colfax said at this time that it was the practice of the House to allow Members to be recorded who were away on business of the House.

6080. The fact that a Member responded under an erroneous belief as to a pair does not justify the Speaker in entertaining a request to change the record after a vote is declared.—On April 9, 1904,⁶ Mr. George G. Gilbert, of Kentucky, asked that his name on a roll call of the preceding day be changed from "present" to "aye." It appeared that he had refrained from voting "aye" because he erroneously supposed himself to have been paired.

The Speaker⁷ after having read section 1 of Rule XV, said:

The rule absolutely prevents the Speaker from even entertaining a request for unanimous consent. The matter of pairs is a matter for gentlemen to regulate among themselves. * * * The Chair declines, under the rule, to entertain the request, the rule prohibiting him from submitting the request.

6081. It is not permissible to entertain the request of a Member to record his vote after he has, on the call of his name, refrained from voting because of a misunderstanding as to a pair.—On February 23, 1901,⁸ the

¹Third session Thirty-seventh Congress, Globe, p. 695.

²First session Twenty-third Congress, Journal, p. 616.

³Second session Twenty-fourth Congress, Journal, p. 114.

⁴First session Thirty-third Congress, Journal, p. 1233; Globe, p. 1996.

⁵First session Thirty-eighth Congress, Globe, p. 1143.

⁶Second session Fifty-eighth Congress, Record, p. 4574.

⁷Joseph G. Cannon, of Illinois, Speaker.

⁸Second session, Fifty-sixth Congress, Record, p. 2915.

yeas and nays had been taken on a motion to concur in a Senate amendment to the Agricultural appropriation bill.

Before the announcement of the vote, Mr. Charles H. Grosvenor, of Ohio, stated that he had refrained from voting on a misunderstanding. When his name was called he had erroneously supposed himself paired. He therefore asked that his name be called, and that he be permitted to vote.

The Speaker,¹ after quoting Rule XV, said that it was impossible to recognize the gentleman to vote.

6082. A Member may not have the record of his vote changed on the statement that he voted on a misapprehension of the question, and a motion relating thereto is not a matter of privilege.²—On August 14, 1850,³ Mr. Isaac E. Morse, of Louisiana, rose and stated that he had risen to a question of privilege; that on the question just taken upon agreeing to the amendment to the thirty-fourth rule he had voted under a total misapprehension of the question; that he believed he was voting on a motion to lay the amendment upon the table. He therefore moved that the Journal be amended, so that his name should appear in the negative upon agreeing to the said amendment.

Objection being made, the Speaker⁴ decided that, inasmuch as the Journal was correctly made up, it was not a question of privilege or a privileged question to move an amendment of the record. When the Journal was incorrectly made up, and the vote of a Member was recorded differently from the fact, a motion to correct the Journal was in order; but the Chair knew no instance wherein the Journal had been amended upon the statement of a Member that he had voted upon a misapprehension of the question.

From this decision of the Chair Mr. Morse appealed. The decision of the Chair was sustained.

6083. On December 17, 1898,⁵ after the approval of the Journal Mr. John W. Gaines, of Tennessee, announced that on a roll call on the preceding day he had voted under a misapprehension, and asked that his vote might be withdrawn and that the Journal might be corrected in accordance therewith.

The Speaker⁶ expressed the opinion that the Record could not be changed.

6084. In 1835 it was recognized that an error in a vote might be corrected after the announcement, or proceedings might be at the mercy of a clerk.—On February 27, 1835,⁷ the House was considering a special order providing for the consideration of a report of the Committee on Foreign Affairs dealing with the relations of the United States with France. A motion to amend the order so as to provide for consideration in the House instead of in the Committee of the Whole was voted on, and there appeared in the affirmative 111 and in the negative 110, the vote being taken by yeas and nays.

¹ David B. Henderson, of Iowa, Speaker.

² See also sections 5931–5933 of this volume.

³ First session Thirty-first Congress, Journal, p. 1266; Globe, p. 1577.

⁴ Howell Cobb, of Georgia, Speaker.

⁵ Third session Fifty-fifth Congress, Record, p. 270.

⁶ Thomas B. Reed, of Maine, Speaker.

⁷ Second session Twenty-third Congress, Debates, p. 1522.

The amendment was then declared adopted, and the resolution as amended was agreed to.

Then Mr. Phineas Miner, of Connecticut, stated that there had been an error in recording his vote on the amendment, and that he was recorded in the affirmative, whereas he had voted in the negative. A motion was made that the error be corrected, but Mr. Joseph B. Anthony, of Pennsylvania, objected that the intervention of the other vote would prevent the correction. To this it was replied that such a doctrine would put the proceedings of the House at the mercy of the errors of a clerk. So, by general consent, the error was corrected, the amendment was declared to be disagreed to, and the resolution was then voted on again.

6085. Where, by an error of the Clerk in reporting the yeas and nays, the Speaker announces a result different from that shown by the roll, the status of the question must be determined by the vote as actually recorded.—On July 26, 1886,¹ Mr. William C. Oates, of Alabama, rising immediately after the reading of the Journal, said:

Mr. Speaker, I desire to correct the Journal wherein it states that on the last bill under consideration at the evening session on Saturday, on the motion of the gentleman from Indiana [Mr. Cobb] for the previous question on the bill and pending amendments, it was announced that no quorum voted thereon. That point was made, and the House, under a misapprehension, supposed it was so. In fact, a quorum had voted, and the previous question was ordered. The Record shows there were 128 yeas and 37 nays, making 165 votes. That was the fact; but the House, on the suggestion of the gentleman from Pennsylvania [Mr. Boyle] that no quorum had voted, accepted that as correct, although, in fact, a quorum had voted and the previous question was ordered.

The Speaker² said:

The Journal will be corrected in accordance with the statement of the gentleman from Alabama. The Chair desires to state, as a matter of justice to the tally clerk, that in recording the affirmative vote in the column assigned for that purpose upon the sheet, when that vote had reached 49 he put down the figures 49 and called two or three more names before there was any other vote in the affirmative. When the next gentleman voted in the affirmative, the tally clerk, looking back to his previous figures, took the 9 for a 4—and it looks very much like a 4, as the gentleman from Alabama will see if he examines it—and therefore recorded the next vote as 45, when it should have been 50; and that error was continued until the close of the roll call, and the footings were made accordingly. It was a mistake made simply by the tally clerk on account of mistaking the figure. The Chair, therefore, thinks the Journal should be corrected to show the previous question was ordered.

6086. A vote having been erroneously announced in such a way as to change the true result, subsequent proceedings in connection therewith fall, and the Journal is amended accordingly.—On September 10, 1850,³ the Speaker stated that the result of the vote of the House on the preceding day on the passage of the bill of the House (No. 387) to supply a deficiency in the appropriation for pay and mileage of Members of Congress for the present session had been erroneously announced and that the subsequent proceedings upon the bill would consequently fall.

The Speaker⁴ then announced the vote to be yeas 78, nays 76.

¹ First session Forty-ninth Congress, Record, pp. 7545, 7546.

² John G. Carlisle, of Kentucky, Speaker.

³ First session Thirty-first Congress, Journal, p. 1436; Globe, pp. 782, 783.

⁴ Howell Cobb, of Georgia, Speaker.

So the bill was passed, and the Journal of the preceding day was ordered to be amended accordingly.

The vote was announced on September 9 as 78 yeas and 77 nays, whereupon the Speaker voted in the negative, and the announcement was made that the House refused to pass the bill. A motion to reconsider was made, and proceedings thereon were pending when the House adjourned. On the next day, the true vote having been found to be 78 yeas to 76 nays, the action recorded in the Journal took place.

6087. On May 26, 1902,¹ the question was on the passage of the bill (H. R. 11879) to correct the military record of Michael Mullet, and the roll having been called, the Speaker announced yeas 73, nays 73, and that the bill had failed to pass.

Later, on the same day, the Speaker² announced that an error had been discovered in the footings, and that, in fact, the yeas had been 74 and the nays 73. Therefore the bill had passed.

6088. On December 18, 1903,³ the House was considering the following resolution:

Resolved, That the Committee on Expenditures in the Post-Office Department is hereby authorized to request the Postmaster-General to send to the committee all papers connected with the recent investigation of his Department the publication of which is consistent with the welfare of the public service.

when the previous question was moved, and on a yea-and-nay vote there appeared, as announced by the Chair, yeas 108, nays 107, and the previous question was considered as ordered.

The question recurring on agreeing to the resolution, there were yeas 109, nays 100, and the Speaker declared the resolution agreed to.

On December 19,⁴ after the reading of the Journal, but before its approval, the Speaker⁵ said:

It is the duty of the Chair to call the attention of the House to the fact that the vote yesterday on ordering the previous question upon the resolution reported by the gentleman from Pennsylvania [Mr. Wanger] was incorrectly reported. The yeas were reported as being 108 and the nays 107. A correct count afterwards shows that the yeas were 107 and the nays 107—a tie vote. Therefore the motion upon ordering the previous question was lost. Without objection the Journal will be amended in accordance with the facts, and all proceedings touching this resolution had subsequent to that erroneous announcement will be vacated. [After a pause.] The Chair hears no objection. The question now is upon the approval of the Journal as amended. Is there objection? [After a pause.] The Chair hears none, and the Journal is so approved.

Then, the resolution being taken up as unfinished business, the Speaker recognized Mr. John S. Williams, of Mississippi, who on the preceding day had opposed the motion for the previous question. Mr. Williams proposed an amendment, which was agreed to after debate, and then the resolution as amended was agreed to.

6089. A wrong result having been announced on a vote on an amendment to a bill, it was held on the next day that the question recurred to that point with all rights intact, although the bill had actually been passed.

¹ First session Fifty-seventh Congress, Record, pp. 5928–5930.

² David B. Henderson, of Iowa, Speaker.

³ Second session Fifty-eighth Congress, Journal, p. 75; Record, pp. 385, 386.

⁴ Journal, p. 80; Record, p. 403.

⁵ Joseph G. Cannon, of Illinois, Speaker.

All related proceedings subsequent to the announcement of an erroneous result fall, the votes to reconsider and lay on the table not excepted.

On July 18, 1848,¹ the bill (H. R. 298) making appropriations for the civil and diplomatic expenses of the Government was reported from the Committee of the Whole House on the state of the Union with certain amendments, among them the following:

Strike out this paragraph: "For removal of obstructions in Savannah River and the naval anchorage near Fort Pulaski, under the direction of the Secretary of War, fifty thousand dollars."

The question being put on agreeing to this amendment, it was announced that there were yeas 86, nays 83. So the amendment was agreed to, and the paragraph was stricken out.

The bill was then passed to be engrossed and read a third time, and a motion to reconsider the vote whereby this was done was made and laid on the table.

On July 19, 1848, Mr. Alexander H. Stephens, of Georgia, rose and stated that he voted in the negative on the amendment and asked that his vote be corrected. This being done, the Speaker² announced the vote on the amendment to be yeas 85, nays 84.

Thereupon the Speaker voted in the negative, and there being yeas 85, nays 85, the question on the amendment was lost, and the paragraph was not stricken from the bill.

Later in this day Mr. Charles E. Stuart, of Michigan, moved to reconsider this vote.

On the following day, July 20, the Speaker gave his decision, he having on the preceding day questioned the propriety of the motion. He said that it was well known to the House that the item in the civil and diplomatic appropriation bill which provided for the removal of obstructions in the Savannah River had been struck out in Committee of the Whole on the state of the Union, and that the vote in the House upon concurring in that amendment was reported on the record yeas 86, nays 83. Of course the amendment was adopted and the appropriation struck out. Yesterday, however, the gentleman from Georgia [Mr. Stephens] rose and stated that his vote was wrongly entered, that he voted "aye" instead of "no," and called for a correction, which was accorded to him as his right. The vote was then reported, yeas 85, nays 84. A case then arose under the rule³ in which it was the duty of the Speaker to settle the question; the Speaker voted in the negative, making the vote, yeas 85, nays 85, whereby the amendment was rejected and the original item as contained in the bill reported by the Committee of Ways and Means was retained. In the meantime, however, the bill had been ordered to be engrossed; a motion had been made to reconsider the vote ordering the engrossment, and that motion had been laid on the table. The gentleman from Michigan [Mr. Stuart] had then raised the question of reconsideration, and moved that the vote by which the House had rejected the amendment of the Committee of the Whole, upon the correction of the Journal and by the casting vote of the Speaker,

¹First session Thirtieth Congress, Journal, pp. 1057, 1064, 1066, 1067, 1078-1083; Globe, pp. 953, 954.

²Robert C. Winthrop, of Massachusetts, Speaker.

³For the rule at that time relating to the Speaker's vote, see section 5964 of this volume.

be reconsidered. A question was then made whether the motion to reconsider could be received.

The Chair now decided that, inasmuch as when the House ordered the bill to be engrossed a provision was not in it which was afterwards put in by the casting vote of the Speaker, the House was entitled to a new vote upon the engrossment. The question then arose upon the motion to reconsider the vote by which the amendment was rejected.

Thereupon Mr. Franklin Clark, of Maine, moved that the vote whereby the amendment had been rejected be reconsidered.

Mr. Armistead Burt, of South Carolina, rose to inquire whether, in order to get at the question of reconsideration, it was not necessary that the House, by its vote, should refuse to order the bill to be engrossed.

The Speaker said that the question of engrossment, owing to these mistakes, was now open; and after the reconsideration should have been disposed of, the question would recur on the engrossment of the bill.

The motion to reconsider was then, on motion put and carried, laid on the table.

The question then recurred on ordering the bill to be engrossed.

6090. On January 16, 1849,¹ the Journal of the preceding day was read, when the Speaker stated that a resolution had been offered on the preceding day in the following words:

Resolved, That the bills reported by the Committee on Territories to establish Territorial governments in upper California and New Mexico, be made the special order for Tuesday, the twenty-third day of January, instant.

The vote (the Speaker² continued) as handed to the Chair by one of the clerks, was 114 in favor to 51 against the resolution. There being two-thirds in its favor, the resolution was declared to have been adopted. It appeared that there had been a misreading of one of the figures on the part of one of the clerks, and that the true state of the vote was—yeas 114, nays 71. The correction would be made in the Journal this morning, and the resolution would be declared not to have passed. The vote to reconsider and to lay on the table would of course be a nullity.³

6091. On September 9, 1850,⁴ the question was taken on the passage of the bill (H. R. 387) and there were announced—yeas 78, nays 77. The Speaker voted in the negative, and thereupon announced that the House had refused to pass the bill.

Mr. Jacob Thompson, of Mississippi, moved to reconsider the vote by which the House refused to pass the bill and to lay the motion to reconsider on the table.

Pending this motion the House adjourned.

On the next day the Speaker,⁵ stated that the result of the vote had been erroneously announced, and that the consequent proceedings on the bill would consequently fall. He then announced the vote to be—yeas 78, nays 76. So the bill was passed, and the Journal of the preceding day was ordered to be amended accordingly.

¹Second session Thirtieth Congress, Journal, p. 256; Globe, p. 267.

²Robert C. Winthrop, of Massachusetts, Speaker.

³The motion to reconsider is not now admitted under such circumstances.

⁴First session Thirty-first Congress, Journal, p. 1436; Globe, pp. 1782, 1783, 1786.

⁵Howell Cobb, of Georgia, Speaker.

6092. On January 22, 1851,¹ after the reading of the Journal, the Speaker² stated that it had been ascertained, on a reexamination of the vote on the motion submitted by Mr. George W. Jones, of Tennessee, on the previous day, to lay on the table the bill of the Senate (No. 19) “to amend the several acts establishing district courts of the United States in the State of Florida, and to provide for writs of error and appeals from said courts,” that the actual result of the vote was—yeas 93, nays 91, and not—yeas 92, nays 91, as had been announced in the House immediately after the vote was taken. Consequently the vote of the Speaker, which had been given in the negative, would not defeat the said motion. It was therefore ordered that the said bill be laid on the table.

6093. Before the decision of the Chair on a vote has been pronounced finally and conclusively, a Member may change his vote.³—On April 3, 1810,⁴ the yeas and nays were ordered on a question relating to a resolution of inquiry into the conduct of Brig. Gen. James Wilkinson.

The Clerk having called over the roll, but the result not having been announced, it was suggested by a Member in his place, Mr. Alexander McKim, of Maryland, that he had committed a mistake in giving his vote on the question last taken, and that he had intended to vote in the negative, and not in the affirmative, side of the said question, as the same had been recorded by the Clerk.

The Speaker then directed the Clerk to call the name of Mr. McKim again, and being so called, Mr. McKim answered in the negative.

Mr. John Randolph, of Virginia, objected to the right to change a vote except by the unanimous consent of the House.

The Speaker⁵ decided that, in accordance with the practice, the gentleman had a right to change his vote.

Mr. Randolph having appealed, on April 4 the decision of the Chair was sustained—yeas 76, nays 19.

6094. On February 28, 1829,⁶ the yeas and nays were taken on a motion to order the previous question on the bill to compensate Susan Decatur.

The Members on each side of the question being communicated by the Clerk to the Speaker, the Speaker announced to the House that there were—yeas 79, nays 81.

At this stage of the proceedings, and before the Speaker had pronounced the decision of the question to the House, Mr. Mark Alexander, of Virginia, announced his desire to change his vote and was permitted to do so.

Thereupon he changed his vote from the negative to the affirmative, thus producing an equal division, which was broken by the Speaker voting in the affirmative.

Thereupon Mr. Joel B. Sutherland, of Pennsylvania, raised a question of order as to the power of the Speaker to permit a Member to change his vote after the numbers of votes on each side of a question had been announced from the Chair.

¹ Second session Thirty-first Congress, Journal, p. 171.

² Howell Cobb, of Georgia, Speaker.

³ See also sections 5931–5933 of this volume for additional precedents on this point.

⁴ Second session Eleventh Congress, Journal, pp. 342, 343 (Gales & Seaton ed.); Annals, pp. 1762, 1754.

⁵ Joseph B. Varnum, of Massachusetts, Speaker.

⁶ Second session Twentieth Congress, Journal, pp. 500, 501.

The Speaker¹ decided that it was the right of a Member to change his vote at any stage of proceeding before the decision of the House thereon should have been finally and conclusively pronounced from the Chair.

Mr. Burwell Bassett, of Virginia, having appealed, the decision of the Chair was sustained—yeas 122, nays 49.

6095. The record of a yea-and-nay vote may not be impeached by showing that Members voted who were recorded as paired.—On April 11, 1904,² Mr. John S. Williams, of Mississippi, claiming the floor to suggest a correction of the Record, said:

I find from that vote, on page 4767 of the Record, that the gentleman from Ohio [Mr. Morgan] is recorded as having voted “yea,” and I find that the gentleman from West Virginia [Mr. Dovener] is also recorded as having voted “yea.” I find upon the same page that the gentleman from Ohio [Mr. Morgan] is recorded as having been paired with his colleague from Ohio [Mr. Snook], and I find on the next page that the gentleman from West Virginia [Mr. Dovener], who voted, is recorded as having been paired with the gentleman from Kentucky [Mr. Trimble]. I furthermore find, upon page 4767, that neither Mr. Snook nor Mr. Trimble voted, and, as a matter of fact, neither one of them was here, The vote as announced was yeas 103, nays 100.

I ask a correction in the Record, and that the names of Mr. Morgan and Mr. Dovener be taken from the list of yeas and put among the list of those answering “present” and paired. That will leave the vote 101 to 100.

Objection being made that votes should not be stricken out for such a reason, the Speaker³ said:

The Chair will state to the gentleman from Mississippi that the statement of pairs in the Record is purely an unofficial statement. The statement of a vote is official. The gentleman can see at once that where pairs are made, not infrequently—* * * The Chair was about to state that the statement of the pairs in the Record is purely nonofficial matter, and it does not, in the opinion of the Chair, lie in the mouth of any Member upon either side to criticize the vote of any other Member. * * * The record is made up as the memoranda were given, and a nonofficial statement can not avail to affect the official statement.

6096. The statement that a Member who is alleged to be absent has been recorded as voting should be sustained by undoubted evidence to justify the Chair in ordering the vote stricken off.⁴—On January 9, 1902,⁵ the vote had been taken by yeas and nays on the bill (H. R. 3110) to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, when Mr. John S. Williams, of Mississippi, stated that he was satisfied that Mr. Frank A. McLain, of Mississippi, had not been present during the roll call, and that his name had been improperly recorded.

The Speaker⁶ said:

All Members will, of course, appreciate the delicacy involved in the question of erasing a name from the record after it has been once placed thereon by an officer of the House. Of course, in the present instance it could make no possible change in the result, but in a close vote it might lead to very serious consequences. Unless a Member himself calls attention to the error, the Chair thinks that to

¹ Andrew Stevenson, of Virginia, Speaker.

² Second session Fifty-eighth Congress, Record, p. 4664.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ See also section 6064 of this chapter.

⁵ First session Fifty-seventh Congress, Record, p. 558.

⁶ David B. Henderson, of Iowa, Speaker.

undertake to erase a name under such circumstances would be setting a precedent for very dangerous legislation. The Chair therefore, although he felt it his duty to call attention to the matter, would decline to order the name erased.

On January 10,¹ on a statement made by Mr. McLain that he had not in fact been present, the Speaker directed the correction to be made.

6097. On an uncontradicted assertion that, a Member recorded as voting had not been present and had not voted, the Chair directed the name to be stricken from the list of those voting.

Instance wherein the Speaker debated a point of order while a Speaker pro tempore occupied the chair, and was about to rule.

On January 27, 1875,² during prolonged dilatory proceedings on the civil rights bill, the Chair announced that on a motion to adjourn over to Saturday there were yeas 63, nays 131.

Thereupon Mr. John B. Storm, of Pennsylvania, rising to a question of privilege, stated that Mr. James A. Garfield, of Ohio, was recorded as voting when in fact he had not been present.

At first the Speaker pro tempore³ was inclined to hold that he could not intervene in the matter. But Mr. E. Rockwood Hoar, of Massachusetts, said:

Suppose a vote was taken on a motion to adjourn, and declared to be carried in consequence of the vote of a Member who was known to all of us not to have been here in the House, and whose name had been recorded by mistake by the Clerk; is it not the privilege of the body, and not merely of the Member, that an erroneous entry of the vote shall not be made?

Mr. James G. Blaine, of Maine, the Speaker, who was temporarily out of the Chair, said:

This, I think, will govern the case. The testimony is all on one side. It is not disputed that there was evidently a mistake. There are no two points in the controversy before the Chair. There is an allegation here that the gentleman from Ohio did not vote; there is no allegation that he did. If there were a disputed point, it must of course be determined by testimony, but there is no disputed point. The fact stated is uncontradicted, and therefore, with all due respect to the Chair, I think the error should be corrected.

The Speaker pro tempore held:

It having been asserted that Mr. Garfield was not present and did not vote, and nobody asserting to the contrary, the roll will be corrected accordingly, and his name will be stricken from it.

6098. On April 8, 1902,⁴ a roll call had been completed on the motion that the House resolve itself into the Committee of the Whole House on the state of the Union to consider the bill (H. R. 12765) to provide for reciprocal trade relations with Cuba, when Mr. Michael E. Driscoll, of New York, said:

Mr. Speaker, when the name of the gentleman from New York [Mr. Bristow] was called, I, in the confusion, mistook it for my own name and answered "aye." Subsequently, when my own name was called, having discovered my mistake, I voted. I wish now to have the error corrected by which Mr. Bristow is recorded as voting. I understand he is not present.

¹Record, p. 564.

²Second session Forty-third Congress, Record, pp. 795, 796.

³John Cessna, of Pennsylvania, Speaker pro tempore.

⁴First session Fifty-seventh Congress, Record, p. 3848.

The Speaker¹ said:

Upon the statement of fact just made by the gentleman from New York [Mr. Driscoll], it seems clear that the vote of Mr. Bristow, as recorded, should be stricken out, as he seems not to have been present, but by mistake his name was answered to by the gentleman from New York [Mr. Driscoll]. In the absence of objection, the vote standing in the name of Mr. Bristow will be stricken out.

6099. A Member having stated on his responsibility that another Member recorded as voting on a preceding day was not then present, the Speaker ordered the correction of the Journal before its approval.—On April 14, 1906,² the Journal of the preceding day's session had been read but not approved when Mr. Halvor Steenerson, of Minnesota, said:

Mr. Speaker, I desire to say that in regard to the vote on the motion to recommit the post-office appropriation bill the Record shows that the gentleman from Iowa, Mr. Hedge, voted "no," when, as a matter of fact, the gentleman from Iowa was not here. * * * I know Mr. Hedge was not here.

The Speaker³ said:

The gentleman stating on his responsibility as a Member that he has personal knowledge that the gentleman from Iowa, Mr. Hedge, was not here and did not vote, and there being nothing that contradicts the gentleman's statement, it seems to the Chair it is his duty to direct that Mr. Hedge's name be stricken out.⁴

6100. It was held in the Senate that when the yeas and nays were ordered and taken, and a quorum failed to respond, debate was not in order when a quorum appeared.

Reference to instances in the Senate wherein debate was had after the yeas and nays were ordered, but not after the calling of the roll had been begun.

On February 27, 1904,⁵ the Senate were considering the bill (S. 2263) "to require the employment of vessels of the United States for public purposes," the pending question being on a motion to recommit. On the preceding day the yeas and nays had been ordered on the motion, but a quorum failing to answer on the call, a call of the Senate was had and a quorum appeared. Thereupon the Senate adjourned.

On this day Mr. Stephen R. Mallory, of Florida, rising to a parliamentary inquiry, asked if debate was in order on the motion to recommit.

After debate as to the custom of the Senate, the President pro tempore⁶ held—

The Chair is of the opinion that where there has been a roll call ordered, and on the call no quorum is developed, and the same day a call of the House is had, and a quorum is developed, the first thing immediately to be done, then, is to proceed with a new roll call.

Mr. James H. Berry, of Arkansas, insisted that such had not been the practice of the Senate; but Mr. Eugene Hale, of Maine, insisted that it had been the practice.

¹ David B. Henderson, of Iowa, Speaker.

² First session Fifty-ninth Congress, Record, p. 5258.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ The permanent Record has omitted the above, which appeared in the daily Record. The permanent Record indicates that the corrections were made, but omits the statement of them.

⁵ Second session Fifty-eighth Congress, Record, p. 2457.

⁶ William P. Frye, of Maine, President pro tempore.

The President pro tempore said:

The Chair is entirely clear about it. The presence of a quorum has been developed. The Secretary will call the roll.

But it is a frequent custom for the Senate to debate a question after the yeas and nays are ordered. An instance occurred on December 10, 1877,¹ also another in 1890,² and another on March 24, 1868.³ These, however, were cases where the yeas and nays were merely ordered, without any effort to take them.

6101. In the general, although not universal, practice, debate has not been closed by the ordering of the yeas and nays until one Member has responded to the call.—On January 5, 1809,⁴ the House was considering a bill “to enforce and make more effectual an act entitled ‘An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto.’”

A question being taken by the yeas and nays, Mr. John Randolph, of Virginia, proposed the following question of order:

When a question, by yeas and nays, has been put by the Speaker, and the Clerk has proceeded to the call, in consequence of which a vote is given by any one of the Members, and at the same time a Member rises in his place to address the Chair, does it preclude further debate on the said question?

The Speaker⁵ decided, as the opinion of the Chair, that in all such cases further debate on the question then depending before the House ought to be precluded.

Mr. Randolph having appealed, the decision of the Chair was sustained—yeas 99, nays 10.

6102. On February 1, 1822,⁶ the House was considering the bill for the apportionment of Representatives among the several States, according to the Fourth Census, and, the question being on an amendment, the yeas and nays were ordered.

The Speaker thereupon put the question, by saying that those who were in favor of the amendment would, when their names were called, answer in the affirmative, and those of a contrary opinion would, when their names were called, answer in the negative.⁷

No Member having answered, Mr. Rollin C. Mallary, of Vermont, rose and presented himself to the House for the purpose of discussing the amendment.

The Speaker⁸ thereupon decided that at this stage debate was inadmissible.

Mr. Weldon N. Edwards, of North Carolina, appealed from this decision, and after debate the decision of the Chair was reversed—114 to 51.

6103. On April 22, 1828,⁹ the House had ordered the yeas and nays on a resolution relating to the adjournment of Congress.

¹ Second session Forty-fifth Congress, Record, p. 86.

² First session Fifty-first Congress, Record, p. 3197.

³ Second session Fortieth Congress, Globe, p. 2076.

⁴ Second session Tenth Congress, Journal, p. 446 (Gales & Seaton ed.); Annals, p. 994.

⁵ Joseph B. Varnum, of Massachusetts, Speaker.

⁶ First session Seventeenth Congress, Journal, pp. 216, 217; Annals, p. 873.

⁷ The formula for putting the question is somewhat different now.

⁸ Philip P. Barbour, of Virginia, Speaker.

⁹ First session Twentieth Congress, Debates, p. 2479.

The yeas and nays had been ordered and the first name had been called by the Clerk, but not responded to, when Mr. Charles F. Mercer, of Virginia, claimed the floor.

Mr. William Drayton, of South Carolina, asked if it would be in order for the gentleman to proceed.

The Speaker¹ replied that the gentleman from Virginia was in time, as no response had been given by the Member whose name had been called.

6104. On April 14, 1874,² the Speaker put the pending question to the House, and on division there appeared in the affirmative 64, in the negative 145.

Mr. James A. Garfield, of Ohio, demanded the yeas and nays, and while the question on ordering the yeas and nays was being put, sought recognition for debate.

The Speaker³ said:

The House is now dividing, and the Chair thinks that in consenting to a division the gentleman waived the right of discussion.

The yeas and nays were then ordered.

Thereupon Mr. Garfield sought recognition on the ground that debate was in order, the previous question not being ordered.

The Speaker said:

The gentleman from Ohio will not contend that, during a division of the House, he can debate the question. The House is now engaged in perfecting the process of that division. The gentleman from Ohio made his point, debated it, and took his seat. The Chair put the question, and the House not being satisfied with the viva voce vote, the division was called for. Now, a further process of certification of the division, by calling the yeas and nays, has been ordered. All these steps are certifications of the vote, and there is no point between them where the gentleman can stop the process and initiate debate. The result is the same as if the previous question had been ordered.

6105. On June 8, 1876,⁴ the House had passed to be engrossed the bill (H.R. 1442) to repeal section 821 of the Revised Statutes of the United States, and to provide an oath for grand and petit jurors in the courts of the United States.

Mr. J. Proctor Knott, of Kentucky, moved to reconsider the vote by which the bill was ordered to be engrossed and read a third time, and demanded the yeas and nays thereon.

The Speaker pro tempore put the question upon ordering the yeas and nays; and those in the affirmative having voted, announced that the yeas and nays were ordered.

Pending which, Mr. George F. Hoar, of Massachusetts, rose to speak on the motion to reconsider.

Mr. William J. O'Brien, of Maryland, made the point of order that debate was not now in order, the yeas and nays having been ordered on the motion to reconsider.

The Speaker pro tempore⁵ overruled the point of order, holding that the previous question did not operate upon the motion to reconsider, and that Mr. Hoar, claiming the floor upon that motion, was entitled to the same.

¹ Andrew Stevenson, of Virginia, Speaker.

² First session Forty-third Congress, Record, p. 3076.

³ James G. Blaine, of Maine, Speaker.

⁴ First session Forty-fourth Congress, Journal, p. 1069; Record, p. 3692.

⁵ Samuel S. Cox, of New York, Speaker pro tempore.