

Chapter IV.

PROCEDURE AND POWERS OF THE MEMBERS-ELECT IN ORGANIZATION.

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81. Proceedings and forms at the organization of the House in a new Congress.

Election of Speaker and other officers, administration of the oath to Members and officers, notification of the President and Senate, and drawing of seats at the beginning of a Congress.

Forms of procedure at the opening of the second or subsequent sessions of a Congress.

When a new Congress assembles on the first Monday in December, the Members-elect are called to order at 12 m. by the Clerk of the preceding House,⁶ standing at his desk. After prayer by the Chaplain of the last House, the Clerk announces:

Representatives-elect: Under the provisions of the Constitution of the United States this is the hour fixed by law for the meeting of the House of Representatives of the——Congress of the United States of America. The Clerk of the House of Representatives of the——Congress will read the names of those whose credentials show that they were regularly elected to this body in pursuance of the laws of their respective States and of the United States.⁷ As the roll is called, following the alpha-

¹ Status with reference to transaction of business. (Secs. 6647–6650 of Vol. V.)

² Adjournment for more than one day before organization. (Sec. 221 of this volume.)

³ A refusal to adopt rules until the Members-elect were sworn. (Sec. 140 of this volume.)

⁴ See also cases of *Letcher v. Moore* (sec. 53 of this volume) and *Ingersoll v. Naylor* (Sec. 803 of this volume).

⁵ Discussion as to why the House of Representatives meets at 12 m. at its first sitting, before organization. (Sec. 210 of this volume.)

⁶ In accordance with section 1 of House Rule III. (See sec. 64 of this work.) In case the Clerk can not for any reason officiate, the duties devolve on the Sergeant-at-Arms, and next upon the Doorkeeper. (See Revised Statutes, secs. 32 and 33.)

⁷ This roll is made up in accordance with section 31 of the Revised Statutes.

betical order of the States, those present will please answer to their names, that we may discover if there is a quorum present.¹

When the roll call has been completed, the Delegates being called last, the Clerk presents a tabulated statement of the changes in the membership that have occurred since the regular election.

Then, if a quorum be present, the Clerk announces the fact, and declares that the next business in order is the election of a Speaker.² Nominations are made from the floor, simply by naming the candidates.³

The House has for many years elected its Speaker by viva voce vote.⁴ The Clerk appoints four tellers, from the Members-elect, representing the parties making nominations,⁵ who, seated at the Clerk's desk, make the record as each Member-elect, when the roll is called, alphabetically, announces the name of his choice. The roll call being completed, one of the tellers, usually the one first named, announces the result of the vote, the Clerk having previously read over the names of those voting for each candidate.

The Clerk, having restated the vote as reported by the tellers, announces that—

Mr.——, a Representative from the State of——, having received a majority of all the votes cast, is duly elected Speaker of the House of Representatives of the——Congress.

The Clerk then designates certain Members, usually the other candidates who have been voted for, to conduct the Speaker-elect to the chair.

The Speaker-elect having taken the chair and addressed the House, the Clerk designates the Member-elect present who has served longest continuously⁶ as a Representative to administer the oath of office to the Speaker-elect.⁷

¹ Form used by Clerk James Kerr, of the Fifty-third Congress, in calling to order the House of the Fifty-fourth Congress, December 2, 1895. (Congressional Record, p. 2.)

² See sections 6747–6750 of Volume V of this work for controversies as to transaction of business before organization. Also see Congressional Record, first session Fifty-first Congress, p. 80, and first session Fifty-fifth Congress, p. 15.

³ Sometimes a resolution to proceed to election of Speaker is adopted; but very early as well as very late precedents exist for proceeding without the resolution. See case December 8, 1829, when, without resolution or motion, the House proceeded to ballot for Speaker. (First session Twenty-first Congress, Journal, p. 7.)

⁴ See section 187 of this work for rule relating to viva voce election and its origin. The rules, however, are not adopted until the House is organized.

⁵ See Congressional Record, first session Fifty-fifth Congress, p. 15.

⁶ This does not always seem to have been the custom. Thus, in 1815, the oath was administered to Speaker Clay by Mr. Robert Wright, of Maryland, who was much younger as a Member than either Nathaniel Macon, of North Carolina, who had served since 1793, or Richard Stanford, of the same State, who had served since 1797, and both of whom were present. (First session Fourteenth Congress, Annals, p. 374.)

But on December 5, 1825, we find Speaker Taylor conducted to the chair by Mr. Thomas Newton, of Virginia, "the father of the House," who also administered to him the oath. (First session Nineteenth Congress, Journal, p. 8; Debates, p. 795.) Again, in 1829, Mr. Newton is spoken of as the father of the House when he administered the oath to Speaker Stevenson. (First session Twenty-first Congress, Debates, p. 471.) Again, in 1835, Mr. Lewis Williams, of North Carolina, "the oldest Member in the House," administers the oath to Speaker Polk. (First session Twenty-fourth Congress, Journal, p. 8; Debates, p. 1946.) Again, on December 16, 1839, Mr. Williams, "the oldest Member," administers the oath to Speaker Hunter. (Journal, first session Twenty-sixth Congress, p. 80.)

⁷ This oath is the same as that administered to Members-elect. (See sec. 128 of this work.) It does not seem to have been the invariable custom for the Speaker to address the House first. Thus, in 1815, Mr. Clay took the oath first. (First session Fourteenth Congress, Journal, p. 7.)

After the administration of the oath the Speaker administers the oath to the Members-elect and Delegates,¹ who are usually called to the area in front of the Speaker's desk several at a time, by States. The Delegates are sworn last. Members of whose election there is no question, but whose certificates have not arrived, may be sworn in by unanimous consent.

The election of the remaining officers of the House is next in order. The rule prescribes that these elections shall be *viva voce*.² It is usually accomplished, however, by the adoption of a resolution of five paragraphs, each in this form:

That _____, of the State of _____, be, and he is hereby, chosen _____ of the House of Representatives,

and relating to the Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain, in the order named.

The minority party usually present their candidates in a similar resolution, which they move as a substitute.

The Speaker having administered the oath of office to the officers elected, the organization of the House is completed, whereupon the following resolutions are presented and agreed to:

Resolved, That the Clerk be instructed to inform the President of the United States that the House of Representatives has elected _____, a Representative from the State of _____, Speaker, and _____, a citizen of the State of _____, Clerk of the House of Representatives of the _____ Congress.

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled; that _____, a Representative from the State of _____, has been elected Speaker, and _____, a citizen of the State of _____, Clerk; and that the House is ready to proceed to business.

Resolved, That a committee of three be appointed by the Speaker on the part of the House of Representatives to join the committee appointed on the part of the Senate to wait on the President of the United States and notify him that a quorum of the two Houses has assembled, and that Congress is ready to receive any communication he may be pleased to make.³

Resolved, That until otherwise ordered the rules of the House of Representatives of the _____ Congress be adopted as the rules of the House of Representatives of the _____ Congress.⁴

Resolved, That until otherwise ordered the daily hour of meeting of the House of Representatives shall be 12 o'clock meridian.

Resolved, That the House do now proceed to draw seats for Members and Delegates of the present Congress in pursuance of Rule XXXII of the _____ House, and when names of Members absent from the city or on account of sickness are called, that seats be selected for them by their colleagues.⁵

¹This order is according to the old form. (First session Second Congress, Journal, p. 434.)

²See section 187 of this work. The rules, however, are not usually adopted until after the officers are elected, the old rule that the rules should continue in force from Congress to Congress having been dropped in the Fifty-first Congress. See debate of May 15, 1797, where the point was raised and discussed that the rules of the former House were not binding in the election of a Clerk. (First session Fifth Congress, Annals, p. 51.)

³Such a resolution is in accordance with the most ancient precedents of the House. (First session First Congress, Journal, p. 134.)

⁴While this resolution is usually adopted, the House sometimes, as in the Fifty-first Congress, proceeds under general parliamentary law until rules are adopted permanently.

⁵These resolutions are the forms used in organization of Fifty-fourth Congress. (Congressional Record, first session, Fifty-fourth Congress, pp. 5 and 6.)

Before the drawing begins the Members usually permit by unanimous consent one or two Members of long service to select their seats.¹ Also, if the political parties are disproportionate in size an understanding is usually arrived at as to the portions of the Hall which they are to occupy.²

When the Congress assembles by proclamation of the President, before the first Monday of December, the formalities are the same, excepting that the Clerk reads the proclamation of the President instead of the usual announcement³

At the opening of sessions other than the first the Speaker calls the House to order, and, after prayer by the Chaplain, directs the Clerk to call the roll of Members by States. This roll having been called and the number of Members present having been ascertained, the Speaker announces that a quorum is present, if such be the fact, and that the House is ready to proceed to business.

Resolutions are then adopted providing for notifying the President and the Senate, as follows:

Resolved, That a committee of three Members be appointed on the part of the House to join the committee appointed by the Senate to wait upon the President and inform him that a quorum of the two Houses has assembled, and that Congress is ready to receive any communication he may have to make.

Resolved, That the Clerk of the House inform the Senate that a quorum of the House of Representatives has appeared, and that the House is ready to proceed to business.⁴

82. A discussion as to whether or not the House is a House before its organization.

Congress may not by law interfere with the constitutional right of a future House to make its own rules.

A proposition to regulate the organization of the House by law.

On March 2, 1861,⁵ Mr. Albert G. Porter, of Indiana, made a report from the Committee on the Judiciary on the bill (H. R. 867) "to provide for and facilitate

¹These favors are generally divided between the two large parties, and ex-Speakers are usually the recipients, but the favor may be granted to any distinguished Member.

On February 13, 1847 (second session Twenty-ninth Congress, *Globe*, p. 418), while the House was in Committee of the Whole House on the state of the Union, and while Mr. W. Hunt was speaking, Mr. John Quincy Adams, of Massachusetts, for the first time since his attack of paralysis, entered the Hall. The committee rose in a body to receive him. Mr. Hunt suspended his remarks, and Mr. Andrew Johnson, of Tennessee, arose and said: "In compliance with the understanding with which I selected a seat at the commencement of the present session, I now tender to the venerable Member from Massachusetts the seat which I then selected for him, and will furthermore congratulate him on being spared to return to this House." Mr. Adams having briefly acknowledged the courtesy, the business proceeded.

In the organization of the Fifty-fourth Congress, ex-Speaker Charles F. Crisp (Fifty-second and Fifty-third Congresses) and ex-Speaker Galusha A. Grow (Thirty-seventh Congress) were accorded this favor. (*Record*, first session Fifty-fourth Congress, p. 8.) Also, in the Fifty-second Congress, ex-Speaker Thomas B. Reed and the two oldest Members on the two sides, Messrs. Holman, of Indiana, and O'Neill, of Pennsylvania, were designated by resolution for the favor.

²The Republicans sit on the left of the Speaker and the Democrats on the right. But when one of these parties is a small minority, the excess of the majority party goes to the extreme left or right. (See *Congressional Record*, first session Fifty-fourth Congress, p. 6.)

³See *Congressional Record*, first session Fifty-fifth Congress, p. 13, when Clerk Alexander McDowell called the House to order.

⁴*Congressional Record*, second session Fifty-fourth Congress, p. 12.

⁵House Report No. 102, second session Thirty-sixth Congress.

the organization of the House of Representatives of the United States on the assembling of each Congress." This bill undertook to prescribe the evidence which should authorize one who claimed to be a Representative to vote; the mode by which that evidence should be presented; the manner of voting for a temporary presiding officer, for the Speaker, and other officers; the order of business previous to the organization, and the number of votes requisite to elect the several officers.

The committee came to the conclusion that these provisions prescribed "rules of proceedings" for the popular branch of future Congresses, and to be, therefore, in contravention of Article I, section 5, clause 2 of the Constitution: "Each House may determine the rules of its proceedings," etc. The report continues:

It seems to have been thought by some persons that the term "House" in the clause just quoted applies to the House after it has been organized by the election of a Speaker and other officers; in other words, that it is not a House until thus organized. But a reference to the clause in the same article which provides that "the House of Representatives shall choose their Speaker and other officers" shows this interpretation to be erroneous. That clause recognizes the body of Representatives assembled as being a "House" before the Speaker has been elected.⁴

The bill was suggested by the troubles at the organization of the Thirty-fourth Congress. It seems never to have been acted on by the House.¹

83. With a single exception the call of the roll of Members at the beginning of a session has been by States and not alphabetically.—On December 4, 1893,² at the beginning of the second session of the Congress, the roll was called alphabetically, and not by States.

Mr. Joseph Wheeler, of Alabama, made the point of order that the roll should be called by States.

The Speaker (Mr. Crisp) said:

No rule of the House requires the roll to be called or recorded in the manner which the gentleman suggests; on the contrary, the rules require that the roll be called alphabetically, except that upon the organization of the House and when in the absence of the Speaker the Clerk discharges the duty of calling the House to order, the rules require him to have the roll called by States. In other cases the rule is that the roll be called alphabetically.

In the Journal, however, the roll call appears as if called by States.

On December 5 Mr. Wheeler presented to the House the precedents from the foundation of the Government to show that at the beginning of a second session the roll had always, with the exception of this instance, been called by States.

84. The call of the roll of Members-elect may not be interrupted, especially by one not on that roll.—On December 4, 1865,³ at the time of the organization of the House, while the roll of Members-elect was being called by States, Mr. Horace Maynard, of Tennessee (whose name was not on the roll), rose and was proceeding to address the Chair, when the Clerk⁴ declined to allow any interruption of the roll call.

¹ Journal, p. 479.

² Second session Fifty-third Congress, Journal, p. 3; Record, pp. 13, 36.

³ First session Thirty-ninth Congress, Globe, p. 3.

⁴ Edward McPherson, of Pennsylvania, Clerk.

85. The House declined before organization to add to the roll the name of a Member-elect whose credential had been lost; but after organization permitted him to take the oath.—On December 4, 1905,¹ at the organization of the House, and immediately after the roll had been called by States to ascertain the presence of a quorum, Mr. Asle J. Gronna, of North Dakota, stated that the certificate of his colleague, Mr. Thomas F. Marshall, had been lost, and asked that his name be added to the roll.

Mr. Sereno E. Payne, of New York, said:

That would not be in order until after the organization of the House.

The Clerk² said:

It would be a matter of unanimous consent. The gentleman from North Dakota asks unanimous consent that the name of his colleague [Mr. Marshall] be added to the roll. Is there any objection?

Mr. John S. Williams, of Mississippi, said:

At this stage of the proceedings I shall object. At the proper time that will be in order.

But after organization Mr. Marshall was permitted by the House to take the oath, on the assurance given by his colleague that the election was in no way disputed.

86. At the organization of the House a person whose name is not on the Clerk's roll may not be recognized.—On December 4, 1865,³ at the organization of the House, and after the roll of Members-elect had been called by the Clerk, after the presence of a quorum had been announced, and after a motion had been made to proceed to the election of a Speaker, Mr. Horace Maynard, of Tennessee, whose name was not on the Clerk's roll, sought recognition.

Objection being made by Mr. Thaddeus Stevens, of Pennsylvania, the Clerk⁴ held:

The Clerk rules, as a matter of order, that he can not recognize any gentleman whose name is not on the roll.

87. It has been held that the House is technically in session during the period of organization.—On January 4, 1850,⁵ Mr. Speaker Cobb decided that the House was in session during the twenty days while unsuccessful votes were being taken for a Speaker. Mr. Robert C. Winthrop, of Massachusetts, had suggested that the thirty days allowed for the introduction of petitions should not be counted from the meeting of Congress, but from the date of the organization of the House.

88. On March 11, 1875,⁶ the point was raised in the Senate that at a called special session it was not in order to take any action looking to the transaction of legislative business, the House not being in session. The point was debated at some length, but no determination was reached.

¹ First session Fifty-ninth Congress, Record, pp. 40, 41.

² Alexander McDowell, of Pennsylvania, Clerk.

³ First session Thirty-ninth Congress, Globe, p. 3.

⁴ Edward McPherson, of Pennsylvania, Clerk.

⁵ First session Thirty-first Congress, Globe, p. 101.

⁶ First session Forty-fourth Congress, Record, p. 25.

89. The House may adjourn for more than one day before the election of a Speaker.—On January 13, 1860,¹ before the election of a Speaker it was ordered that when the House adjourns it adjourn until Monday next.

90. At the organization of the House in 1855 the Clerk ordered tellers.—On December 7, 1855,² during the protracted struggle over the election of a Speaker, Mr. Benjamin F. Leiter, of Ohio, moved that the House adjourn.

Mr. Edwin B. Morgan, of New York, asked for tellers.

The Clerk³ ordered tellers, and appointed Mr. Morgan and Mr. John Letcher, of Virginia.

91. The yeas and nays may be ordered before the organization of the House. In 1855 the Clerk decided questions of order at the organization.

On December 7, 1855,² before rules had been adopted or a Speaker elected, Mr. Benjamin F. Leiter, of Ohio, moved that the House adjourn.

Mr. Benjamin Stanton, of Ohio, demanded the yeas and nays.

Mr. John Letcher, of Virginia, made the point of order that the yeas and nays might not be demanded until after the organization of the House.

The Clerk³ said:

It is in order to call for the yeas and nays.

The question being taken, the yeas and nays were not ordered.

But on many other occasions during the protracted period before a Speaker was elected, the yeas and Days were ordered and taken without question.

92. In 1839 the difficulties at organization prevented the daily approval of the Journal until finally, on one day, the Journals of several days were approved.—From December 2 to 6, 1839,⁴ the House was prevented from settling difficulties as to its organization by the refusal of the Clerk of the preceding House to put any question, except the motion to adjourn, because the call of the roll by States had not been completed, and the presence of a quorum ascertained. On December 5 Mr. John Quincy Adams, of Massachusetts, was chosen chairman of the meeting of Members-elect. On December 6, as soon as the meeting assembled, the Journals of the proceedings of Monday, Tuesday, Wednesday, and Thursday, the 2d, 3d, 4th, and 5th, were read and approved.

93. Instance wherein the rules were adopted immediately after the election of Speaker.—On December 21, 1839,⁵ the House adopted rules before proceeding to the election of any officers except the Speaker.⁶

94. Before the election of a Speaker the House has adopted a rule regulating debate.—On December 22, 1855,⁷ during the organization of the House,

¹ First session Thirty-sixth Congress, Journal, p. 127; Globe, p. 444.

² First session Thirty-fourth Congress, Globe, p. 10.

³ John W. Forney, Clerk.

⁴ First session Twenty-sixth Congress, Journal, p. 7; Globe, p. 20.

⁵ First session Twenty-sixth Congress, Journal, p. 95.

⁶ Usually, however, rules are not adopted until the officers have been elected. See section 81 of this work.

⁷ First session Thirty-fourth Congress, Journal, p. 161; Globe, p. 69.

and before the election of a Speaker or the adoption of rules, Mr. John A. Quitman, of Mississippi, submitted the following resolution, which was agreed to:

Resolved, That, until the organization of this House by the election of a Speaker, no Member shall occupy more than ten minutes in debate on any question before the House, nor shall any Member speak more than once on any question before the House, until every Member desiring to speak thereon shall have spoken; and, upon a motion to lay on the table, there shall be no debate.

95. On January 19, 1856,¹ before the election of Speaker or the adoption of rules, Mr. Schuyler Colfax, of Indiana, offered the following resolution, which was agreed to:

Resolved, That for one week, unless a Speaker is sooner elected, no debate on any subject, or under the form of personal explanation, shall be in order; but any Member attempting to speak shall be held out of order, unless the unanimous consent of the House shall have been first had, upon the question being submitted by the Clerk.

96. The House has adopted a rule relating to the privilege of the floor before the election of a Speaker.—On December 4, 1855,² at the time of the organization of the House, and before a Speaker had been elected or rules adopted, it was, on motion of Mr. George W. Jones, of Tennessee—

Ordered, That the Doorkeeper be directed to enforce so much of the rules of the last Congress as relates to the admission of persons within the Hall of the House.

97. On January 30, 1860,³ before the election of the Speaker, the House adopted the following:

Ordered, That the Doorkeeper be directed to execute the seventeenth rule of the House of Representatives of the Thirty-fifth Congress, in regard to the privileges of the Hall.

98. On December 27, 1855,⁴ before the election of Speaker or the adoption of rules, a proposition for the drawing of seats by Members was offered and entertained without any point of order raised, but after debate was laid on the table.

99. Before the election of officers the House has provided for opening its sessions with prayer.—On January 23, 1856,⁵ before the election of a Speaker or the adoption of rules, Mr. James F. Dowdell, of Alabama, offered a preamble and resolution reciting the propriety of the House showing their reverence for God, and resolving that the daily sessions be opened with prayer, and providing that the ministers of the gospel in the city be requested to attend and perform the duty alternately.

This motion was agreed to. Later in the session, after the organization of the House, a Chaplain was elected.

100. On December 7, 1859,⁶ before the election of a Speaker, Mr. Alfred Wells, of New York, by unanimous consent, offered the following resolution:

¹First session Thirty-fourth Congress, Journal, p. 334; Globe, pp. 269, 270.

²First session Thirty-fourth Congress, Journal, p. 4, Globe, p. 18.

³First session Thirty-sixth Congress, Journal, p. 149; Globe, p. 629.

⁴First session Thirty-fourth Congress, Journal, p. 185; Globe, p. 89.

⁵First session Thirty-fourth Congress, Journal, pp. 354, 582; Globe, p. 282.

⁶First session Thirty-sixth Congress, Journal, p. 21; Globe, p. 42.

Resolved, That until this House shall be organized by the election of a Speaker, the clergy of this city, of the various religious denominations, be respectfully requested to open the daily session of this House with prayer; and that such of the clergy as shall accept of this invitation officiate, one each day, in alphabetical order.

Mr. William Smith, of Virginia, questioned the power of the House to transact any business until after its organization, but withdrew his objection, and the House agreed to the resolution.

101. Before the election of a Speaker the House has empowered the Clerk and Sergeant-at-Arms of the last House to preserve order.—On December 16, 1859,¹ before the election of a Speaker, Mr. William E. Niblack, of Indiana, by unanimous consent, offered the following resolutions, which were agreed to:

Resolved, That until the organization of this House by the election of a Speaker, the Clerk of the last House shall be authorized and empowered to preserve order on the floor of the House and in the galleries, and as far as possible for that purpose he may exercise the powers devolved on the Speaker, for the time being, under the rules of the last House of Representatives.

Resolved, further, That until the organization of this House as aforesaid, the Sergeant-at-Arms of the last House of Representatives is hereby authorized to exercise the ordinary powers of his office for the preservation of order, under the direction of the Clerk of the last House of Representatives as aforesaid.

A question was raised as to whether or not these resolutions were intended to allow the Clerk to decide questions of order, and Mr. Niblack responded that they were not.

102. Before the election of officers or the adoption of rules, the House has made a rule for enforcing order in the galleries.—On December 15, 1849,² before the House had been able to elect a Speaker and before rules had been adopted, Mr. James Thompson, of Pennsylvania, offered, and the House agreed to, the following rule:

Resolved, That the Sergeant-at-Arms and Doorkeeper are hereby authorized and directed to enforce the seventeenth rule of the last House of Representatives, and that no person be admitted to the ladies' gallery unless accompanied by ladies or introduced in person by a Member of Congress.

This resolution was agreed to without question as to the authority of the unorganized House to adopt the rule.

103. Proceedings at organization of the House in the New Jersey, or "Broad Seal," contest of 1839.

In 1839, at the organization of the House, the Members-elect did not permit five persons bearing regular credentials to participate in the organization.

In 1839 certain persons whose titles as Members-elect were contested assumed to participate in the organization; but the meeting passed on the vote of each after it had been given.

On December 5, 1839,³ the Members-elect of the House, having been prevented from organizing the House by complications arising over a contest as to the occupants of five of the six seats of the State of New Jersey, Mr. John Quincy Adams, of

¹First session Thirty-sixth Congress, Journal, p. 44; Globe, p. 165.

²First session Thirty-first Congress, Journal, p. 102; Globe, p. 36.

³First session Twenty-sixth Congress, Journal, pp. 6–80; Globe, pp. 20–56.

Massachusetts, was chosen chairman of the body and the rules of the last House were adopted so far as they might be applicable.

Mr. Henry A. Wise, of Virginia, then offered this resolution:

Resolved, That the acting Clerk of this House shall proceed with the call of the Members from the different States of the Union in the usual way, calling the names of such Members from New Jersey as hold the regular and legal commissions from the executive of that State.¹

On the succeeding day Mr. R. Barnwell Rhett, of South Carolina, moved that the resolution lie on the table.

On this question tellers were called for, and the Chair appointed Messrs. George C. Dromgoole, of Virginia, and Edward Davies, of Pennsylvania, tellers to count the House.

Mr. Dromgoole inquired of the Chair who were to be counted as Members from New Jersey, and stated that he should, unless otherwise directed by the House, count every person who presented himself.

The Chairman answered, and so decided, that those must be counted who had been commissioned as Members of the House of Representatives of the United States for the Twenty-sixth Congress from the State of New Jersey by the governor of that State. The Chairman further stated that he had expressed this as his opinion before he was placed in the Chair.

From this decision Mr. Aaron Vanderpoel, of New York, took an appeal to the Members on the ground that the Chair had usurped to himself the decision of the very question that the Members were trying to decide.

Pending the appeal the House adjourned. The session of the next day, December 7, was occupied largely with proceedings for the correction of the Journal, in the course of which a vote by tellers was had, and the Chairman was asked who were to be counted as Members of the House. He replied that "the tellers will count whoever passes through; and if any pass whose title to a seat is contested, they will report the fact to the meeting, and the meeting will decide the question." But the tellers, in reporting their vote, reported no votes by gentlemen whose titles were contested.

Monday, December 9, was occupied largely with the reading of documents relating to the case, and with questions relating to the reading. It was not until December 10 that the question recurred on the appeal of Mr. Vanderpoel.

Mr. Henry A. Wise, of Virginia, moved the previous question, and on the question there were 110 ayes and 48 noes. Mr. John T. H. Worthington, of Maryland, one of the tellers, reported that three of the persons claiming to be Members from New Jersey, under the commission of the governor, voted on the previous question.

The main question was then put: "Shall the decision of the Chair stand as the judgment of the meeting?" and passed in the negative, ayes 108, noes 114.

And so the decision of the Chair was reversed.

Mr. Worthington, one of the tellers, stated that four of the Members from New Jersey, commissioned by the governor, voted on that question.

¹For these five seats there were ten claimants, five with credentials from the governor and five with certificates from State officials stating the vote.

The Chairman here stated that it was now for the meeting to decide who should be called as Members from New Jersey.

The question on the motion of Mr. Rhett, that the resolution of Mr. Wise do lie on the table, was called for.

The Chairman decided that that question could not be put until the preliminary question was settled as to who should vote as Members from New Jersey.

Several propositions were made, among them a motion that neither set of Members claiming seats from New Jersey should vote, until the question "Who shall vote from New Jersey?" should be decided by the House.

The Chairman decided that he was not competent to put the question on this motion, nor was it within the competency of the meeting to pass upon the motion, since in effect the motion was to decide that the people of New Jersey should not be represented on the floor.

After incidental questions had been considered, the Chairman suggested a course of procedure in the form of a ruling, but an appeal being taken, he withdrew it. Thereupon Mr. George N. Briggs, of Massachusetts, renewed the proposition in this resolution:

Resolved, That on the motion of Mr. Rhett to lay Mr. Wise's resolution on the table, or on Mr. Wise's resolution itself, the tellers shall count all the persons who may pass between them, and if any pass whose right to vote is disputed, the tellers shall report their names to the Chair, after the number of votes on both sides are reported, for the decision of the House.

This resolution was agreed to without question as to those voting.

The question then recurred on Mr. Rhett's motion, and the tellers reported that 115 had voted in the affirmative, and 114 had voted in the negative, among which latter number was one disputed vote, that of Mr. Charles Naylor, of Pennsylvania whose seat was contested by Mr. Ingersoll.

The Chairman announced to the House that he voted with the nays, whereby an equal division was produced, and the question on Mr. Rhett's motion was lost.

Mr. Francis O. J. Smith, of Maine, challenged the right of Mr. Naylor to vote, whereupon Mr. Naylor challenged Mr. Smith's right. Mr. Wise moved that Mr. Naylor's vote be counted. The question was about to be put on this motion under the operation of the previous question, when the Chairman ruled that Mr. Naylor's right to vote could not be questioned, since all controversy and proceedings had reference to the New Jersey cases and none other. Therefore the resolution moved by Mr. Briggs and adopted by the House had no relation to Mr. Naylor's right to vote.

From this decision Mr. Hopkins L. Turney, of Tennessee, appealed to the meeting.

Pending this appeal the House voted on a motion to adjourn, the tellers reporting 116 in the affirmative and 113 in the negative and that three disputed votes had been given on each side. The disputed votes being equal on each side, and therefore not affecting the result, the Chairman decided that the question was carried in the affirmative, and the meeting accordingly adjourned.

On December 11 the question was taken on the appeal by Mr. Turney, "Shall the decision of the Chair stand as the judgment of the House?" and the tellers

reported 112 votes in the affirmative, including in that number the votes of Mr. Naylor, of Pennsylvania, and Messrs. Aycrigg, Yorke, Maxwell, and Stratton, of New Jersey, commissioned by the governor of that State, 118 votes in the negative, including in that number the vote of Mr. Ingersoll, of Pennsylvania, claiming to be a Member in place of Mr. Naylor, also the votes of Messrs. Kille, Cooper, and Ryall, of New Jersey, claiming to be Members, in the room of Members commissioned by the governor of that State.

The Chairman then stated that it was for the meeting now to decide, name by name, upon the right to vote of each disputed voter whose name had been reported by the tellers.

Mr. F. O. J. Smith, of Maine, objected that the determination of the rights of the disputed voters would not affect the result; that the Chairman's decision was overruled, no matter what decisions should be given as to the challenged votes.

The Chairman held, however, that more Members were voting from Pennsylvania and New Jersey than could be permitted to vote under the Constitution and the laws; therefore the meeting must decide upon these disputed rights.

The question was first taken on Mr. Naylor's right to vote, and the tellers reported 119 votes in the affirmative, 112 votes in the negative, and no disputed votes. So it was decided that Mr. Naylor's vote should be counted.

The question was next taken on the vote of Mr. Aycrigg, of New Jersey, and on the motion that it be counted the tellers reported 117 votes in the affirmative, including in that number the votes of Messrs. Halstead, Maxwell, Stratton, and Yorke, of New Jersey, commissioned by the governor of that State; 122 votes in the negative, including in that number the votes of Messrs. Cooper, Kille, and Ryall, of New Jersey, claiming to be Members, in the room of Members commissioned by the governor of that State.

It was therefore decided that the vote of Mr. Aycrigg should not be counted.

The question was next put, "Shall the vote of Mr. Maxwell be counted?"

And the tellers reported 116 votes in the affirmative, including in that number the votes of Messrs. Halstead, Stratton, and Yorke, of New Jersey, commissioned by the governor of that State; 122 votes in the negative, including in that number the votes of Messrs. Cooper, Kille, and Ryall, of New Jersey, claiming to be Members in the room of Members commissioned by the governor of that State.

And so it was decided that the vote of Mr. Maxwell should not be counted.

It was then agreed that the question be taken by one vote on Messrs. Halstead, Stratton, and Yorke; and on the question the tellers reported 110 votes in the affirmative, 117 votes in the negative, and there was no disputed vote on either side. And so it was decided that the votes of Messrs. Halstead, Stratton, and Yorke should not be counted.

The next vote decided that the vote of Mr. Ingersoll, of Pennsylvania, should not be counted, and then it was decided that the votes of Messrs. Cooper, Kille, and Ryall, of New Jersey, should not be counted.

The Chairman then announced that from the votes thus taken and the decision thereby made the House had determined that the decision of the Chair that Mr. Naylor's vote could not be questioned, should be reversed, that Mr. Naylor's vote instead, Stratton, and Yorke should not be counted.

The next vote decided that the vote of Mr. Ingersoll, of Pennsylvania, should not be counted, and then it was decided that the votes of Messrs. Cooper, Kille, and Ryall, of New Jersey, should not be counted.

The Chairman then announced that from the votes thus taken and the decision thereby made the House had determined that the decision of the Chair that Mr. Naylor's vote could not be questioned, should be reversed, that Mr. Naylor's vote

on the motion made by Mr. Rhett, that the resolution of Mr. Wise do lie on the table, should be counted, and that therefore the motion of Mr. Rhett had been determined in the negative.

The question then recurred on agreeing to the resolution offered by Mr. Wise.

The previous question being moved, there were in favor of it 113 votes, against it 113 votes. The Chairman thereupon voted in favor of the previous question and it was ordered.

On agreeing to the resolution there were 115 yeas and 118 nays; and so the resolution moved by Mr. Wise was rejected.

Mr. Rhett then moved the following resolution:

Resolved, That the House will proceed to call the names of gentlemen whose rights to seats are not disputed or contested; and, after the names of such Members are called, and before the Speaker is elected, they shall, provided there be a quorum of such present, then hear and adjudge upon the elections, returns, or qualifications of all claimants, Mr. Naylor and Mr. Ingersoll excepted, to the seats contested on this floor.

This resolution being divided, the portion to and including the word "contested" was agreed to without a call of the roll. The second portion was then agreed to, yeas 138, nays 92.

On December 12 the roll was called in pursuance of this order, and at the conclusion of the roll call Mr. Randolph, of New Jersey, read in his place a paper purporting to be a protest, signed by the five gentlemen commissioned by the governor of New Jersey, against the course adopted by the House in relation to their claim to be Members of the House. This paper set forth—

That the determination of the State authorities, authenticated in the manner prescribed by the State laws, is the only evidence of the election of Members of the House of Representatives which can be received prior to the organization of the House, and is final and conclusive until reversed by the House itself, duly organized.

That no one who can not produce the evidence of his election, prescribed by the laws of his State, is entitled to take a seat in the House of Representatives; and no one who does produce such evidence can be excluded before an investigation by the House, without a gross violation of the Constitution of the United States and the rights of the States themselves.

That the House of Representatives can not be constitutionally organized, nor a quorum formed, until all the States of the Union have had an opportunity to appear by all their representatives; and that a constitutional quorum is not merely a majority of the Representatives elect after the arbitrary exclusion of other Members, on any pretext whatever, but a majority of all the Members from all the States, after each State has had an opportunity to appear by her Representatives, and to constitute a part of that quorum.

That the body here assembled, having no judicial powers, possessing no means for sending for persons and papers, not legally authorized to examine witnesses under oath, and expressly forbidden by law to go into the consideration of any business before the House is organized, and the oath to support the Constitution administered to its Members, can not exercise the highest judicial function belonging to the House of Representatives, that of reviewing and reversing the decisions of the State authorities in relation to their own elections; and that its only power is to require the persons appearing here as Members to produce the credentials prescribed by the laws of their respective States.

That, by the Constitution of the United States, each State has the power to prescribe by law the time, place, and manner of holding elections for its own Representatives in Congress, which power includes the right of prescribing the time, place, and manner of ascertaining and making known the result to Congress and the world.

Therefore the protestants held that the failure of the House to recognize their credentials was an outrage on the rights of their State and a violation of the Constitution of the United States.

Mr. Randolph moved that the protest be spread on the Journal, and on this question there appeared yeas 114, nays 117.

Mr. George C. Dromgoole, of Virginia, then submitted the following resolution:

Resolved, That a select committee, to consist of nine, be appointed, viva voce, by the Members of the House, to whom shall be referred all the papers in the possession of the Clerk relating to contests for seats on this floor from the State of New Jersey, and that they report thereon.

This resolution was agreed to, yeas 123, nays 104.

Mr. George W. Crabb, of Alabama, then moved to reconsider the vote, the point having been made that the first question was as to the returns and not as to the election. By general consent, then, the House reconsidered the vote.

Thereupon, Mr. Henry A. Wise, of Virginia, offered the following:

Resolved, That the credentials of the following Members: John B. Aycrigg, John P. B. Maxwell, William Halstead, Charles C. Stratton, and Thomas Jones Yorke, are sufficient to entitle them to take their seats in the House, leaving the question of contested election to be afterwards decided by the House.

The vote on this resolution was taken by yeas and nays, and there were yeas (the Chairman voting with the yeas) 117, nays 117. The House being equally divided, the question was lost.

A motion was then made by Mr. Smith, of Maine, that the House do come to the following resolution:

Resolved, That this House proceed at this time to the election of a Speaker.

Mr. Wise raised the question of order that it was not in order to proceed to the election of a Speaker, since by the terms of the resolution moved by Mr. Rhett the House had decided to proceed with the contested cases before the election of a Speaker.

The Chairman decided that, while the resolution moved by Mr. Rhett was in full force, the resolution proposed by Mr. Smith was still in order.

After an appeal, which was subsequently withdrawn, and several roll calls on incidental questions, the question was taken on Mr. Smith's resolution, and it was agreed to, yeas 118, nays 110.

Then followed several ineffectual attempts to settle the status of the five gentlemen having certificates from the governor of New Jersey as to the vote for Speaker. A resolution presented by Mr. John White, of Kentucky, that they were entitled to vote in the organization until excluded by a majority of uncontested votes was laid on the table, yeas 119, nays 115.

Finally, on December 14, the House proceeded viva voce to the election of a Speaker, and while the first vote was being taken Thomas Jones Yorke, John B. Aycrigg, William Halstead, John P. B. Maxwell, and Charles C. Stratton, commissioned by the governor of New Jersey as Members from that State, severally and respectively, rose in their places, exhibited their commissions, and demanded that their votes for Speaker be received; and each of them announced his vote for John Bell.

The vote was then reported by the tellers, but before the result was announced Mr. Wise inquired of the tellers if the votes of the New Jersey Members who had claimed to vote had been received.

The tellers answered the inquiry in the negative.

There was no choice on this vote, and the voting was continued until December 16, when, on the eleventh vote, Robert M. T. Hunter, of Virginia, had 119 votes, a majority, and was elected Speaker.

104. At the beginning of each session the House fixes by resolution the daily hour of meeting.—On December 6, 1859,¹ before the election of a Speaker, Mr. Sherrard Clemens, of Virginia, by unanimous consent, offered this resolution, which was agreed to:

Resolved, That the daily session of this House shall be at 12 o'clock meridian.

105. On December 4, 1855,² on the first day of the session, and when the House was about to adjourn after several unsuccessful trials to elect a Speaker, Mr. George W. Jones, of Tennessee, offered the following, which was agreed to:

Ordered, That the daily hour of meeting be fixed at 12 o'clock m. until otherwise ordered.

106. On December 3 1860,³ at the beginning of a second session, the House adopted an order fixing the hour of daily meeting, as was done at the first session.

107. On December 6, 1886,⁴ at the opening of the second session of the Congress, Mr. William S. Holman, of Indiana, offered and the House agreed to the resolution establishing the hour of meeting of the House at 12 o'clock noon.

108. On December 5, 1892,⁵ at the beginning of the second session, the House adopted the resolution fixing the hour of daily meeting until otherwise ordered.

109. On December 1, 1902,⁶ at the opening of the second session of the Congress, Mr. John Dalzell, of Pennsylvania, presented the following resolution, which was agreed to:

Resolved, That until otherwise ordered the hour of daily meeting of the House of Representatives shall be 12 o'clock meridian.⁷

110. In the early practice a motion to change the hour of daily meeting was made at any time, but as the order of business grew more rigid the motion lost its privilege.—It was the custom in the early days to agree to a resolution or order on the first day of a Congress fixing the "hour to which the House shall stand adjourned," and then on motion during the session as circumstances required the hour would be changed.⁸ In those days the necessity of making certain motions privileged had not been felt, and this motion, like most other motions, was offered when a gentleman got the floor.

¹ First session Thirty-sixth Congress, Journal, p. 14; Globe, p. 16.

² First session Thirty-fourth Congress, Journal, p. 18; Globe, p. 4.

³ Second session Thirty-sixth Congress, Journal, p. 8.

⁴ Second session Forty-ninth Congress, Journal, p. 10; Record, p. 14.

⁵ Second session Fifty-second Congress, Journal, p. 5.

⁶ Second session Fifty-seventh Congress, Journal, p. 6; Record, p. 4.

⁷ A similar resolution was agreed to in the Senate. Record, p. 1.

⁸ First session Sixteenth Congress, Journal, pp. 3, 364, 418 (Gales and Seaton ad.).

111. On March 28, 1834,¹ the following resolution was moved and agreed to, apparently without a motion for unanimous consent or to suspend the rules:

Resolved, That 11 o'clock a. m. shall be the hour to which this House shall stand adjourned until otherwise ordered.

112. On January 14, 1835,² Mr. Patrick H. Pope, of Kentucky, apparently by unanimous consent, submitted and the House agreed to a resolution changing the hour of daily meeting of the House from 12 to 11 o'clock a.m.

113. On March 15, 1836,³ Mr. John Bell, of Tennessee, asked unanimous consent for the consideration of a resolution changing the hour of the daily meeting of the House. Objection being made, he moved the suspension of the rules,⁴ and the rules being suspended for the purpose, the resolution was considered.

114. On June 9, 1846,⁵ Mr. Seaborn Jones, of Georgia, moved that when the House adjourns this day it adjourn to meet at 10 o'clock tomorrow morning.

Mr. Joseph R. Ingersoll, of Pennsylvania, raised the question of order that, as the hour for the meeting of the House was fixed by a standing order of the House, it was not in order to entertain a motion to change the same at any time except when resolutions were in order.⁶

The Speaker⁷ stated that, although the forty-seventh rule of the House provided that "a motion to fix the day to which the House shall adjourn shall always be in order," it did not follow that a motion to change the hour already fixed by the House was always in order; and he therefore sustained the question of order raised by Mr. Ingersoll and decided that the motion of Mr. Jones was not in order.

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

115. On January 8, 1845,⁸ Mr. Jacob Thompson, of Mississippi, moved the following resolution:

Resolved, That from and after this day the regular hour for the meeting of this House shall be 11 o'clock a.m.

While a motion to amend this resolution was pending, Mr. Isaac E. Holmes, of South Carolina, moved that the House adjourn.

¹First session Twenty-third Congress, Journal, p. 459.

²Second session Twenty-third Congress, Journal, p. 217; Debates, p. 988.

³First session Twenty-fourth Congress, Journal, p. 515; Debates, p. 2779.

⁴The resolution fixing the daily hour to which the House shall stand adjourned does not seem to have been considered in the light of one of the rules of the House. Thus, on May 3, 1828, a resolution to change the hour to 10 a.m. was moved and at once considered. But a motion to amend it by inserting a provision that it should not be in order to move an adjournment before 5 p.m. was ruled out, on the ground that it would be a change of rule, which could not be made except after one day's notice, the rules so providing. (First session Twentieth Congress, Journal, pp. 673, 674.) The House quite often changed the hour of its daily meeting. Thus on March 5, 1828. (First session Twentieth Congress, Journal, p. 379.)

⁵First session Twenty-ninth Congress, Journal, p. 933; Globe, p. 950.

⁶The rule providing for the introduction of resolutions has been changed since then.

⁷John W. Davis, of Indiana, Speaker,

⁸Second session Twenty-eighth Congress, Journal, p. 186; Globe, p. 113.

Mr. William J. Brown, of Indiana, moved that when the House adjourn to-day it adjourn to meet at 11 o'clock tomorrow.

Mr. John White, of Kentucky, raised the question of order that, although under the forty-eighth rule a motion to fix a different day from that to which the House would adjourn took precedence of a motion to adjourn, a motion to fix a different hour was not contemplated by the rule and did not take such precedence.

The Speaker¹ decided in favor of the question raised by Mr. White, and the House acquiesced in the decision.

116. The resolution of the House fixing the hour of daily meeting is a standing order rather than a rule.—On April 21, 1880,² Mr. John T. Harris, of Virginia, raised a question of order as to the following resolution, which he had offered as privileged:

Resolved, That on and after Wednesday next, until otherwise ordered, the hour of daily meeting of the House be 11 o'clock a.m.

Debate arising as to the nature of the resolution, the then existing rule was quoted as follows:

No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor, and no rule shall be suspended except by a vote of two-thirds of the Members present, etc.

The Speaker³ said, in relation to the resolution to change the hour of meeting:

The Chair thinks that this is an order of the House and not a rule. The latter part of the rule applies to a suspension of the rules by a two-thirds vote, but that part of the rule is not applicable as against an order in manner as provided for in first clause of the rule as read.

The Speaker therefore held that the resolution was included under the first classification, being an order of the House requiring one day's notice, and that the resolution was not before the House.

117. On April 21, 1884,⁴ Mr. William R. Morrison, of Illinois, claiming the floor for a privileged report, presented the following from the Committee on Ways and Means:

Resolved, That on and after April 22, 1884, the hour of daily meeting of the House for this session be 11 o'clock a.m.

Mr. John A. Kasson, of Iowa, asked if this was privileged.

The Speaker⁵ said:

The Chair will state that this is not a rule of the House which it is now proposed to change. The rules of the House do not fix the time of meeting, but the House by resolution at the beginning of the session provided that the daily session should begin at 12 o'clock until otherwise ordered.

118. The Senate having assembled and there being no presiding officer, by mutual consent one of the older Members took the chair.

¹John W. Jones, of Virginia, Speaker.

²Second session Forty-sixth Congress, Journal, p. 2612.

³Samuel J. Randall, of Pennsylvania, Speaker.

⁴First session Forty-eighth Congress, Record, p. 3184.

⁵John G. Carlisle, of Kentucky, Speaker.

The Senate, following the act of 1789, declined to administer the oath to Members-elect until it had chosen a President pro tempore, although a precedent for the proposed action was cited.

Argument that the law of 1789 as to organization of House and Senate by administration of the oath to Members-elect is directory merely.

On Monday, October 10, 1881,¹ the Senate assembled in special session, convened by proclamation of the President, who as vice-President had succeeded to the Presidency on the death of President Garfield, on September 19. When the Senate had met on March 4, 1881, it had been evenly divided politically, its committees having been organized by the casting vote of the Vice-President. No President pro tempore had been chosen; therefore when the Senate met this day there was no presiding officer.

Mr. Isham. G. Harris, of Tennessee, rising after the prayer of the Chaplain, stated that he had been requested by a number of Senators on both sides of the Chamber to call the Senate to order. He stated that if there was no objection he would do so, in order that they might proceed with business. There being no objection, Mr. Harris took the chair.

The proclamation of the President was then read.

Thereupon Mr. George H. Pendleton, of Ohio, offered a resolution that Thomas F. Bayard, of Delaware, be chosen President pro tempore.

Mr. George F. Edmunds, of Vermont, here presented the credentials of Messrs. Warner Miller and E. G. Lapham as Senators-elect from the State of New York, vice Messrs. Roscoe Conkling and Thomas C. Platt, resigned; and Mr. Nelson W. Aldrich, of Rhode Island, vice Ambrose E. Burnside, deceased. Mr. Edmunds declared that under the seventh rule of the Senate the presentation of credentials was always in order except during certain business such as reading of the Journal, etc.

The credentials having been presented, Mr. Edmunds moved that the oath be administered to them by Mr. Henry B. Anthony, the oldest member of the Senate in continuous service.

On motion of Mr. Pendleton, this motion was laid on the table—yeas, 36 nays 34.

Thereupon Mr. Edmunds moved as a substitute for the resolution of Mr. Pendleton a proposition that the credentials be placed on file, and that the oath be administered to the Senators-elect by Hon. Henry B. Anthony.

Mr. Edmunds said he had heard it stated that—

the law of Congress requires that the oath of office of a Senator-elect should be administered by the President of the Senate, either the Vice-President, the Constitutional President of the Senate, or the President pro tempore acting in his absence, and that this law is an exclusive law, by implication forbidding any other administration of such an oath, and hence that it is impossible legally to admit these gentlemen until there shall be a President pro tempore who can fulfill the statute and administer the oath.

Mr. Edmunds thereupon called attention to the fact that the act of 1789 was passed by a Senate and signed by a President pro temporal not one of whom had taken the oath prescribed by the Constitution.

¹Special session of Senate, Forty-seventh Congress, Record, p. 505.

Therefore Mr. Edmunds argued that

this body as well as every other parliamentary body is entitled, when the just exigency of the case arises, to receive members who otherwise are a part of it, and to act, if there be no means of acting otherwise, on the very first question as well as the last one that may be presented to the body, without taking an oath at all.

Mr. Edmunds then referred to the Senate precedent of March 4, 1853, in a similar case, when it was ordered that “the oath required by the Constitution be administered” by Hon. Lewis Cass, the oldest member of the Senate. After that had been done, a President pro tempore was elected. Mr. Edmunds argued that the Senators of 1853 viewed the act of 1789 as a

directory provision for the convenient and orderly administration of the Government, which the two Houses of Congress were expected to follow, unless the absence of the convenient means of following it would put them back upon their own inherent powers. I need not tell my honorable friend from Ohio, and I need not read to him the authority to show it, that by the ancient constitution of 211 parliamentary bodies the power to administer oaths respecting their own proceedings (I limit it to that, of course) is inherent, and part of their power and existence as a body.

Mr. Augustus H. Garland, of Arkansas, admitted that by unanimous consent the course urged by Mr. Edmunds might be followed; but the law of 1789 and Rule 63 of the Senate that the oath “required by the Constitution and prescribed by the act of June 1, 1789, shall be taken in open Senate,” etc., constituted a rule which the Senate should follow, and the act of 1789 required that the “President of the Senate for the time being” should administer the oath.

Mr. Edmunds’s amendment was rejected—yeas 33 nays 34—and a President pro tempore was elected before the oath was administered.¹

119. Form and history of the rule for the drawing of seats by Members (Rule XXXII, secs. 1 and 2).—The drawing of seats by the Members is provided for by the rule of the House No. 32:

1. At the commencement of each Congress, immediately after the Members and Delegates are sworn in, the Clerk shall place in a box, prepared for that purpose, a number of small balls, of marble or other material, equal to the number of Members and Delegates, which balls shall be consecutively numbered and thoroughly intermingled, and at such hour as shall be fixed by the House for that purpose, by the hands of a page, draw said balls one by one from the box and announce the number as it is drawn, upon which announcement the Member or Delegate whose name on a numbered alphabetical list shall correspond with the number on the ball shall advance and choose his seat for the term for which he is elected.

2. Before said drawing shall commence each seat shall be vacated and so remain until selected under this rule, and any seat having been selected shall be deemed forfeited if left unoccupied before the call of the roll is finished, and whenever the seats of Members and Delegates shall have been drawn no proposition for a second drawing shall be in order during that Congress.

In the early years of the House seats were evidently selected by Members in accordance with a system of mutual agreement. On February 16, 1826,² Mr. Robert Taylor, of Virginia, proposed a rule that the seats be numbered, and that on the first or second day of each session Members should select their seats by drawing pieces of paper bearing those numbers. This proposition was laid on the

¹ Special session Forty-seventh Congress, Record, pp. 505–509.

² First session Nineteenth Congress, Journal, pp. 263, 265.

table. On July 2, 1838,¹ the House agreed to a resolution that in the new arrangement of the Hall which was to be made the Members should be entitled, as nearly as possible, to the same relative positions which they then held. A proposition by Mr. Horace Everett, of Vermont, that seats be drawn by lot was not considered seriously. On June 1, 1841,² an effort was made to establish a permanent rule providing for drawing of seats by lot. It was urged that Members living near the seat of Government obtained an undue advantage of others by making early choices. The rule was not adopted. On December 8, 1841,³ the House was called on to decide which of two Members was entitled to a certain seat, one Member having attempted to transfer it to another. Finally, on December 1, 1845,⁴ Mr. Howell Cobb, of Georgia, proposed to remedy the unfairness of the old method of selection by having a drawing by lot. This was agreed to, and on December 4, seats were drawn for the first time.

From 1845 until 1880 seats were drawn in accordance with a resolution adopted on each occasion. At the time of the revision of 1880 the Committee on Rules reported a plan for having the names of Members written on slips of paper, which were to be drawn from a box by the Clerk. But Mr. Walter L. Steele, of North Carolina, having recited an instance in the House where such a plan had not proved satisfactory, offered as an amendment the present form of section 1.⁵ The amendment was adopted.

Section 2 is in the form reported in the revision of the Forty-sixth Congress.⁶ It was in form a new rule, although a portion of it comes from Rule 163 of the old rules of the House, which provided:

Whenever the seats of Members shall have been drawn, no proposition shall be in order for a second drawing during the same Congress.

This restriction dates from February 8, 1872,⁷ when it was proposed by Mr. Samuel S. Cox, of New York, to prevent obstruction of the public business by the presentation of resolutions for new drawings of seats.⁸

120. At the time of the organization of the House the motion relating to the drawing of seats is privileged.—On December 5, 1856,⁹ a resolution for the drawing of seats at the beginning of a session was offered and admitted as a question of privilege.

¹ Second session Twenty-fifth Congress, Journal, p. 1207; Globe, p. 489.

² First session Twenty-seventh Congress, Journal, pp. 20, 21, 34; Globe, pp. 9, 10.

³ Second session Twenty-seventh Congress, Journal, pp. 27, 28; Globe, p. 9.

⁴ First session Twenty-ninth Congress, Journal, pp. 13, 55; Globe, p. 4.

⁵ See Congressional Record, second session Forty-sixth Congress, p. 1204.

⁶ Congressional Record, second session Forty-sixth Congress, p. 207.

⁷ Congressional Globe, second session Forty-second Congress, pp. 831, 904.

⁸ Speaking in the House on March 3, 1880 (second session Forty-sixth Congress, Record, p. 1283), Mr. Alexander H. Stephens, of Georgia, indicated that the Members of the Whig party used to select seats in the portion of the Hall to the left of the Speaker, where members of the Republican party now sit, while Members of the Democratic party then as now selected seats on the side to the right of the Speaker. Members of third parties usually sit with the minority.

⁹ Third session Thirty-fourth Congress, Journal, p. 59.

121. Precedents as to drawing of seats where a large portion of the majority is to be accommodated on the minority side of the main aisle.— On December 4, 1905,¹ at the organization of the House, a question arose as to the selection of seats, and Mr. James A. Tawney, of Minnesota, asked and received unanimous consent for agreement to the following:

That in selecting seats the precedents of the Fifty-second and Fifty-fourth Congresses be followed whereby the section of seats next to the main aisle on the minority side were given to the majority side, leaving any further excess of majority Members to be accommodated in the seats on the extreme left of the minority side.

Mr. Tawney in debate referred to the precedents in the Fifty-second² and Fifty-fourth³ Congresses.

122. Before an organization of the House has been effected the Senate has not usually proceeded to general legislation.

In the earlier practice of the House the Senate was notified of the election of Speaker, but not of that of other officers.

In 1839⁴ the House met in the first session on December 2, but the organization was not completed until December 21. On that day, the Speaker having been elected, the rules adopted, and the Clerk and Sergeant-at-Arms elected—which steps occurred in the order enumerated—a message was sent to the Senate informing that body that a quorum of the House had assembled, that Robert M. T. Hunter, of Virginia, had been elected Speaker, and that it was now ready to proceed to business.⁵ The Doorkeeper and Postmaster were not elected until the day after this message was sent.

On December 23 a message was received from the Senate informing the House that the Senate, on December 2, formed a quorum, and was ready to proceed to business. The message also communicated a resolution adopted by the Senate for appointing the customary joint committee to await upon the President and inform him that the two Houses were ready to receive any communication from him. The House at once concurred in this.

The Senate had adopted these resolutions on December 2. On the 4th Mr. Thomas H. Benton said that he understood that, as the other branch was not organized, it would not be proper to transact legislative business, yet he thought some resolutions of inquiry might be adopted in order to obtain a basis for future action. But, on the succeeding day, doubts as to the propriety of this being raised, Mr. Benton decided not to proceed.

On December 9 a resolution was adopted to inform the President that a quorum of the Senate had assembled, and that they were ready to receive any communication of an executive character which he might make.

Thereafter, until the organization of the House and the receipt of the President's message, the Senate transacted no business but executive business, not even bills

¹ First session Fifty-ninth Congress, Record, pp. 43, 44.

² First session Fifty-second Congress, Record, pp. 9, 10.

³ First session Fifty-fourth Congress, Record, p. 6.

⁴ First session Twenty-sixth Congress, Journal, pp. 79, 95–101; Globe, pp. 1–78.

⁵ It was not then the custom to transmit to the Senate information as to the election of other officers than the Speaker.

being introduced. Of course the election of its officers and appointment of its committees occurred.

123. In the Thirty-first Congress the organization of the House was delayed for twenty days by the failure to elect a Speaker. During this time the Senate did no general legislative business. On December 11, 1849,¹ while the House was still unorganized, Senator Joseph R. Underwood, of Kentucky, gave notice of his intention to introduce a bill.

A question being raised, and the opinion of the Vice-President² being asked, he said that the impression of the Chair was that no proceeding connected with legislative business could be had until both Houses were organized. As notice of the introduction of a bill was a necessary antecedent step to the introduction of a bill, and one which related to the business of legislation, in the opinion of the Chair it was not now in order to give such notice.

On December 15 the Senate adopted a resolution appointing a committee to wait on the President and inform him that the Senate was organized and ready to receive any communication he might think proper "in relation to matters which are within the sphere of their separate constitutional action." Mr. Henry Clay approved this, saying that it was in accordance to precedent, and did not seem wanting in courtesy to the other body.

124. In the session of 1855–56,³ while the House was unable to organize because the election of a speaker was not effected until February, the Senate did not proceed to legislation, but on December 4 notified the President that it was ready for communications of an executive character; on December 31⁴ received the annual message of the President of the United States; organized its committees, etc.

125. On January 18 and 19, 1860,⁵ while the House was endeavoring to elect a Speaker, the Senate debated at length whether or not it might proceed to general legislative business, it being contended on the one hand that the Congress consisted of an organized Senate and an organized House, and that while one remained unorganized there was no Congress. On the other hand, it was contended that the Senate might proceed with business. A proposition declaring that the Senate might not proceed to legislative business until the House should be organized was laid on the table, and then, by a vote of 45 yeas to 7 nays, the Senate voted to allow a bill to be referred to a committee. During the discussion the constitutional questions and the precedents were examined carefully.

126. At the beginning of a second session of a Congress the House proceeded to business, although a quorum had not appeared in the Senate.

A message from one House that a quorum has appeared is not delivered in the other until a quorum has appeared there also.

On November 4, 1794,⁶ at the second day's session of the second session of the

¹ First session Thirty-first Congress, Globe, pp. 15, 35, 36.

² Millard Fillmore, of New York, Vice-President.

³ First session Thirty-fourth Congress, Globe, p. 4.

⁴ Globe, p. 107.

⁵ First session Thirty-sixth Congress, Globe, pp. 494, 517.

⁶ Second session Third Congress, Annals, p. 870.

Third Congress, a quorum appeared, and a message announcing that fact was sent to the Senate.

On November 5 Mr. Jonathan Dayton, of New Jersey, said he saw no reason for awaiting the attendance of a quorum in the Senate, and submitted a motion for the appointment of a committee to examine unfinished business.

Mr. Benjamin Goodhue, of Massachusetts, objected to the motion as improper, but the Speaker¹ put the question on Mr. Dayton's motion.

The House thereafter proceeded to business, no quorum of the Senate appearing until November 18,¹ when the joint committee was authorized and appointed to notify the President that a quorum of the two Houses had assembled.

The Journal indicates that no message was sent to the Senate until the quorum had appeared, excepting the message of November 4. That message was not delivered in the Senate until the quorum had appeared, on November 18.²

¹ Annals, pp. 787, 890; Journal, pp. 232, 233 (Gales and Seaton ed.).

² Senate Journal, p. 120 (Gales and Seaton ed.).