

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure; 2 *Hats.*, 305; or for a quarter of an hour. 4 *Grey*, 331.

§ 586. Motion for a recess.

An adjournment during pleasure is effected in the House by a motion for a recess. A recess may not be taken by less than a quorum (IV, 2958–2960), and consequently the motion for it is not in order in the absence of a quorum (IV, 2955–2957). When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division or when a quorum is not present (IV, 664; V, 6665, 6666); but a roll call is not in this way interrupted (V, 6054, 6055). Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of the said certain day as a legislative day (IV, 3192). And an adjournment at a time prior to the hour fixed for a recess vacates the recess (IV, 3283). A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess (V, 6667). A Committee of the Whole takes a recess only by permission of the House (V, 6669–6671; VIII, 3362). The motion for a recess is not privileged (V, 4302, 5301, 6740), in the House or in Committee of the Whole (June 26, 1981, p. 14356) against a demand that business proceed in the regular order (V, 6663; VIII, 3354–3356). However, beginning in the 102d Congress a motion to authorize the Speaker to declare a recess was given a privilege equal to that of the motion to adjourn (clause 4 of rule XVI); and beginning in the 103d Congress the Speaker was authorized to declare a recess “for a short time when no question is pending” (clause 12 of rule I).

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. 5 *Grey*, 137. And from courtesy and respect, no member leaves his place till the Speaker has passed on.

§ 587. Adjournment pronounced by the Speaker.

#### SEC. LI—A SESSION

Parliament have three modes of separation, to wit: by adjournment, by prorogation or dissolution by the King, or by the

§ 588. Sessions of Parliament.

efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act was passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up *de novo*, if taken up at all. *1 Blackst., 186*. Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, of for a fortnight, a month, &c., *ad libitum*. All matters depending remain in *statu quo*, and when they meet again, be the term ever so distant, are resumed, without any fresh commencement, at the point at which they were left. *1 Lev., 165; Lex. Parl., c. 2; 1 Ro. Rep., 29; 4 Inst., 7, 27, 28; Hutt., 61; 1 Mod., 252; Ruffh. Jac., L. Dict. Parliament; 1 Blackst., 186*. Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament, 86*.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. *5 Grey, 374; 9 Grey, 350; 1 Chandler, 50*. Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

The House may empower a committee to sit during a recess which is within the constitutional term of the House (IV, 4541–4543), but not thereafter (IV, 4545). Therefore committees are created commissions by law if their functions are to extend beyond the term of the Congress (IV, 4545).

§ 589. Sitting of committees in recesses and creation of commissions to sit after Congress adjourns.

Under clause 2(m)(1)(A) of rule XI, all committees are authorized to sit and act anywhere within the United States, and to issue subpoenas, whether the House is in session or has adjourned to a date certain or adjourned sine die, even after the second regular session of a Congress until the end of the constitutional term. Under clause 1(b)(4) of rule XI, all committees are authorized to file investigative reports and annual activities reports following sine die adjournment.

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What, then, constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, "on extraordinary occasions to convene both Houses, or either of them." *I. 3.* If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution which says, "the Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." *I. 4.* This must begin a new session; for even if the last adjournment was to this day the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. \* \* \*

The twentieth amendment to the Constitution, clause 2, now provides that the Congress shall assemble at least once in every year, at noon on the 3d day of January, unless they shall by law appoint a different day. Section 132 of the Legislative Reorganization Act of 1946, 60 Stat. 812, as amended by section 461 of the Legislative Reorganization Act of 1970, 84 Stat. 1140, provides that except in time of war the two Houses shall

adjourn sine die not later than the last day of July (Sundays excepted) unless otherwise provided by the Congress. (For form of resolution used to continue in session past July 31, see H. Con. Res. 648, 92d Cong., July 25, 1972, p. 25145.) The same section contemplates an adjournment of Congress from the thirtieth day before to the second day following Labor Day in the first session of a Congress (each odd-numbered year) in lieu of a sine die adjournment. See § 1105, *infra*. Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote), and such adjournments to a day certain, within the session, do not terminate the session (V, 6676, 6677). In one instance the two Houses by concurrent resolution provided for adjournment to a day certain with the provision that if there be no quorum present on that day the session should terminate (V, 6686). Prior to the adoption of the twentieth amendment it had become established practice that a meeting of Congress once within the year did not make uncertain the constitutional mandate to meet on the first Monday of December (I, 10, 11). And where a special session continued until the time prescribed by the Constitution for the annual meeting without an appreciable intervening time (V, 6690, 6692), a question arose as to whether there had actually been a recess of Congress (V, 6687, 6693), with the conclusion that a recess was a real and not an imaginary time (V, 6687).

\* \* \* In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: "Resolved by the Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the — day of —."

§ 591. Manner of closing a session by action of the two Houses.

In the modern practice the resolving clause of the concurrent resolution is in form different from that given by Jefferson. For a history and chronology of adjournment resolutions, see § 84, *supra*.

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and

§ 592. Parliamentary law as to business at the termination of a session.

writs of error. These stand continued, of course, to the next session. *Raym.*, 120, 381; *Ruffh. Fac.*, L. D., *Parliament*.

Impeachments stand, in like manner, continued before the Senate of the United States.

For a discussion of continuance of impeachments, see § 620, *infra*.

#### SEC. LII—TREATIES

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Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. *Ware v. Hylton*, 3 *Dallas's Rep.*, 223. It is acknowledged, for instance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel*, b. 1, c. 19, sec. 214. An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. 4 *Russell's Hist. Mod. Europe*, 457; 2 *Smollet*, 242, 246.

§ 593. General nature of treaties.