

HINDS' PRECEDENTS
OF THE
HOUSE OF REPRESENTATIVES
OF THE
UNITED STATES

INCLUDING REFERENCES TO PROVISIONS
OF THE CONSTITUTION, THE LAWS, AND DECISIONS
OF THE UNITED STATES SENATE

By
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Clerk at the Speaker's Table

VOLUME I

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INTRODUCTION.

The value of precedents in guiding the action of a legislative body has been demonstrated by the experience of the House of Representatives for too many years to justify any arguments in their favor now. "We have no other means of building up parliamentary law, either in the Mother Country or here," said a great lawyer, who was also an experienced legislator,¹ "except by instances as they arise and treatment of them and disposition of the law and of the good reasons that should govern these considerations." And a great legislator, who had served a lifetime in the House of Representatives and the Senate² concluded that "the great body of the rules of all parliamentary bodies are unwritten law; they spring up by precedent and custom; these precedents and customs are this day the chief law of both Houses of Congress."

In the House of Representatives, as in other legislative bodies, the memories of the older Members, as they might be corroborated by the journals, have been the favorite and most readily accessible repository of the precedents; but as the generations of statesmen come and go much is lost, and many useful precedents cease to be available except as from time to time the voluminous pages of the journals may be searched hastily under the stress of some pressing question.

It is manifestly desirable, on a floor where high interests and great passions strive daily, that the rules of action should be known definitely, not only by the older members, but by all. Not only will the Speaker be enabled to make his decisions with more confidence and less fear that he may be swayed by the interests of the moment, but the Members, understanding the rules of his action, will sustain with commendation what they might have criticised with asperity. Thus, good order and dignity will be preserved to the body.

Mr. Jefferson, quoting with approval the famous English Speaker Onslow, has dwelt on the necessity of an adherence to the rules of procedure in order that the minority, as the weaker party, may be protected from the abuses "which the wantonness of power is but too apt often to suggest to large and successful majorities." The protection of the minority in its proper functions of examining, amending, and sometimes persuading the House to reject the propositions of the majority is an essential requirement of any sound system of procedure. Edmund Burke, when commiserated on his toilsome and apparently fruitless years as an opposition statesman in the House of Commons, explained that he found his reward in the fact that the minority which he led had caused many wise modifications of ministerial measures, and had also caused others to be abandoned in view of

¹William M. Evarts, in the United States Senate. First session Forty-ninth Congress, Record, p. 7353.

²John Sherman, in the Senate. First session Forty-fourth Congress, Record, p. 433.

the honest and intelligent criticism which they would meet. When Mr. Jefferson wrote no one had seriously conceived that a minority might go further than this lofty and useful duty. But as the House of Representatives grew in size the rules and practice put into the hands of the minority the power of obstruction. This power grew to such proportions during the portentous legislative struggles preceding and following the civil war that at last it amounted to the absolute power to stop legislation entirely. Not only was the power justified because it was established, but it attained a certain degree of respectability as it enwrapped itself in the theory that on great questions the wisdom of the few should be permitted to thwart the rashness of the many. The abundant checks and balances devised by the framers of the Constitution to save the Government from popular passions were considered by a large school of statesmen inadequate without the added check of obstruction. Mr. Speaker Reed, in 1890, destroyed this system by the enunciation of the principle that the processes of a legislative body might not be used to destroy its powers; and since that day the minority has been remitted to its historic functions. The rulings then made constitute the only important reversal in the lines of precedent which as a whole have built up for the minority a safeguard for its legitimate duties, and for the majority a flexible and effective instrumentality for its necessary achievements.

In another respect the value of precedent to the House of Representatives should not be overlooked. The framers of the Constitution experienced little uncertainty as to the functions and powers of the House. In the Colonial Assemblies there was existing a political institution, indigenous to America, and proven by the long conflict arising from the attempts of the English Kings to establish arbitrary power. The people of America had fought the first battle of liberty in the Colonial Assemblies. Nowhere else, among the great nations of the earth, did the people possess such a perfect means of expressing their will. It was natural, therefore, that the framers of the Constitution should at once have conceived of a National House of Representatives, framed on the model of the Colonial Houses, and should have guaranteed to it the powers and privileges necessary for its preservation as the organ of the will of the whole people. It is a duty and a national necessity that those powers and privileges be preserved in their pristine vigor; and there is no surer way to this end than perfect information on the part of every Member of the House as to what they are. One of the chief ends proposed by this work has been the collection and classification of the precedents relating to this subject in such a way that they may always be clearly before the membership of the House. If the prerogatives of the House are well understood, other branches of the Government are less likely to encroach on them; and if there be encroachment, it is more likely to be met with promptness, intelligence, and firmness.

It has been the habit of a certain school of statesmen to picture a fancied decay of the importance of the House as a branch of the Government. A critical examination of the present and past condition of its powers and privileges affords no foundation for this theory, which derives dignity only from the fact that it has been advanced from time to time for nearly a century. Perhaps it is to be explained by a confusion of ideas, resulting from the undoubted fact that

with the great increase of membership the individual Representative has lost much of freedom and opportunity. This is a condition of all large bodies, well understood as long ago as when Thackeray, in writing the pages of *Pendennis*, caused his chief character to be informed that as a young member of Parliament his only duty would be to do as he might be directed by the leaders. From the ruling by which Mr. Speaker Clay repressed the superabounding individuality of John Randolph to the latest rulings by Mr. Speaker Cannon, the pages of these volumes show a constant subordination of the individual to the necessities of the whole House as the voice of the national will.

A hall of business, not always orderly and usually noisy, appeals to the imagination less favorably than a quiet and dignified school of debate. But if beneath the apparent confusion there can exist a system of procedure, just to all the members and at the same time conducive to an efficient performance of the duties of the body, the great objects of the House will be attained, and its place in the confidence and respect of the people will be unassailable. If the precedents which are gathered in these volumes can contribute to the perfection and maintenance of such a system, and cause it to be understood and appreciated within the House and without, the labor of their preparation will not have been in vain.

It can not, of course, be claimed that the system of the House's procedure is perfect, or that changes will not result in the future as in the past from the multiplied experiences of successive Congresses. And it is of the highest importance that those changes proceed on a basis of sound principles, having in view the maintenance of efficiency as a legislative body, integrity in methods of determination, freedom and fairness in deliberation, and as great privileges to the individual as are consistent with the rights of all. This happy development will be promoted if from these precedents it shall be possible to understand readily and accurately the fundamental theories of the House's law.

Abundant references have been made to precedents of the United States Senate where they are of such a nature as to throw light on principles related to the procedure of the House, but no attempt has been made to make a complete collection of them. Some of those that are given are of the highest value, representing conclusions formed after careful examination.

In references to dates and volumes of debates and journals many thousands of footnotes are given. It is not reasonable to hope that no errors have crept in, but the system of double reference to dates and paging is such that the text of the work may be corroborated without difficulty from the pages of the journals and debates.

ASHER C. HINDS

PORTLAND, ME., *September 3, 1907.*

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