Chapter LI.

POWER TO PUNISH FOR CONTEMPT.

1597. Discussion by Jefferson as to the inherent power of the House to punish for contempts without prior sanction of law.—Thomas Jefferson, in his Manual written for the use of the Senate and in 1837 adopted as a guide for the House in all cases not provided for by its rules and orders, has the following in his discussion of the subject of privilege:

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise: In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney for attempting to corrupt the integrity of certain Members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight, and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted a challenge given to a Member of their House to be a breach of the privileges of the House;[1] but satisfactory apologies and acknowledgments being made, no further proceeding was had. The editor of the Aurora having, in his paper of February 19,1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order it was insisted in support of it that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State legislatures exercise the same power, and every court does the same; that if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers

[1] See sections 2677–2687 of Volume III of this work.

of our peace and proceedings. To this it was answered that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State legislatures have equal authority because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them directly exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own Members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, e. g., for the punishment of contempts, of affrays or tumult in their presence, etc., but, till the law be made, it does not exist, and does not exist from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him (3 Grey, 59, 147, 255), is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the Member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact; if the offense is to be kept undefined and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. Which of these doctrines is to prevail time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make and at the same time apply the law is open to question and consideration, as are all new laws. Perhaps Congress in the meantime, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang, up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

1598. It was found inexpedient to define the offense of contempt of the House by law and provide a punishment.—On February 13, 1837,[1] Mr. Andrew Beaumont, of Pennsylvania, moved the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of bringing in a bill defining the offense of a contempt of this House, and to provide for the punishment thereof.

After debate a motion was made that the resolution lie on the table, and was decided in the negative. Then, after further debate, the resolution was disagreed to.

1599. The contempt cases of Randall and Whitney in 1795.

On the evidence of Members who in their places gave information of attempts to bribe them, the House issued an order for the arrest of the person charged with the offense.

Arrests are made by the Sergeant-at-Arms on authority of a warrant duly signed, attested, and sealed; and on performing the duty that officer makes return on the warrant.

[1] Second session Twenty-fourth Congress, Journal, p. 386; Debates, p. 1755.

On December 28, 1795,[1] information being given to the House by the following Members in their places, to wit, William Smith (South Carolina), William V. Murray (Maryland), and William B. Giles (Virginia), that a person of the name of Robert Randall had made or communicated to them, respectively, certain overtures to obtain their several support in this House to a memorial intended to be presented by the said Robert Randall, on behalf of himself and others, for the grant of a tract of land containing 18,000,000 or 20,000,000 acres, bordering on Lakes Erie, Michigan, and Huron, and lying within the limits of the United States; for which support the said Members, respectively, were promised to receive of the said Robert Randall and his associates a consideration or emoluments in lands or money; and this House, regarding the said information as sufficient evidence of a contempt to, and breach of the privileges of, this House, in an unwarrantable attempt to corrupt the integrity of its Members, it was—

Resolved, That Mr. Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of the said Robert Randall, and the same in his custody to keep, subject to the further order and direction of the House.

A warrant, pursuant to this resolution, was accordingly prepared, signed by Mr. Speaker, under his seal, attested by the Clerk and delivered to the Sergeant-at-Arms, with order forthwith to execute the same and make due return thereof to the House.

Information being also given to the House, by Mr. Daniel Buck, one of the Members from Vermont, of an application to him by a person of the name of Charles Whitney, by which there was good reason to believe that the said Whitney was a partner and associate of the before-named Randall, etc., so action was taken against Whitney similar to that already taken against Randall, although at first there was hesitation because it was reported that Whitney was already in custody of a magistrate.

On December 29[2] the Sergeant-at Arms made a return on the warrants, that he had executed the same on the bodies of Robert Randall and Charles Whitney, who were taken into custody on the preceding day, and were held subject to the further direction of the House.

1600. The contempt cases of Randall and Whitney, continued.

In 1795 proceedings against persons in contempt were taken in accordance with recommendations by a select committee on privileges.

Form of arraignment of Randall and Whitney in 1795.

Instance wherein the House amended its charges against a person already arraigned for contempt.

Thereupon the House authorized the appointment of a Committee of Privileges to report "a mode of proceeding," and Messrs. Abraham Baldwin, of Georgia; William Smith, of South Carolina; William B. Giles, of Virginia; William V. Murray, of Maryland; Edward Livingston, of New York; Joshua Coit, of Connecticut, and Benjamin Goodhue, of Massachusetts, were appointed.

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[1] First session Fourth Congress, Journal, pp. 389; Annals, pp. 166–170; American State Papers (miscel.), Vol. I, p. 125.

[2] Journal, p. 391; Anna, p. 169.

This committee on the same day [1] reported the following resolution, which was agreed to:

Resolved, That the said Robert Randall and Charles Whitney be brought to the bar of the House and interrogated by the Speaker touching the information given against them, on written interrogatories, which with the answers thereto shall be entered on the minutes of the House. And that every question proposed by a Member be reduced to writing and a motion made that the same be put by the Speaker. That, after such interrogatories are answered, if the House deem it necessary to make any further inquiry on the subject, the same be conducted by a committee to be appointed for that purpose.

The said Robert Randall was accordingly brought to the bar of the House in custody of the Sergeant-at-Arms; and the charge against him being read, he was interrogated by Mr. Speaker—

whether he did admit or deny the truth of the said charge.

to which interrogatory he answered that he was not prepared to admit or deny the same, but requested that time might be allowed him to answer, and offer a vindication of his conduct, until the day after tomorrow.

Whereupon it was

Ordered, That the said Robert Randall do now withdraw in custody, until the House shall presently decide on his request.

The said Robert Randall accordingly withdrew in custody; and after debate the House decided that he be allowed until 12 o'clock tomorrow to make answer.

The House also resolved

That it be an addition to the charge against the said Robert Randall "that he informed a Member of this House that a number of the Members of this House, not less than thirty, had engaged or were engaged to support his memorial and application, or words to that effect."

The said Robert Randall was then returned to the bar in custody and notified by Mr. Speaker of the indulgence and further proceeding of the House respecting him; after which it was

Ordered, That he be detained in custody of the Sergeant-at-Arms and brought again to the bar at 12 o'clock tomorrow.

Charles Whitney was then brought to the bar in custody, the charges against him read, and thereupon he was interrogated by the Speaker.[2] The Speaker seems to have asked the questions according to his own judgment, none being suggested by Members. In response to one question the respondent denied that he had offered any improper inducements to Mr. Buck at his house in Vermont.

Thereupon Mr. Buck informed the House that the respondent had offered him land and money.

On motion it was then

Ordered, That the respondent withdraw in custody, that the proceedings respecting him be adjourned until tomorrow at 12 o'clock, and that he be kept in custody separate and apart from Robert Randall.

1601. The contempt cases of Randall and Whitney, continued.

The House permitted a person arraigned for contempt in 1795 to be represented before the House by counsel.

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[1] Journal, p. 392.

[2] Journal, pp. 392, 393; Annals, p. 177.

On December 30[1] a petition of Robert Randall was presented and read praying that he might be indulged with the assistance of counsel, and a reasonable time to prepare for his defense.

Considerable debate arose as to the propriety of permitting counsel, and also as to whether or not the examination should be by a select committee or before the House. It was urged that these proceedings were peculiar, not analogous to process in the courts, where the Constitution provided for counsel and trial by jury. This process was justified by the inherent power of the House to take measures for its own preservation; and there was no obligation to permit counsel, although it might be done as a matter of favor.

The House decided that Randall's petition should be granted. He was then brought to the bar in custody, and it being demanded of him by Mr. Speaker "what further time he required to prepare for his defense?" he answered "until Friday next."

The House then ordered that he have the time asked, and in the meantime be remanded to custody.

The Speaker then laid before the House a document which had been given up by Charles Whitney to the Sergeant-at-Arms, and which purported to be an agreement relating to the land scheme, from which the proceedings had arisen. The document was read and laid on the table.

Charles Whitney was then brought in under custody, and the further information against him, given by Mr. Buck on the preceding day, being read to him, he was interrogated by the Speaker "whether he did admit or deny the same?"

To which he answered that he did wholly deny the same.

Thereupon he was remanded to custody.

1602. The contempt cases of Randall and Whitney, continued.

A person being on trial for contempt, both the information given by Members and their testimony were required to be under oath.

In 1795 the House decided to hear the case of a person arrested for contempt at the bar rather than by a select committee.

In 1795 the House introduced a district judge to administer oaths to witnesses in a contempt case heard at the bar of the House.

Method of examining witnesses through the Speaker in a contempt case tried at the bar of the House in 1795.

In a contempt case tried at the bar of the House the prisoner and counsel withdrew during deliberations of the House.

Then, as to whether or not the examination should be by select committee or before the House debate arose, it being urged that the dignity of the House demanded an open inquiry rather than secret proceedings before a select committee. The matter was referred to the Committee on Privileges.

On December 31[2] the Committee on Privileges submitted their report. This report included several provisions that were the subject of debate. It was urged that the information to be given by Members in writing over their signatures should also be sworn to; but the argument was made that this was a proceeding by privilege, not by law, and that the word of the Member was sufficient. On the other hand, it

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[1] Journal, p. 393; Annals, p. 179.

[2] Annals, pp. 185–195.

was argued that no citizen should be punished without the solemnity of an oath, and that where the offense was not committed in the presence of the House it was proper for the information to be on oath. Another question arose as to the proposed introduction of the district judge to administer oaths. It was urged that this would be an encroachment on the privileges of the House; but the House declined to take this view. And finally a contention arose as to whether or not an oath should be required of Members who should testify as well as of the witnesses for the accused. The Committee on Privileges had reported in favor of requiring an oath of the latter only, and it was argued in support of this that the oath taken by a Member when he took his seat was sufficient. On the other hand, it was urged that the trial should proceed as in the courts. The House decided to amend the report in this respect.

On January 1[1] the report was adopted in form as follows:

That the proper mode of conducting the further inquiry and the trial in the case of Robert Randall and Charles Whitney will be to proceed, first, with a further hearing of Robert Randall at the bar of the House.

That the information that has been given against the said Robert Randall and Charles Whitney be reduced to writing and signed by the informants themselves, respectively, and entered at large on the Journal. That the said information be read to the prisoners, and that they be called upon by the Speaker to declare what they have to say in their defense.

That if the said prisoners shall offer any parole evidence in their exculpation the same shall be heard at the bar of the House, excepting the Members of the House, who may give their testimony on oath in their places; and no question shall be put to any Member on the part of the prisoner by way of cross-examination, except leave be first given by the House, and every such question shall be put by the Speaker; and that the judge of the district of Pennsylvania be requested to attend for the purpose of administering an oath or affirmation to all witnesses. That all questions on the part of the House to be asked of the said witnesses shall be put by the Speaker.

That in every debate the prisoners and their counsel shall be directed to withdraw; and that when they shall have concluded their defense and are withdrawn, the sense of the House shall be taken on the guilt or innocence of the prisoners, respectively.

January 4[2] the Members delivered at the Clerk's table their several informations showing attempts to corrupt them at the seat of Government. Then Robert Randall was arraigned, being attended by counsel, Messrs. Lewis and Tilghman; and the informations were read to him.

It was then demanded of him by Mr. Speaker: "What have you to say in your defense?" To which he answered that he was "not guilty."

In response to further demand by the Speaker, he said he had no witness whom he wished examined.

His counsel asked, however, that the informations delivered against him might be attested by oaths of the informant Members, and that he be permitted to examine them under oath.

The prisoner and counsel having retired, after debate the House adopted the following:

Resolved, That the prisoner be informed that if he has any questions to propose to the informants or other Members of the House he is at liberty to put them in the mode already prescribed; that the said informant Members be sworn to the declaration just read, and also to answer such questions as shall be asked of them touching the same.

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[1] Journal, p. 395 , Annals, p. 194.

[2] Journal, p. 397.

Oaths were then administered by the district judge.

Various Members of the House were questioned on behalf of the respondent in the manner prescribed in the resolution of the House.

1603. The contempt cases of Randall and Whitney, continued.

For contempt in attempting to bribe its Members the House committed Robert Randall in 1795.

The House, in 1795, declined to take action that would seem to imply a definition of its privileges.

Is an attempt to bribe a Member at a place other than the seat of government, and before he has taken his seat, a breach of privilege?

On January 5[1] counsel for the respondent made an argument and on the next day[2] the House proceeded to a final decision. The following resolution was proposed, but set aside:

Resolved, That the said Robert Randall has thereby committed a high contempt of this House and a breach of privilege.

It was then voted by yeas and nays, 78 to 17, as follows:

Resolved, That it appears to this House that Robert Randall has been guilty of a contempt to, and a breach of the privileges of, this House by attempting to corrupt the integrity of its Members in the manner laid to his charge.

Resolved, That the said Robert Randall be brought to the bar, reprimanded by the Speaker, and committed to the custody of the Sergeant-at-Arms until further order of this House.

January 7[3] the case of Whitney was taken up. His case was distinguished from that of Randall by the fact that he had attempted to corrupt a Member-elect before he had taken his seat and away from the seat of government. Various propositions were made to declare the case not one of privilege, because of one or both of these reasons; but objection was made to a definition of privilege, and finally, by a vote of yeas 52 to nays 30, a simple resolution discharging Whitney from custody was agreed to.

On January 12[4] Randall petitioned that he be released from imprisonment and on January 13 the House adopted a resolution that he be discharged from the custody of the Sergeant-at-Arms.

1604. William Duane, for a publication tending to defame the Senate, was found guilty of contempt and imprisoned by order of that body.

The Senate requested the Executive to prosecute William Duane for defamation of the Senate.

Form of proceedings at the trial of William Duane at the bar of the Senate.

A person on trial at the bar of the Senate was to be present at the arraignment and examination but to retire during the deliberations.

William Duane, on trial at the bar of the Senate for contempt, was allowed counsel under certain conditions.

Form of warrant signed by the President of the Senate for taking William Duane into custody.

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[1] Annals, p. 212.

[2] Journal, p. 405; Annals, pp. 218–220.

[3] Journal, p. 407; Annals, pp. 222–229.

[4] Journal, p. 414.

On Much 8, 1800,[1] after a debate that had began on February 26, and after the discussion and rejection of several propositions, the Senate agreed to the following by a vote of 19 yeas to 8 nays:

Resolved, That the Committee on Privileges be, and they are hereby, directed to consider and report what measures it will be proper for the Senate to adopt in relation to a publication in the newspaper printed in the city of Philadelphia on Wednesday morning, the 19th of February, 1800, called the General Advertiser, or Aurora, in which it is asserted that the bill prescribing the mode of deciding disputed elections of President and Vice-President of the United States had passed the Senate, when, in fact, it had not passed; in which it is also asserted that the Hon. Mr. Pinckney, a Senator from the State of South Carolina, and a member of the committee, who brought before the Senate the bill aforesaid, had never been consulted on the subject, whereas, in fact, he was present at each meeting of the committee; and generally to report what measures ought to be adopted in relation to sundry expressions contained in said paper respecting the Senate of the United States, and the members thereof, in their official capacity.

On March 18[3] the committee submitted the following report, which, as agreed to on March 19 and 20, contains a statement of the entire case:

Whereas on the 19th of February, now last past, the Senate of the United States being in session in the city of Philadelphia, the following publication was made in the newspaper, printed in the said city of Philadelphia, called the General Advertiser, or Aurora, viz:

"In our paper of the 27th ultimo we noticed the introduction of a measure into the Senate of the United States, by Mr. Ross, calculated to influence and affect the approaching Presidential election, and to frustrate, in a particular manner, the wishes and interests of the people of the Commonwealth of Pennsylvania.

"We this day lay before the public a copy of that bill as it has passed the Senate.

"Some curious facts are connected with this measure, and the people of the Union at large are intermediately, and the people of this State immediately, interested to consider the movements, the mode of operation, and the effects.

"We noticed a few days ago the caucuses (or secret consultations) held in the Senate Chamber. An attempt was made in an evening paper to give a counteraction (for these people are admirable at the system of intrigue) to the development of the Aurora, and to call those meetings jacobinical; we must cordially assent to the jacobinism of those meetings—they were in the perfect spirit of a jacobinical conclave.

"The plain facts we stated are, however, unquestionable; but we have additional information to give on the subject of those meetings. We stated that intrigues for the Presidential election were among the objects. We now state it as a fact that can not be disputed upon fair ground, that the bill we this day present was discussed in the caucus on Wednesday evening last.

"It is worthy of remark how this bill grew into existence.

"The opponents of independence and republican government who supported Mr. Ross in the contest against Mr. McKean are well known by the indecency, the slander, and the falsehood of the measures they pursued—and it is well known they are all devoted to the Federal party, which we dissected on Monday. Mr. Ross proposed this bill in the Federal Senate (how consistently with the decency of his friends will be seen), a committee of five was appointed to prepare a bill on the subject; on this committee Mr. Pinckney, of South Carolina, was appointed. On Thursday morning last (the caucus held the preceding evening) Mr. Ross informed Mr. Pinckney that the committee had drawn up a bill on the subject, when in fact Mr. Pinckney had never been consulted on the subject, though a member of the committee. The bill was introduced and passed as below.

"On this occasion it may not be impertinent to introduce an anecdote which will illustrate the nature of the caucuses, and show that our popular Government may, in the hands of a faction, be as completely abused, as the French constitution has been, by the self-created consuls:

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[1] First session Sixth Congress, Senate Journal, p. 45. (Gales & Seaton ed.)

[2] This debate is reported at length in vol. 6 of Annals, pp. 66–106.

[3] Senate Journal, pp. 51–54; Annals, pp. 111–115.

"In the summer session of 1798, when Federal thunder and violence were belched from the pestiferous lungs of more than one despotic minion, a caucus was held at the house of Mr. Bingham, in this city. It was composed of Members of the Senate, and there were present seventeen Members. The Senate consisting of thirty-two Members, this number was of course a majority, and the session was a full one.

"Prior to deliberation on the measures of war, navy, army, democratic proscription, etc., it was proposed and agreed to that all the Members present should solemnly pledge themselves to act firmly upon the measures to be agreed to by the majority of the persons present at the caucus.

"The measures were perfectly in the high tone of that extraordinary session. But upon a division of the caucus it was found that they were divided nine against eight. This majority, however, held the minority to their engagement, and the whole seventeen voted in the Senate upon all the measures discussed at the caucus.

"Thus it is seen that a secret self-appointed meeting of seventeen persons dictated laws to the United States; and, not only that, nine of that seventeen had the full command and power over the consciences and votes of the other eight, but that nine possessed, by the turpitude of the eight, actually all the power which the Constitution declares shall be vested in the majority only. In other words, a minority of nine Members of the Senate ruled the other twenty-three Members.

"It is easily conceivable, as in the recent changes in France, that the spirit of caucusing may be conducted in progression down to two or three persons; thus three leading characters may agree to act upon measures approved by any two of them, these three may add two others, and they would be a majority of five; and those adding four others would be a majority of nine; and this nine possess all the power of a majority of twenty-three.

"Yet such is the way we are treated—by those who call themselves Federalists.

"The following bill is an offspring of this spirit of faction secretly working, and it will be found to be in perfect accord with the outrageous proceedings of the same party in our State legislature who are bent on depriving this State of its share in an election that may involve the fate of the country and posterity."

Resolved, That the said publication contains assertions and pretended information respecting the Senate and the committee of the Senate, and their proceedings, which are false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication is a high breach of the privileges of this House.

Resolved, That William Duane, now residing in the city of Philadelphia, the editor of the said newspaper called the General Advertiser, or Aurora, be, and he is hereby, ordered to attend at the bar of this House, on Monday, the 24th of March, instant, at 12 o'clock, at which time he will have opportunity to make any proper defense for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions and pretended information; and the Senate will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the Secretary of the Senate of the United States, and attested as a true copy by James Mather, Sergeant-at-Arms for the said Senate, and left by the said Sergeant-at-Arms with the said William Duane, or at the office of the Aurora, on or before the 22d day of March, instant, shall be deemed sufficient notice for the said Duane to attend in obedience to this resolution.

On March 22,[1] the Committee on Privileges reported the following form of proceeding:

When William Duane shall present himself at the bar of the House, in obedience to the order of the 20th instant, the President of the Senate is to address him as follows:

First. William Duane:

You stand charged by the Senate of the United States, as editor of the newspaper called the General Advertiser, or Aurora, of having published in the same, on the 19th of February now last past, false, scandalous, defamatory and malicious assertions and pretended information respecting the Senate and the committee of the Senate and their proceedings, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States, and therein to have been guilty of a high breach of the privileges of this House.

[1] Senate Journal p. 55; Annals, p. 117.

Then the Secretary shall read the resolutions of the Senate, passed the 20th instant, and with the preamble; after which the President is to proceed as follows, viz:

First. Have you anything to say in excuse or extenuation for said publication?

Secondly. If he shall make no answer the Sergeant-at-Arms shall take him into custody, and retiring with him from the Senate Chamber until the Senate shall be ready for a decision, at which time the Sergeant-at-Arms shall again set him at the bar of the House and the President of the Senate is to pronounce to him the decision.

Thirdly. If he shall answer, he is to continue at the bar of the House until the testimony (if any be adduced) shall be closed and then he shall retire while the Senate are deliberating on the case; and when a decision is agreed upon, the said Duane, being notified of the time by the Sergeant-at-Arms verbally, or by a written notice left at his office, shall appear at the bar of the House, and the President of the Senate is to pronounce to him the decision.

On March 24,[1] Duane appeared at the bar of the Senate, and, the charges against him having been read, requested that he be allowed the assistance of counsel.

Thereupon he was ordered to withdraw, and after debate the following resolutions were agreed to:

Resolved, That William Duane, having appeared at the bar of the Senate and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense.

Resolved, That a copy of the resolution last agreed to be sent to William Duane, and at the same time he be ordered to attend at the bar of this House at 12 o'clock on Wednesday next.

On Wednesday, March 26[2]—

Ordered, That the Sergeant-at-Arms, at the bar of the House, do call William Duane, and the said William Duane did not appear.

Whereupon, on motion—

Resolved, That as William Duane has not appeared at the bar of this House, in obedience to the order of the 24th instant, and has addressed a letter to the President of the Senate, which has been read this morning, in which he refuses any further attendance, his letter be referred to the Committee of Privileges, to consider and report thereon.

On March 27[3] the Committee on Privileges reported the following resolution, which was agreed to, yeas 16, nays 11:

Resolved, That William Duane, editor of the General Advertiser, or Aurora having neglected and refused to appear at the bar of this House at 12 o'clock on the 26th day of March, instant, pursuant to the order of the 24th instant, of which order he had been duly notified; and having sent the following letter to the President of the Senate, which has been communicated to the Senate, viz:

"To the President of the Senate:

"SIR: I beg of you to lay before the Senate this acknowledgment of my having received an authenticated copy of their resolutions on Monday last, in my case. Copies of those resolutions I transmitted to Messrs. Dallas and Cooper, my intended counsel, soliciting their professional aid; a copy of my letter enclosed, marked A. Their answers I have also the pleasure to enclose, marked B and C. I find myself, in consequence of these answers, deprived of all professional assistance, under the restrictions which the Senate have thought fit to adopt. I therefore think myself bound by the most sacred duties to decline any further voluntary attendance upon that body, and leave them to pursue such measures in this case as in their wisdom they may deem meet.

"I am, sir, with perfect respect,

"WM. DUANE,"

is guilty of a contempt of said order and of this House, and that, for said contempt, he, the said William Duane, be taken into custody of the Sergeant-at-Arms attending this House, to be kept subject to the further orders of the Senate.

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[1] Senate Journal, p. 56; Annals, p. 118.

[2] Senate Journal p. 58; Annals, p. 121.

[3] Senate Journal, pp. 59–61; Annals, pp. 122–125.

The committee further reported the following resolution, which was agreed to, yeas 18, nays 11:

Resolved, That a warrant issue signed by the President of the Senate, in the following form, viz:

UNITED STATES,

The 27th day of March, 1800, ss:

Whereas the Senate of the United States, on the 18th day of March, 1800, then being in session in the city of Philadelphia, did resolve that a publication in the General Advertiser or Aurora, a newspaper printed in the said city of Philadelphia, on Wednesday, the 19th of February, then last past, contained assertions and pretended information respecting the Senate and committee of the Senate, and their proceedings which were false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication was a high breach of the privileges of the House.

And whereas the Senate did then further resolve and order that the said William Duane, resident in the said city, and editor of said newspaper, should appear at the bar of the House on Monday, the 24th day of March, instant, that he might then have opportunity to make any proper defense for his conduct in publishing the aforesaid false, defamatory, Scandalous, and malicious assertions and pretended information.

And whereas the said William Duane did appear on said day at the bar of the House, pursuant to said order, and requested counsel, and the Senate, by their resolution of the 24th day of March, instant,

"Resolved, That William Duane, having appeared at the bar of the Senate and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who might be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense, and that the said William Duane should attend at the bar of the Senate on Wednesday, then next, at 12 o'clock, of which the said Duane had due notice."

And whereas said William Duane, in contempt of the said last-mentioned order, did neglect and refuse to appear at the bar of the Senate at the time specified therein, and the Senate of the United States, on the 27th day of March, instant, did thereupon resolve that the said William Duane was guilty of a contempt of said order of the Senate, and that for said contempt he, the said William Duane, should be taken into custody of the Sergeant-at-Arms attending the Senate, to be kept for their further orders. All which appears by the journals of the Senate of the United States now in session in the said city of Philadelphia.

These are, therefore, to require you, James Mathers, Sergeant-at-Arms for the Senate of the United States, forthwith to take into your custody the body of the said William Duane, now resident in the said city of Philadelphia, and him safely to keep, subject to the further order of the Senate; and all marshals and deputy marshals and civil officers of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof, for which this shall be your sufficient warrant.

Given under my hand, this 27th day of March, 1800.

THOMAS JEFFERSON,
PRESIDENT OF THE SENATE OF THE UNITED STATES.

On May 14,[1] the last day of the session, the Senate, by a vote of yeas 13, nays 4, agreed to the following:

Resolved, That the President of the United States be requested to instruct the proper law officer to commence and carry on a prosecution against William Duane, editor of the newspaper called the Aurora, for certain false, defamatory, scandalous, and malicious publications in said newspaper, of the 19th of February last, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States.

Proceedings instituted against Duane in accordance with this request resulted in a sentence of imprisonment for thirty days and the payment of cost of prosecution.[2]

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[1] Senate Journal, p. 98; Annals, p. 194.

[2] Smith's Digest of Decisions and Precedents, Senate Miscel. Doc. No. 278, second session Fifty-third Congress, p. 17.

1605. The arrest by a civil magistrate of an officer of the House for an act performed in the service of the House was deemed a high breach of privilege.

A spectator in the gallery having created disturbance, the Speaker ordered his arrest.

On December 22, 1800,[1] a spectator, one James Lane, in the gallery applauded by clapping his hands. The Speaker[2] at once directed the Sergeant-at-Arms to attend to the disturbance, and the Sergeant-at-Arms at once went into the gallery and took the person out, keeping him in confinement about two hours.

The spectator obtained a warrant for the arrest of the Sergeant-at-Arms, who was apprehended and conducted before a magistrate, by whom, after a time he was released, James Lane not appearing to prosecute.

On December 30,[3] the Speaker laid before the House a letter from the Sergeant-at-Arms on the subject, which was referred to a select committee on privileges.

On January 6, 1801,[4] the committee reported a resolution that it was not expedient for the House to take any further order on the letter from Joseph Wheaton, Sergeant-at-Arms.

This was agreed to, yeas 58, nays 30.

The report was then presented to the House, as follows:

That the representation made by the Sergeant-at-Arms, contains a correct statement of facts; and that he, in the opinion of the committee, is to be commended for the promptitude and fidelity with which he executed the order of the Speaker, to apprehend the person guilty of indecent and disorderly conduct in the gallery.

The committee have reason to believe, from the best information they can obtain, that the person who committed the disorder (and who has since absconded), was, at the time, intoxicated with liquor.

The magistrate, by whose warrant the Sergeant-at-Arms was arrested and held in custody, for discharging his duty in the premises, has explained his conduct, in a letter accompanying this report. The suggestion made to him, that any one Member of this House was consulted relative to the prosecution of the Sergeant-at-Arms, is, by the committee, presumed to be wholly false; as it would imply in such Member, not only a disregard of all sense of personal propriety, but also an inexcusable contempt for the honor and dignity of the House.

That, although the arrest and confinement of an officer of the House of Representatives, for any act by him performed in its service, and in obedience to its orders, must be deemed a high breach of its privileges; yet as the magistrate, in the present case, seems rather to have been deceived by false representations, than influenced by improper views, the committee can not consider his conduct as a subject of animadversion.

They are therefore of opinion, that it is not expedient for the House to take any further order on the letter of Joseph Wheaton.

The question being put on agreeing to this report, there were yeas 50, nays 38; so the report was agreed to.

The debate showed that the power of the Speaker to order the arrest of a person in the gallery, and of the Sergeant-at-Arms to make the arrest, was questioned. The Speaker said that he considered himself possessed of the power to arrest and confine a person for disorderly behavior during the present sitting, subject to the instructions of the House. He had not claimed the power to confine an individual beyond that time.

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[1] Second session Sixth Congress, Journal, p. 744 (Gales & Seaton ed.); Annals, p. 851.

[2] Theodore Sedgwick, of Massachusetts, Speaker.

[3] Journal, p. 748; Annals, p. 866.

[4] Journal, p. 752; Annals, p. 880.

1606. The contempt case of John Anderson before the House in 1818.

A citizen having attempted to bribe a Member, the House arrested, tried, and punished him.

Discussion of the power of the House to issue a general warrant.

Discussion of the power of the House to punish for a breach of its privileges.

The House appointed a committee of privileges to determine the procedure in the Anderson contempt case.

In the case of John Anderson, the accused and witnesses were examined at the bar of the House.

For attempting to bribe a Member John Anderson was censured by the Speaker at the bar of the House.

On January 7, 1818,[1] Mr. Lewis Williams, of North Carolina, arose and laid before the House a letter from Col. John Anderson, in which the latter requested him to accept $500 as "part pay for extra trouble" in furthering claims from the River Raisin. Mr. Williams also submitted a signed statement from himself.

On the letter and statement being read, on motion of Mr. John Forsyth, of Georgia—

Resolved, unanimously, That Mr. Speaker do issue his warrant directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of John Anderson, and the same in his custody to keep, subject to the further order and direction of this House.

Mr. Forsyth explained that he had, in drawing up the resolution, followed the precedent of 1795.[2]

Before the adoption of the resolution there was some question as to the authority of the House to issue a general warrant, which was spoken of as opposed to the principles of civil liberty. The Speaker[3] observed that, in the practice of the House, happily, instances were extremely rare where such a warrant became necessary. No such case had occurred within his observation. But there could be no doubt, when an offense was committed against the privileges or dignity of the House, it was perfectly in its power to issue a warrant to apprehend the party offending. The Speaker also expressed the opinion that the facts on which the warrant was issued need not be substantiated by oath.

On January 8, Colonel Anderson having been arrested, an extended debate arose on Mr. Forsyth's motion for the appointment of a committee on privileges to report a mode of procedure. It was objected that neither the Constitution nor the law gave any authority to the House to punish, and that the great and oppressive powers assumed in this respect by the British Parliament were no precedent here. The House might protect itself from indecorum and insult, but might not punish individuals for acts done elsewhere. It was better to suffer a hundred insults than to trample on the rights of the individual. The precedent of 1795 was set by "a high-handed party majority, full of British notions and fond of British precedents."

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[1] First session Fifteenth Congress, Journal, pp. 117, 119, 129, 154; Annals, pp. 580, 614, 622, 626, 631, 639, 743, 790.

[2] See section 1599 of this work.

[3] Henry Clay, of Kentucky.

On the other hand, it was said that there must be in the House the power to resist the advances of bribery and corruption, since the Constitution, in giving being to the House, must have given it every attribute necessary to its security and its purity. The House of Commons acted as a House in its punishment for contempts; therefore the different functions of Parliament, as compared with Congress, did not prevent the precedents of the Commons from being valuable. The precedent of 1795 had not been set by party influence, since of the 78 who voted for the proceedings 39 were afterwards, when the parties were formed, known as Republicans.

The Committee on Privileges being authorized by the House, it was composed of Messrs. John Forsyth, of Georgia; Joseph Hopkinson, of Pennsylvania; Henry St. George Tucker, of Virginia; John Sergeant, of Pennsylvania; Richard M. Johnson, of Kentucky; Timothy Pitkin, of Connecticut, and John W. Taylor, of New York.

This committee reported the following resolution, which was adopted:

Resolved, That John Anderson be brought to the bar of the House and interrogated by the Speaker, on written interrogatories, touching the charge of writing and delivering a letter to a Member of the House offering him a bribe, which, with his answers thereto, shall be entered on the minutes of the House; and that every question proposed by a Member be reduced to writing and a motion made that the same be put by the Speaker, and the question and answer shall be entered on the minutes of the House. That after such interrogatories are answered, if the House deem it necessary to make further inquiry on the subject, the same be conducted by a committee appointed for that purpose.

Anderson then appeared at the bar of the House in the custody of the Sergeant-at-Arms; and the Speaker addressed him, informing him why he had been brought before the House, and that the House would take into consideration any request of his for counsel, leave to summon witnesses, etc.

And Anderson having stated his requests and retired, the House resolved to allow him counsel and ordered that the Clerk issue processes for his witnesses; also that a copy of the letter of accusation be furnished him. Then he was brought to the bar and the resolution communicated to him by the Speaker.

In the midst of the proceedings Mr. John C. Spencer, of New York, presented a resolution that, because of great doubt of the power of the House to punish Anderson for contempt, the case should be turned over to the Attorney-General of the United States, and that the Committee on the Judiciary should inquire into the expediency of providing a law for the punishment of contempt. A very long and exhaustive debate arose. The authority of the law of Parliament was denied, and it was contended that the House had only such privileges as were defined in Article I, section 6, and all cases not enumerated there were obviously excluded. There were no inherent powers, except those specifically enumerated. This argument was made by Mr. Philip P. Barbour, of Virginia, and Mr. Charles F. Mercer, of the same State, replied that in Virginia "from the form of the speaker's chair to the power of expelling a member the character and authority of the house of delegates is derived, without any express constitutional provision, from the House of Commons, the archetype of the popular branch of every State legislature, as it is of this House."

The resolution of Mr. Spencer was, at the end of the debate, postponed indefinitely, by a vote of 117 to 42.

Then, on January 15, it was voted that Anderson be brought to the bar of the House, where the Speaker propounded to him certain questions, which he

answered. Then witnesses were examined, the Speaker and Anderson questioning them. On January 16 the Speaker propounded further interrogatories, the remaining witnesses summoned by Anderson were examined, and then Anderson was heard in his own defense.

After this he was removed from the bar and the House came to final action in his case. Mr. Forsyth submitted the following resolution:

Resolved, That John Anderson has been guilty of a contempt and a violation of the privileges of the House, and that he be brought to the bar of the House on Wednesday next and be there reprimanded by the Speaker for the outrage he has committed, and then discharged from the custody of the Sergeant-at-Arms.

The resolution was amended making the time "this day" instead of Wednesday. There were several attempts to further amend, with a view of softening the resolution, in view of Colonel Anderson's services, but they failed; and the original resolution having passed as amended, John Anderson appeared at the bar of the House, was reprimanded, and then discharged from custody. In giving the reprimand the Speaker dwelt strongly upon the evil consequences of attempting to corrupt a legislative assembly.

1607. The case of John Anderson, continued.

Decision of the Supreme Court affirming the right of the House to punish John Anderson for contempt.

Anderson brought a suit against the Sergeant-at-Arms of the House[1] for assault and battery and false imprisonment, which was finally settled by a decision of the United States Supreme Court, rendered at the February term, 1821.

From the circuit court of the District of Columbia the case of Anderson *v.* Dunn went to the Supreme Court of the United States, and at the February term, 1821 a decision was rendered. (6 Wheaton, 204.) The summary of the decision was:

To an action of trespass against the Sergeant-at-Arms of the House of Representatives of the United States, for an assault and battery and false imprisonment, it is a legal justification and bar, to plead, that a Congress was held and sitting, during the period of the trespasses complained of, and that the House of Representatives had resolved that the plaintiff had been guilty of a breach of the privileges of the House, and of a high contempt of the dignity and authority of the same; and had ordered that the Speaker should issue his warrant to the Sergeant-at-Arms, commanding him to take the plaintiff into custody, wherever to be found, and to have him before the said House, to answer to the said charge; and that the Speaker did accordingly issue such a warrant, reciting the said resolution and order, and commanding the Sergeant-at-Arms to take the plaintiff into custody, etc., and deliver the said warrant to the defendant, by virtue of which warrant the defendant arrested the plaintiff and conveyed him to the bar of the House, where he was heard in his defense, touching the matter of the said charge, and the examination being adjourned from day to day, and the House having ordered the plaintiff to be detained in custody, he was accordingly detained by the defendant until he was finally adjudged to be guilty, and convicted of the charge aforesaid, and ordered to be forthwith brought to the bar, and reprimanded by the Speaker, and then discharged from custody; and after being thus reprimanded, was actually discharged from the arrest and custody aforesaid.

After the statement of the case, the opinion, delivered by Mr. Justice Johnson, proceeds:

Notwithstanding the range which has been taken by the plaintiff's counsel in the discussion of this cause, the merits of it really lie in a very limited compass. The pleadings have narrowed them down

[1] The House authorized an appropriation for the defense of the Sergeant-at-Arms. Second session Fifteenth Congress, Annals, p. 433.

to the simple inquiry, whether the House of Representatives can take cognizance of contempts committed against themselves under any circumstances? The duress complained of was sustained under a warrant issued to compel the party's appearance, not for the actual infliction of punishment for an offence committed. Yet it can not be denied that the power to institute a prosecution must be dependent upon the power to punish. If the House of Representatives possessed no authority to punish for contempt, the iniating process issued in the assertion of that authority must have been illegal; there was a want of jurisdiction to justify it.

It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own members. Nor does the judicial or criminal power given to the United States, in any part, expressly extend to the infliction of punishment for contempt of either House, or any one coordinate branch of the Government. Shall we, therefore, decide that no such power exists?

It is true that such a power, if it exists, must be derived from implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers. Had the faculties of man been competent to the framing of a system of government which would have left nothing to implication, it can not be doubted that the effort would have been made by the framers of the Constitution. But what is the fact? There is not in the whole of that admirable instrument a grant of powers which does not draw after it others, not expressed, but vital to their exercise; not substantive and independent, indeed, but auxiliary and subordinate.

The idea is utopian that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility and stated appeals to public approbation. Where all power is derived from the people, and public functionaries, at short intervals, deposit it at the feet of the people, to be resumed again only at their will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger.

No one is so visionary as to dispute the assertion that the sole end and aim of all our institutions is the safety and happiness of the citizen. But the relation between the action and the end is not always so direct and palpable as to strike the eye of every observer. The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion applied to the exigencies of the state as they arise. It is the science of experiment.

But if there is one maxim which necessarily rides over all others, in the practical application of government, it is that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers. The wretch beneath the gallows may repine at the fate which awaits him, and yet it is no less certain that the laws under which he suffers were made for his security. The unreasonable murmurs of individuals against the restraints of society have a direct tendency to produce that worst of all despotisms, which makes every individual the tyrant over his neighbor's rights.

That "the safety of the people is the supreme law" not only comports with, but is indispensable to, the exercise of those powers in their public functionaries, without which that safety can not be guarded. On this principal it is, that courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

It is true that the courts of justice of the United States are vested, by express statute provision, with power to fine and imprison for contempts; but it does not follow from this circumstance that they would not have exercised that power without the aid of the statute, or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution or a legislative declaration, that the power of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment.

But it is contended that if this power in the House of Representatives is to be asserted on the plea of necessity, the ground is too broad and the result too indefinite; that the executive and every coordinate, and even subordinate, branch of the Government may resort to the same justification, and the whole assume to themselves, in the exercise of this power, the most tyrannical licentiousness.

This is unquestionably an evil to be guarded against, and if the doctrine may be pushed to that extent, it must be a bad doctrine, and is justly denounced.

But what is the alternative? The argument obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness or repel insult is a supposition too wild to be suggested. And, accordingly, to avoid the pressure of these considerations, it has been argued that the right of the respective Houses to exclude from their presence, and their absolute control within their own walls, carry with them the right to punish contempts committed in their presence; while the absolute legislative power given to Congress within this district enables them to provide by law against all other insults against which there is any necessity for providing.

It is to be observed that, so far as the issue of this cause is implicated, this argument yields all right of the plaintiff in error to a decision in his favor; for, non constat, from the pleadings, but that this warrant issued for an offense committed in the immediate presence of the House.

Nor is it immaterial to notice what difficulties the negation of this right in the House of Representatives draws after it when it is considered that the concession of the power, if exercised within their walls relinquishes the great grounds of the argument, to wit, the want of an express grant and the unrestricted and undefined nature of the power here set up. For why should the House be at liberty to exercise an ungranted, an unlimited, and undefined power within their walls any more than without them? If the analogy with individual right and power be resorted to it will reach no further than to exclusion, and it requires no exuberance of imagination to exhibit the ridiculous consequences which might result from such a restriction imposed upon the conduct of a deliberative assembly.

Nor would their situation be materially relieved by resorting to their legislative power within that district. That power may, indeed, be applied to many purposes, and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government; but they are purposes of a more grave and general character than the offenses which may be denominated contempts, and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet contempt might be reasonably applied.

But although the offense be held undefinable, it is justly contended that the punishment need not be indefinite. Nor is it so.

We are not now considering the extent to which the punishing power of Congress by a legislative act may be carried. On that subject the bounds of their power are to be found in the provisions of the Constitution.

The present question is, What is the extent of the punishing power which the deliberative assemblies of the Union may assume and exercise on the principle of self-preservation?

Analogy and the nature of the case furnish the answer—"the least possible power adequate to the end proposed," which is the power of imprisonment. It may at first view, and from the history of the practice of our legislative bodies, be thought to extend to other inflictions. But every other will be found to be mere commutation for confinement, since commitment alone is the alternative where the individual proves contumacious. And even to the duration of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is indispensable to its continuance; and although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.

This view of the subject necessarily sets bounds to the exercise of a caprice which has sometimes disgraced deliberative assemblies, when under the influence of strong passions or wicked leaders, but the instances of which have long since remained on record only as historical facts, not as precedents

for imitation. In the present fixed and settled state of English institutions there is no more danger of their being revived, probably, than in our own.

But the American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice, under the specious appearance of merited resentment.

If it be inquired what security is there that, with an officer avowing himself devoted to their will, the House of Representatives will confine its punishing power to the limits of imprisonment, and not push it to the infliction of corporal punishment, or even death, and exercise it in cases affecting the liberty of speech and of the press, the reply is to be found in the consideration that the Constitution was formed in and for an advanced state of society and rests at every point on received opinions and fixed ideas. It is not a new creation, but a combination of existing materials, whose properties and attributes were familiarly understood, and had been determined by reiterated experiments. It is not therefore, reasoning upon things as they are, to suppose that any deliberative assembly constituted under it would ever assert any other rights and powers than those which had been established by long practice and conceded by public opinion. Melancholy, also, would be that state of distrust which rests not a hope upon a moral influence. The most absolute tyranny could not subsist where men could not be trusted with power because they might abuse it, much less a government which has no other basis than the sound morals, moderation, and good sense of those who compose it. Unreasonable jealousies not only blight the pleasures, but dissolve the very texture of society.

But it is argued that the inference, if any, arising under the Constitution is against the exercise of the powers here asserted by the House of Representatives; that the express grant of power to punish their Members, respectively, and to expel them, by the application of a familiar maxim, raises an implication against the power to punish any other than their own Members.

This argument proves too much; for its direct application would lead to the annihilation of almost every power of Congress. To enforce its laws upon any subject without the sanction of punishment is obviously impossible. Yet there is an express grant of power to punish in one class of cases and one only, and all the punishing power exercised by Congress in any cases, except those which relate to piracy and offenses against the laws of nations, is derived from implication. Nor did the idea ever occur to any one that the express grant in one class of cases repelled the assumption of the punishing power in any other.

The truth is that the exercise of the powers given over their own members was of such a delicate nature that a constitutional provision became necessary to assert or communicate it. Constituted, as that body is, of the delegates of confederated States, some such provision was necessary to guard against their mutual jealousy, since every proceeding against a representative would indirectly affect the honor or interests of the State which sent him.

In reply to the suggestion that on this same foundation of necessity might be raised a superstructure of implied powers in the Executive and every other Department, and even ministerial officer of the Government, it would be sufficient to observe that neither analogy nor precedent would support the assertion of such powers in any other than a legislative or judicial body. Even corruption anywhere else would not contaminate the source of political life. In the retirement of the Cabinet it is not expected that the Executive can be approached by indignity or insult; nor can it ever be necessary to the Executive, or any other Department, to hold a public deliberative assembly. These are not arguments; they are visions which mar the enjoyment of actual blessings, with the attack or feint of the harpies of imagination.

As to the minor points made in this case, it is only necessary to observe that there is nothing on the face of this record from which it can appear on what evidence this warrant was issued. And we are not to presume that the House of Representatives would have issued it without duly establishing the fact charged on the individual. And, as to the distance to which the process might reach, it is very clear that there exists no reason for confining its operation to the limits of the District of Columbia; after passing those limits, we know no bounds that can be prescribed to its range but those of the United States. And why should it be restricted to other boundaries? Such are the limits of the legislating powers of that body; and the inhabitant of Louisiana or Maine may as probably charge them with bribery and corruption, or attempt, by letter, to induce the commission of either, as the inhabitant of any other section of the Union. If the inconvenience be urged, the reply is obvious; there is no difficulty in observing that respectful deportment which will render all apprehension chimerical.

1608. The case of Hallet Kilbourn, a contumacious witness in 1876.

Form of subpoena duces tecum issued in Kilbourn case.

In the Kilbourn case the subpoena was attested for the Clerk by deputy.

The witness Kilbourn was arraigned without previous adoption of a form.

The House denied to Kilbourn the services of counsel at his arraignment for contempt.

On March 14, 1876,[1] Mr. John M. Glover, of Missouri, from the Select Committee on the Real Estate Pool and Jay Cooke Indebtedness, which had been empowered "to send for persons and papers," made to the House a "partial report," stating that it had caused a subpaena duces tecum to be issued and duly served on one Hallet Kilbourn, a resident of this District. The subpoena was in the words and figures following:

HALLET KILBOURN:

We command and strictly enjoin you that, laying aside all manner of business and excuses whatsoever, you appear in your proper person before the select committee of the House of Representatives, appointed on the 28th day of January, A. D. 1876, of which Hon. John M. Glover is chairman, at their room in the Capitol—the room of the Committee on Mines and Mining—in the city of Washington, D. C., on Saturday, the 4th day of March, A. D. 1876, at the hour of 10 o'clock a.m., of said day, to testify what you know in regard to the matters to be inquired of by said committee; and that you also diligently and carefully search for, examine, and inquire after, and bring with you and, produce at the time and place aforesaid, the certain deeds and deeds of trust, declarations of trust, and "printed papers" referred to therein, relating to the following squares, parts of squares, lots, and parcels of ground, or real property, situate in the city of Washington, in the District of Columbia, to wit, all the property described in the paper writing hereto attached, marked "Exhibit A," and made a part of this subpoena, also relating to any other property purchased or sold by you as trustee for either the "real estate pool "in which the firm of Jay Cooke & Co., or Messrs. Stewart, Hillyer & Sunderland, or either of them, had an interest, together with all copies, drafts, and vouchers relating to said documents, and all other documents, letters, and paper-writings whatsoever, including bank books, bills of exchange, bank checks, stubs of checks, ledgers, blotters, day books, and other books of accounts or maps, that can or may afford any information or evidence relating to the said matters to be inquired of by said committee, belonging to you, or subject to your control, either individually, or as trustee, or as a member of the firm of Kilbourn. & Latta.

Herein fail not and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 28th day of February, A. D. 1876.

[SEAL.]

MICHAEL C. KERR, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

By GREEN ADAMS, *Chief Clerk.*

The Exhibit A follows, and then the report of the committee proceeds to state that said Kilbourn appeared as a witness before the committee at 10 a. m., March 4, 1876, and to give extracts of testimony showing the interrogatories and replies of the witness. This testimony shows that the witness declined to produce books and papers and to answer certain questions, on the ground that the subject involved was a purely private matter and had no relation, in the remotest degree, to any public interest whatsoever.

[1] First session Forty-fourth Congress, Journal, pp. 578–588; Record pp. 170–1708.

The committee closed their partial report by stating that it was necessary, for the efficient prosecution of the inquiry ordered by the House, that said Hallet Kilbourn should be required to respond to the subpoena duces tecum, and answer the questions which he had refused to answer, and that there was no sufficient reason why the witness should not obey said subpoena duces tecum and answer the questions he had declined to answer, and that his refusal as aforesaid was in contempt of this House.

This resolution accompanied the report:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms attending this House or his deputy, commanding him to take into custody forthwith, wherever to be found, the body of Hallet Kilbourn, and him bring to the bar of the House to show cause why he should not be punished for contempt, and in the meantime to keep the said Kilbourn in his custody to wait the further order of this House.

This resolution was agreed to without debate or division.

On the same day[1] the Sergeant-at-Arms appeared at the bar of the House having in custody, as therein commanded, the body of Hallet Kilbourn.

Whereupon the said Kilbourn was arraigned and the following interrogatory propounded to him by the Speaker:

Mr. Kilbourn, you are presented at the bar of the House, upon the order of the House, under arrest on an alleged breach of the privileges of the House in refusing to answer certain questions propounded to you by a committee of the House, which questions that committee was authorized by the House to ask. It is my duty now, by authority of the House, to ask you whether you are now ready to answer those questions before the committee.

Mr. Kilbourn then stated that the proceedings were of great importance to him, and he would respectfully request that he might be represented by his counsel, Judge Black, of Pennsylvania, and David Dudley Field, of New York.

Mr. Horace F. Page, of California, moved that the request be granted. In the debate it was urged against this Motion[2] that it was not the practice of the House to permit such proceeding, the prisoner at the bar being usually permitted to have read his reasons for not responding to the demands. On the other hand, it was argued[3] that this was in spirit, although not technically, a criminal proceeding, and. the prisoner had a constitutional right to be represented as he requested.

On motion of Mr. Glover, the motion of Mr. Page was laid on the table, yeas 117, nays 74.

1609. The case of Hallet Kilbourn, continued.

When arraigned the witness Kilbourn submitted a written, unsworn answer, which does not appear in the Journal.

The journal contains no reference to the act of the Speaker in certifying the case of the witness Kilbourn to the district attorney.

Then, on motion of Mr. Nathaniel P. Banks, of Massachusetts, leave was granted said Kilbourn to make his statement[4] in writing, to be read at the Clerk's desk.

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[1] Journal, pp. 589–591; Record, p. 1712–1716.

[2] By Mr. William S. Holman, of Indiana.

[3] By Mr. George F. Hoar, of Massachusetts.

[4] This statement was not printed in the Journal, but is found in the Record. Journal., p. 591; Record, p. 1715.

In this statement he admitted that the House, as well as the Senate, had originally the power to try and punish for all contempts that might be committed against it; and, as to contempts generally, each House was still in the possession of the same jurisdiction which it had from the beginning; but, as regarded the particular offense which a witness committed by refusing to obey a subpoena or to answer a proper question, the Revised Statutes [1] had declared it to be an indictable misdemeanor and transferred the whole power of trial and punishment to the criminal courts of the District. Therefore the House could do nothing but certify the facts found by the committee. The witness further denied the right of the House to investigate private business arbitrarily; but if either the committee or the House would assert that the production of his private papers, or the revelation of his private business, would promote any public interest, or if any private individual would assert on oath that the papers asked for would lead to the detection of corruption, he would respond freely to all demands for information or papers.

The answer of the witness does not appear to have been under oath.

The Speaker then propounded to the witness the interrogatories which he had refused to answer:

Mr. Kilbourn, are you now prepared to answer, upon the demand of the proper committee of the House, "where each of these five members reside," meaning the members of the pool? Are you prepared to produce, in obedience to the subpoena duces tecum, the records which you have been required by the committee to produce?

The witness declining to answer the said interrogatories, Mr. Glover submitted the following resolution, which was agreed to:

Resolved, That Hallet Kilbourn, having been heard by the House pursuant to the order heretofore made requiring him to show cause why he should not answer the questions propounded to him by the committee and respond to the subpoena duces tecum by obeying the same, and having failed to show sufficient cause why he should not answer said questions and obey said subpoena duces tecum as aforesaid, be, and is therefore, considered in contempt of the House because of said failure.

Mr. Glover also submitted the following resolution, which was agreed to:

Resolved, That in purging himself of the contempt for which Hallet Kilbourn is now in custody, the said Kilbourn shall be required to state to the House whether he is now willing to appear before the committee of this House to whom he has hitherto declined to obey a certain subpoena duces tecum, and answer certain questions and obey said subpoena duces tecum, and make answers to said questions; and if he answers that he is ready to appear before said committee and obey said subpoena duces tecum and answer said questions, then said witness shall have the privilege to so appear and obey and answer forthwith or so soon as said committee can be convened; and that in the meantime the witness remain in custody; and in the event that said witness shall answer that he is not ready to so appear before said committee and obey said subpoena duces tecum and make answer to said questions as aforesaid, then that said witness be recommitted to the said custody for the continuance of such contempt; and that such custody shall continue until the said witness shall communicate to this House, through said committee, that he is ready to appear before said committee and make such answer and obey said subpoena duces tecum, and that in executing this order the Sergeant-at-Arms shall cause the said Kilbourn to be kept in his custody in the common jail of the District of Columbia.

On March 28, 1876,[2] the Speaker, by unanimous consent, laid before the House a letter from H. H. Wells, United States attorney for the District of Columbia,

[1] Revised Statutes, section 102.

[2] Journal, pp. 680–682; Record, pp. 2008–2020.

stating that the grand jury had found against Hallet Kilbourn an indictment in five counts:

(1) Failure to produce certain papers before the House committee; (2) refusing to answer certain questions before said committee; (3) refusing to answer certain questions before the House of Representatives; (4) failure to produce papers and refusal to answer questions before the committee; (5) refusal to answer the questions and produce the books and papers before the House of Representatives.

On the same day the Speaker also laid before the House a communication from John G. Thompson, Sergeant-at-Arms, reporting that the United States marshal for the District of Columbia had appeared with a warrant issued by the supreme court of said District for Hallet Kilbourn and had requested that he be admitted to the presence of Kilbourn in the jail, that the said Kilbourn might, under the terms of the warrant, be taken from the jail and before the court to be tried on the criminal charge. The Sergeant-at-Arms stated that he had declined to accede to the request, since the effect of such action would be to release Kilbourn from his custody by an officer of the House of Representatives. A copy of the warrant was appended to the letter, but does not appear in the Journal.

Mr. Glover thereupon submitted this resolution:

Resolved, That Hallet Kilbourn, a recusant witness, having by this House been adjudged guilty of a contempt of its authority by reason of his refusal to answer certain questions and refusing to produce, in answer to a subpoena duces tecum, certain documents, books, papers, etc., before a special investigating committee of this House, and said Kilbourn, because of said contempt and the judgment of this House, being now by its order and said judgment in the custody of the Sergeant-at-Arms in the common jail of the District of Columbia, there to remain in said custody until he shall communicate to this House, through said committee, that he is ready to appear before said committee and make answer to said questions and obey said subpoena duces tecum: Therefore, because of the facts and premises aforesaid, the said Sergeant-at-Arms is ordered to retain the custody aforesaid of said witness, and not to part with his custody or deliver him up to any other person, officer, court, or tribunal until the further order of this House.

The resolution was debated at length. Mr. Jephtha D. New, of Indiana, said, in reply to the contention of the witness that no person had filed allegations that the public interest demanded production of the papers or the answering of the questions, that the resolution authorizing the investigation of the real estate pool had recited that the Government was a creditor of Jay Cooke & Co., and therefore concerned in the investigation of the real estate pool, which was part of their assets.[1] The question of the right of the House to punish for contempt was considered at length, as well as the bearings of the law relating to witnesses.

Mr. Stephen A. Hurlbut, of Illinois, proposed, as a substitute to the resolution offered by Mr. Glover, a preamble reciting the fact of Kilbourn's committal by order of the House, and further reciting that in accordance with the provisions of law the Speaker had certified[2] to the district attorney the facts pertaining to the case, and a presentment had been found by the grand jury, and a resolution directing the release of Kilbourn and the delivery of him to the marshal of the District.

The House refused to agree to this substitute, yeas 33, nays 191, and the original resolution presented by Mr. Glover was then agreed to.

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[1] For terms of this resolution, see Journal, p. 578.

[2] The Journal does not contain a record of the Speaker's certification.

On April 3,[1] by a motion to suspend the rules, Mr. Glover attempted to have passed a resolution providing limitations on the diet furnished the prisoner; but the resolution failed to command the necessary two-thirds vote.

On April 12,[2] the Speaker laid before the House a letter from the Sergeant-at Arms reporting that a writ of habeas corpus had been served upon him commanding him to produce the body of Hallet Kilbourn before one of the justices of the Supreme Court of the District of Columbia at 10 a.m. April 12, 1876. The Sergeant-at-Arms requested instructions, and attached to his letter a copy of the writ. This copy is printed in the Journal.

Mr. New, by unanimous consent, presented a resolution, which was agreed to, referring the matter to the Judiciary Committee with instructions for early action.

On April 15,[3] Mr. Frank H. Hurd, of Ohio, from the Committee on the Judiciary, made a report recommending the adoption of the following preamble and resolution:

Whereas one Hallet Kilbourn was subpoenaed to testify in a certain investigation ordered by this House before a committee duly authorized to send for persons and papers; and whereas during his examination as a witness the said Hallet Kilbourn refused to answer certain questions propounded to him as such witness by said committee, and to produce certain books and papers which he was ordered by said committee to produce; and whereas for such refusal the House of Representatives has adjudged the said Hallet Kilbourn to be in contempt of its authority and has ordered him into custody until he shall purge himself of said contempt and answer the questions as propounded and produce the papers and books ordered to be produced; and whereas said committee is still engaged in the investigation which it was ordered to make by the House, and is unable to complete the same because of the contumacy of the witness; and whereas the said Hallet KiIbourn is now in execution by the legal process of this House as aforesaid; and whereas the Chief Justice of the Supreme Court of the District of Columbia has issued a writ of habeas corpus to the Sergeant-at-Arms of this House, directing him to produce before the said judge the body of the said Kilbourn. Therefore,

Be it resolved, That the Sergeant-at-Arms be directed to make a careful return of said writ, setting out the causes of the detention of said Kilbourn, and to retain the custody of his body, and not to produce it before the said judge or court without further order of this House.

This resolution was discussed at length[4] on the same and succeeding day. It was urged that the English precedents for a hundred and fifty years as well as the American precedents were in favor of a course of action different from that proposed by the majority. Parliament since 1704 had not refused to bring the body into court.

Mr. J. R. Tucker, of Virginia, moved to amend by directing the Sergeant-at-Arms to appear by counsel before the court and raise question as to the legality of the writ of habeas corpus, meanwhile retaining custody of the body of said Kilbourn.

This proposition was disagreed to, and after exhaustive debate, the following resolution, offered by Mr. William P. Lynde, of Wisconsin, was agreed to[5] as a substitute—yeas, 166; nays, 75—and the resolution of the Committee on the Judiciary as amended was then agreed to:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Hallet Kilbourn that the prisoner is duly held by authority of the

[1] Journal, p. 736; Record, p. 2170. This action would seem to indicate that such a resolution was not considered privileged.

[2] Journal, pp. 789, 790; Record, p. 2417.

[3] Journal, pp. 807; 808, Record, p. 2482.

[4] Record, pp. 2483–2500, 2513–2532.

[5] Journal, pp. 813, 814; Record, p. 2532.

House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of mid Kilbourn, before said court when making such return as required by law.

1610. The case of Hallet Kilbourn, continued.

While confined in jail for contempt, the witness Kilbourn was released by habeas corpus proceedings, the court intimating that the punishment of law superseded the right of the House to punish.

In making return in the habeas corpus proceedings in the Kilbourn, the Sergeant-at-Arms produced the body of the prisoner.

On April 19[1] the Speaker laid before the House a communication from the Sergeant-at-Arms in which the latter reported to the House that he had made a careful return of the writ of habeas corpus, setting out in detail the facts relating to his detention, and that said Kilbourn was in his custody by virtue of an adjudication of the House finding him guilty of contempt of its authority. The Sergeant-at-Arms further stated that he produced the body of said Kilbourn and presented it to the judge who had issued the writ. Thereupon the judge ordered Kilbourn, into the custody of the Marshal of the District of Columbia, who immediately took possession of his body.

A question was made that a copy of the return should be appended to the letter of the Sergeant-at-Arms, and the Speaker[2] said that this should be done to perfect the record.[3]

On April 28[4] a letter from the Sergeant-at-Arms, transmitting the decision of the Chief Justice of the Supreme Court of the District of Columbia, in the matter of Hallet Kilbourn's petition for a writ of habeas corpus, was laid before the House.

On May 2[5] the House declined to accept an offer of Kilbourn to appear before the committee and testify and furnish such information as his books might contain.

The opinion of Chief Justice Carter "begins by stating that the real question involved is whether the House of Representatives possessed jurisdiction for punishment over the person of the relator. It might be regarded in the light of unvarying authority that punishment for contempt within the limitations of the jurisdiction of the House, whether the House was to be considered as a court or not, was conclusive of judgment, and might not be inquired into by writ of habeas corpus or otherwise. It was a right inherent in the jurisdiction of the tribunal, essential to its integrity and preservation, and inviolate from the interference of jurisdiction disconnected with the tribunal exercising it. The first inquiry would be whether the power of the House to inflict the punishment involved in its order had been transferred by

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[1] Journal, p. 821; Record, p. 2591.

[2] Michael C. Kerr, of Indiana, Speaker.

[3] This return was submitted April 20, 1876, and is printed in the Record but not in the Journal. Record, pp. 2646–2654.

[4] Record, p. 2818; Journal, p. 880.

[5] Journal, p. 905; Record, p. 2884.

[6] For full text of this opinion, see Digest of Decisions and Precedents (Smith's) Senate miscellaneous document, second session Fifty-third Congress, No. 278, pp. 549–552.

law to the adjudications of the courts.[1] By the law approved January 24, 1857,[2] it was provided that a recalcitrant witness should "in addition to the pains and penalties now existing" be liable to indictment for misdemeanor, and on conviction be punished by fine and imprisonment. The failure of the witness to testify being reported to the House, the statute made it the duty of the Speaker to certify the fact, under the seal of the House, to the district attorney. In the revision of the statutes (act of June 22, 1874) the last expression of legislation on this subject was embodied in sections 102 and 104 of the Revised Statutes.

The reasons for the statutory enactment seem to have been that the antecedent condition of the power was latent, undefined, and unpublished. Common justice to the citizen required that it should be defined and made known. Again, it was a truth well known to the constitutional student of the history of this Government that a large and intelligent portion of its statesmen have denied the implied power of either House of Congress to inflict any punishment.

The present statute had a further significance in that, for some reason, the words "in addition to the pains and penalties now existing," as found in the earlier act, have been dropped, leaving the punishment of the statute the sole penalty.

It might be objected that it was not in the power of Congress to supersede by law the authority residing in either branch to punish for contempt and inherited from the Constitution. But the act did not imply the abnegation of power on the part of the House or Senate to inflict punishment for contempt, but, on the contrary, recognized that power, and exercised it in denominating the offense a misdemeanor and punishing it as such.

There was nothing in the language or nature of the statute indicating that the penalty imposed by it was to operate as an addition to any penalty that might be inflicted by the House for the same offense. Such a purpose would seem to be in violation of the Constitution. The offense was a single act—the refusal to produce the papers and to give the residences and names of the members of the real estate pool. The relator could not be punished in the courts in the penalty of transgression, and also in the House to make him testify. With the judgment of the House in contempt, its power to punish terminated, and the punishment prescribed by law intervened.

1611. The case of Hallet Kilbourn, continued.

The attempt in 1876 to punish Hallet Kilbourn for declining to testify before a committee resulted in a decision of the Supreme Court denying that the House has an unlimited power to punish for contempt of its authority.

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[1] On February 18, 1871 (Third session Forty-sixth Congress, Record, p. 1754), when the House was providing for recompensing the attorney who had defended Members of the House against the suits of Hallet Kilbourn, John H. Reagan, of Texas, said: "On the question of contempt the House surrendered its jurisdiction of the matter to a petty court. The result was that the officers of the House and the Members of its committee were brought into court to answer for a trespass, instead of the House compe;ling the offending witness guilty of contempt to answer to the exclusive jurisdiction of this House. It was the folly and fault of this House in failing to vindicate its jurisdiction which has brought the Government, as well as the officers and Members of this House, into contempt."

[2] 11 Stat. L., p. 155.

The power of the House to punish for contempt is limited to the cases expressly defined by the Constitution.

In the Kilbourn case the court held that no witness could be punished for contumacy except in an inquiry which the House had power to make.

The House does not possess the general power to inquire into the private affairs of the citizen.

In the Kilbourn case the court decided that the resolution authorizing the investigation was in excess of the constitutional power of the House.

Kilbourn brought suit for false imprisonment against John G. Thompson,[1] Sergeant-at-Arms, and several Members of the House, and the case reached the Supreme Court of the United States, where an opinion was delivered by Mr. Justice Miller at the October term, 1880.[2] Beside the general issue, Thompson pleaded in justification that he acted as Sergeant-at-Arms of the House, in conformity with its rules and orders, and under command of the duly and properly attested warrant of the Speaker.[3] The opinion of the court denies that there is in neither branch of Congress an unlimited power to punish for contempt of their authority.

> The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair implication from what is granted, are "reserved to the States respectively, or to the people." Of course neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either House separately, as in the case of impeachments. No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that "no person shall be deprived of life, liberty, or property without due process of law," the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established. An act of Congress which proposed to adjudge a man guilty of a crime and inflict the punishment would be conceded by all thinking men to be unauthorized by anything in the Constitution. That instrument, however, is not wholly silent as to the authority of the separate branches of Congress to inflict punishment. It authorizes each House to punish its own Members. By the second clause of the fifth section of the first article, "each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member, "I and by the clause immediately preceding, it "may be authorized to compel the attendance of absent Members, in such manner and under such penalties as each House may provide." These provisions are equally instructive in what they authorize and in what they do not authorize. There is no express power in that instrument conferred on either House of Congress to punish for contempts.

The court goes on to say that the advocates of this power have used two principal arguments—first, its exercise by the House of Commons; and, second, the necessity of such a power to enable the two Houses of Congress to perform the duties and exercise the powers which the Constitution has conferred on them.

The first argument is examined at length, and the conclusion is reached that the powers and privileges of the House of Commons on the subject of punishment

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[1] On March 3,1877, the House by resolution authorized the Sergeant-at-Arms to employ counsel in this case. (Second session Forty-fourth Congress, Journal, p. 678; Record, p. 2241.) Also on August 9, 1876, (fast session Forty-fourth Congress, Journal, p. 1413; Record, p. 5387).

[2] 103 U.S., pp. 170–205.

[3] This warrant is given in full. It quotes the resolution of the House, directs the execution of the order, and is given under the hand and seal of the Speaker, attested by the Clerk. See 103 U.S., p. 176.

for contempts rest on principles which have no application to other legislative bodies, and certainly have none to the House of Representatives of the United States.

As to the second argument, the court makes no decision, none being required by the circumstances of the case; but in passing the intimation is given that the English precedents do not give much aid to the doctrine that the power exists as one necessary to enable either House of Congress to exercise successfully the function of legislation.

The opinion then goes on:

As we have already said, the Constitution expressly empowers each House to punish its own Members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent Members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

Each House is by the Constitution made the judge of the election and qualification of its Members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature.

The House of Representatives has the sole right to impeach officers of the Government and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.

Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizens.

The court goes on to describe the three departments of the Government—legislative, executive, and judicial—and to declare that in the preamble and resolution [1] under which the committee acted in the Kilbourn case the House of Representatives—

not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the Government, because it was in its nature clearly judicial.

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[1] The full text (see Journal, p. 578) is as follows:

"Whereas the Government of the United States is a creditor of the firm of Jay Cooke & Co., now in bankruptcy, by order and decree of the district court of the United States in and for the eastern district of Pennsylvania, resulting from the improvident deposits made by the Secretary of the Navy of the United States with the London branch of said house of Jay Cooke & Co. of the public moneys; and whereas a matter known as the 'real estate pool' was only partially inquired into by the late joint select committee to inquire into the affairs of the District of Columbia in which Jay Cooke & Co. had a large and valuable interest; and whereas Edwin M. Lewis, trustee of the estate and effects of said firm of Jay Cooke & Co., has recently made a settlement of the interest of the estate of Jay Cooke & Co., with the associates of said firm of Jay Cooke & Co., to the disadvantage and loss, as it is alleged, of the numerous creditors of said estate, including the Government of the United States; and whereas the courts axe now powerless, by reason of said settlement, to afford adequate redress to said creditors:

"*Resolved,* That a special committee of five Members of this House, to be selected by the Speaker, be appointed to inquire into the nature and history of said 'real estate pool' and the character of said settlement, with the amount of property involved in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers, and report to this House.

The court points out that if the United States was a creditor of the defunct firm the only legal redress was a resort to the courts; and, in fact, the matter was then before the court. That the indebtedness resulted from the "improvidence" of a Cabinet officer did not change the nature of the suit, since no purpose of impeaching the Secretary was avowed. The House of Representatives could not know that the court was powerless to redress the creditors, since the matter was still pending, and even if the court were powerless the preamble and resolution suggests no remedy. If the real estate pool was charged with any crime or offense, the court alone could punish the members. The House had no authority to enter into this investigation into the private affairs of individuals who held no office under the Government.

> We are of opinion for these reasons [concludes the court] that the resolution of the House of Representatives authorizing the investigation was in excess of the power conferred on that body by the Constitution; that the committee, therefore, had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House, and the warrant of the Speaker, under which Kilbourn was imprisoned, are, in like manner, void for want of jurisdiction in that body, and that his imprisonment is without any lawful authority.

The court then reviews the similar case of Anderson *v.* Dunn.

1612. The Senate ease of Elverton R. Chapman, a contumacious witness in 1894.

Instance wherein the Senate proceeded to an investigation of charges made in general terms against its membership by newspapers.

In 1894 the certification of alleged cases of contempt before a Senate committee was made without action of the Senate declaring the witness in contempt.

On May 17, 1894,[1] the Senate agreed to a resolution providing for the investigation of newspaper charges that there had been corruption in connection with the passage of the tariff bill, particularly in connection with the sugar schedule thereof. This resolution was in form as follows:

> Whereas, it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and
>
> Whereas, it has been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up, as it now stands in the proposed amendment, in consideration of large sums of money paid for campaign purposes to the Democratic party; therefore,
>
> *Resolved,* That a committee of five Senators be appointed to investigate these charges and to inquire further whether any contributions have been made by the so-called sugar trust, or any person connected therewith, to any political party for campaign purposes or to secure or defeat legislation, and with power to send for persons and papers and to administer oaths.
>
> *Resolved further,* That said committee be authorized to investigate and report upon any charge or charges which may be filed before it, alleging that the action of any Senator has been improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation; and whether any Senator has been or is speculating in what is known as sugar stocks during the consideration of the tariff bill now before the Senate.

On May 29[2] the committee reported that Elisha J. Edwards and John S. Shriver had refused to answer pertinent interrogatories, and concluded:

> Wherefore the committee report and request that the President of the Senate certify as to each witness his aforesaid failure to testify and his aforesaid refusals to answer, and all the facts herein, under the seal of the Senate, to the United States district attorney for the District of Columbia, to the end that each of said witnesses may be proceeded against in the manner and form provided by law.

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[1] Second session Fifty-third Congress, Senate journal, p. 197; Record, pp. 4848–4851.

[2] Senate journal., pp. 214216; Record, pp. 5451–5459.

The Vice-President [1] decided that the report was not such as required the action of the Senate, and on appeal the decision was sustained.

Mr. Joseph N. Dolph, of Oregon, presented a resolution providing for the arrest and arraignment of Edwards as a contumacious witness, but the resolution was never brought to a vote.

On June 12 the committee reported that Elverton R. Chapman had refused to answer pertinent questions. No action was taken on this report by the Senate.[2] Mr. William V. Allen, of Nebraska, at this time offered in the Senate a resolution providing for the arrest and arraignment of Chapman, but no action was taken on it.

On June 21, 1894, the committee in a similar manner reported that Henry O. Havemeyer, John E. Searles, and John W. Macartney had refused to answer pertinent inquiries, and in the usual form used in the preceding cases, requested the President of the Senate to certify the cases.

In these cases, however, there were minority reports, a portion of the committee not agreeing that the questions at issue were pertinent or such as the committee had authority to ask. In these cases, also, the resolutions for the arrest and arraignment of the recalcitrants were offered but not acted on.

The above reports gave rise to considerable debate, Mr. David B. Hill, of New York, contending that the report should be acted on by the Senate before the President could be authorized to certify. In the preceding cases he had certified, but in this case the committee were not united. It was further contended by Mr. William E. Chandler, of New Hampshire, that it was questionable whether the statute executed itself, and used the seal of the Senate for that purpose without the action of the Senate. Mr. George F. Hoar, of Massachusetts, further objected that the Senate was laying down its constitutional rights in not itself compelling the witnesses to testify.[3] Mr. Hill also urged that the Senate, and not a divided committee, should determine whether there had been a refusal to answer material questions. The debate ceased without any action of the Senate and was not resumed.

The cases of all the witnesses mentioned above were certified by the President of the Senate, and indictments were found against them.

1613. The case of Elverton R. Chapman, continued.

In 1894 the power of punishing for contempt was fully discussed in the district court of appeals.

The indictment against Chapman was the subject of further legal proceedings, involving interesting questions of law. These questions, after being passed upon by the supreme court of the District of Columbia, were carried to the court of appeals of the District of Columbia, where a decision was rendered in an opinion by Mr. Chief Justice Alvey, which discusses at length the principles involved: [4]

This case comes into this court on an appeal specially allowed from the judgment of the court below, overruling a demurrer to the indictment against the appellant.

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[1] Adlai E. Stevenson, of Illinois.

[2] Senate journal, p. 238; Record, p. 6146.

[3] Senate Journal, pp. 254; Record, pp. 6639–6648.

[4] See Smith's Digest of Decisions and Precedents, second session Fifty-third Congress, Senate Miscellaneous Document No. 278, p. 822.

The appellant was indicted under section 102 of the Revised Statutes of the United States, providing for the prosecution and punishment of contumacious witnesses summoned to give testimony before either House of Congress or committees thereof. It is averred in the indictment that the appellant was summoned and appeared as a witness before a special committee of the Senate of the United States, in relation to a matter of inquiry before said committee, and that he refused to answer questions pertinent to the matter of inquiry referred to such committee.

The section of the Revised Statutes under which the indictment was found is as follows:

"SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months."

In connection with the foregoing section 102 it is proper to read section 104 of the Revised Statutes, which is as follows:

"SEC. 104. Whenever a witness summoned as mentioned in section 102 fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

At the time the committee was raised and the subject-matter of inquiry was referred to it, the Senate had under consideration and debate the tariff act recently passed, known as the Wilson bill, with a very large number of proposed amendments thereto, reported from the Finance Committee of that body on the 20th of March, 1894; and among these amendments thus reported were certain proposed amendments providing for duties on sugar, different from the provisions in the bill as it had been passed by the House of Representatives and sent to the Senate. In the consideration of this matter, and in the rater, of duties that might be fixed to be paid on imported sugar, it was supposed that the American Sugar Refining Company was largely interested and that the market value of the stock of that corporation would be materially affected, the one way or the other, by the ultimate action and judgment of the Senate. In this state of affairs the matter became a topic of heated discussion with the public, and the press of the country teemed with imputations of bad faith and violated pledges, and some to the extent of charging attempted bribery and corruption, and that certain Senators were yielding to corrupt influences, and were acting and intended to act, in a manner derogatory to their high duties of Senators and legislators of the nation. With these charges and imputations daily repeated, the Senate was impelled by a proper sense of duty to itself and the country to institute the proper proceedings for maintaining its dignity, integrity, and purity as an important branch of the legislative department of the Government. For this purpose, and acting upon the immediate inciting cause of certain publications recited in the preamble, the following preamble and resolutions were passed, on the 17th of May, 1894, raising a special committee, and clothing it with power of full investigation.

[Here follow the preamble and resolution as given above.]

Investigation was commenced, and according to the averments of the indictment in the course of the investigation by the committee, the appellant was produced as a witness, being a member of a firm of stockbrokers in the city of New York, dealing in the stock of the American Sugar Refining Company, and was asked by the committee, or a member thereof for the committee, whether the firm of Moore & Schley, of which the witness was a member, had bought or sold what were known as sugar stocks, during the month of February, 1894, and after the first day of that month, for or in the interest, directly or indirectly, of any United States Senator; had the firm, during the month of March, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; had the said firm, during the month of April, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; had the said firm, during the month of May, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; was the said firm at that time carrying any sugar stock for the benefit of or in the interest, directly or indirectly, of any United States Senator. But the appellant, then and there, to wit, on the 9th day of June, 1894, each and all of said questions willfully refused to answer; and all of which said questions are averred to have been pertinent to the inquiry then and there being made by the committee under the resolution.

This, so far as we are informed, is the first case of an indictment found under section 102 of the Revised Statutes, or the act from which that section was formed. There have been many cases of contempt, on the part of witnesses, for refusing to answer questions on inquiries instituted by the Houses of Congress, since the passage of the original act of 1857, from which sections 102, 103, and 104 of the Revised Statutes are taken; but in no case prior to the present, so far as we are informed, have the proceedings reached the form of an indictment.

There is no serious objections urged to the form of the indictment. The great effort on the part of the appellant has been to show, and which has been urged with great ability, that the provisions of the statute, as embodied in section 102 of the Revised Statutes, are unconstitutional and void; and that the scope and nature of the inquiry authorized by the resolutions of the 17th of May, 1894, were not within the limits of the power of the Senate of the United States, and therefore void.

In support of the demurrer to the indictment several positions have been strongly and ingeniously urged in argument; but we shall consider and determine the case as fully embraced by three principal questions—

(1) "Is the section 102 of the Revised Statutes of the United States constitutional and valid?

(2) "Was the inquiry directed by the resolutions of the 17th of May, 1894, within the power of the Senate to execute by requiring witnesses to testify, and—

(3) "Were the questions propounded to the appellant, the witness, pertinent to the subject-matter of inquiry that the committee was charged to investigate?"

If either of those propositions be resolved in the negative, it would follow that the demurrer should have been sustained; but, on the other hand, if they are all resolved in the affirmative, it results that the demurrer was properly overruled.

(1) With respect to the first of these questions, we can entertain no doubt. The section of the Revised Statutes brought into question, with some unimportant omissions and changes of phraseology, embodies the first section of the act of Congress of the 24th of January, 1857, entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress and to compel them to discover testimony." (11 Stat., 155.) The history of Congress is full of instances where difficulties had been experienced in compelling unwilling and contumacious witnesses to make disclosure of facts essential to Congressional action; and it was found that the ordinary and incidental powers that pertained to the Houses of Congress in their separate capacities were quite inadequate to meet the exigencies of many of the cases that occurred. It was for the remedy of this evil that the act of 1857 was passed.

That Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions can not admit of serious question. Congress is invested with all the legislative power of the Government, and each House also with certain other powers not legislative in their nature; and it is expressly provided that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested in it. (Const., art. 1, sec. 8, par. 18.) Under this grant of power, what more natural and appropriate, as a means of executing its powers and indeed necessary, than a statute providing for the discovery of evidence as the basis of action, and prescribing a punishment for those who condemn the authority of the body, and, by their contumacious conduct, obstruct the lawful exercise of its functions. We have no doubt of the power of Congress in this respect.

It has been, however, strongly urged in argument that the terms of the section 102 are sufficiently broad and comprehensive to include a class of witnesses protected and exempted by the provisions of Article V of the Constitution, and especially so urged when read, as it should be, in connection with the next succeeding section, 103 of the Revised Statutes, and therefore the section is void in toto. But it is not pretended that the appellant belongs to the class of witnesses contemplated by the article of the Constitution referred to; and if the contention of the appellant were conceded to be correct, as applied to a class of witnesses under different conditions, it would not follow necessarily that the statute should be stricken down in its entirety, because it may be susceptible of an unconstitutional application in certain cases that may possibly arise. This is not reasonable, nor is it in accordance with the rule of interpretation adopted by the Supreme Court of the United States as applied to a statute good on its face, but where, by reason of its general and comprehensive terms, it may be made, by construction, to apply to objects forbidden by the Constitution. In such case the statute win be allowed its full force and operation, as applicable to all cases, rightfully and constitutionally within its provisions, but such application

will be sustained as to those objects simply to which the statute is forbidden to extend. This is the rule as we understand it, upon which the Supreme Court acted in the State Freight Tax Cases, 15 Wall., 232; Supervisors *v.* Stanley, 105 U. S., 305, 313; Virginia Coupon Cases, 114 U. S., 269, and other cases that could be cited.

But we are not to be understood as conceding that any such rule of construction as that just stated is necessary to be invoked. It is not by any means necessary that section 103 should be read with or as part of section 102. The last-mentioned section stands alone and makes a complete provision by its own terms, and it is in no manner dependent upon section 103; and there is nothing in the terms of section 102 that renders it liable to constitutional condemnation, whatever may be thought of section 103. The statute must not be condemned as unconstitutional if by any reasonable construction of its terms it can be maintained as constitutional and valid. This is an undoubted rule of construction.

It has also been seriously contended in argument that the act of 1857, now embodied in the Revised Statutes, was an attempt on the part of Congress to delegate its power and jurisdiction, or the power and jurisdiction of the several Houses thereof, incident and belonging to it as a legislative body, to punish for contempts, to the courts, and therefore the statute is void. But to this we can not accede. The statute has never been understood, either by Congress itself or by the courts, as having any such purpose as that of an attempt to delegate the power of the Houses of Congress to commit for contempt of their authority. This is fully shown by the case of Irwin, who was, for refusing to testify, committed by order of the House of Representatives, in 1875, and who, unsuccessfully, attempted to be relieved on habeas corpus. And so the case of Kilbourn, which occurred in 1876, where the witness was committed to prison by the order of the House of Representatives for refusing obedience to a subpoena duces tecum, and to testify in regard to a matter referred to a committee for investigation, and for which imprisonment an action was brought. In that case, which underwent great consideration by the Supreme Court, it was never suggested or intimated that Congress held, or had attempted, to divest itself of, and relegated to the courts, the power to punish for contempts, in cases to which the power of each House properly extends, by the passage of the act of 1857. That Congress could not divest itself, or either House thereof, of that essential incidental power inherent in it may well be conceded. It is a constitutional incident of the body; but it can only be exercised in such cases as to which the power of the Houses in their separate capacities extends.

But the existence of such inherent power in the House of Congress did not preclude the passage of the act of 1857, in the exercise of the ordinary legislative power of the two Houses of Congress, prescribing additional pains and penalties to those already existing by virtue of the inherent powers of the Houses of Congress, as legislative bodies, nor did Congress express its meaning in any doubtful terms. By the very terms of the original act of 1857 it was declared that the recusant witness should, in addition to the pains and penalties then existing, be liable to indictment as and for a misdemeanor in any court of the United States having jurisdiction thereof, etc. In the Revised Statutes the terms "in addition to the pains and penalties then existing" have been omitted, but this omission can certainly not operate to make the statute import a sense that it never was intended to have nor consistently with the Constitution could have. It is only by showing that the statute, as it stands in the statute book, is void, that the objection to it is available as a defense to the indictment; and the effort to show it void has utterly failed.

(2) We come now to the question whether the matter of inquiry directed by the resolutions of the 17th of May, 1894, was within the power of the Senate to execute by requiring witnesses to testify. And in considering this question we must confess there is great difficulty in clearly and distinctly marking the boundaries within which either House of Congress may act with coercive power to compel the disclosure of facts deemed important to it and the rights of the citizen to exemption from inquiry into his private affairs. The question was most elaborately considered in the case of Kilbourn *v.* Thompson (103 U. S., 168), but that case was presented in somewhat different aspect from the present.

It must, however, be considered as established by that case that while within certain limits and for certain purposes either House of Congress may, where the examination of witnesses and the production of papers are necessary to the performance of its legal and constitutional functions, fine and imprison a contumacious witness, yet the Constitution invests neither House with any general power to punish for contempt. In that case it was also held that the question whether either House of Congress, acting in the case of a witness refusing to testify, had proceeded within the limits and scope of its constitutional authority, is a judicial question and one not to be concluded by the judgment of

the body itself. In other words, that the House taking action in such case is a body of limited and restricted powers and whenever powers are exercised in excess or beyond the limits of those constitutionally possessed by the House its action can afford protection to no one acting under its unauthorized order or command. In the Kilbourn case the resolution of the House of Representatives under which Kilbourn was summoned and examined as a witness, directed the committee to examine into the history and character of what was called "the real-estate pool of the District of Columbia;" and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation in a bankrupt court, had an interest in the pool or were creditors of it. The subject-matter of the investigation, therefore, was of judicial cognizance and not legislative, and this was shown on the face of the resolution; and it was held that there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently there was no authority in the House to compel a witness to testify on the subject. It followed that the order of the House declaring Kilbourn guilty of a contempt of its authority and ordering his imprisonment was void, and afforded no protection to the Sergeant-at-Arms in an action against him for false imprisonment. It was emphatically declared by the court "that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possess the general power of making inquiry into the private affairs of the citizen."

In the case now before us the subject-matter referred to the committee for investigation was altogether different in its nature and involved questions and consequences wholly unlike the subject-matter referred to the committee in Kilbourn's case. It was a matter immediately and most seriously affecting the Senate itself and the great legislative trust confided to its members by the people or the States of the Union. The dignity of the body and the integrity and purity of some of its members were openly and seriously questioned, and that, too, in a manner well calculated to destroy public confidence in and bring odium and reproach upon that important branch of our national legislature. The charges or imputations referred to in the resolutions, the truth of which was made the subject of inquiry, not only affected pending legislation with distrust, but were of a nature, if found to be true, to subject members of the body to reprimand or expulsion, and other guilty parties to punishment, at the hands of the Senate. But nothing could be done until inquiry was made and the facts brought to light. A preliminary investigation was therefore necessary. And for the purposes of the inquiry no more formal proceedings were required than those adopted by the Senate. No technical formality was required and no specific charges could, in justice and fairness, be formulated against any Member of the Senate or any other person until the facts could be ascertained upon which to proceed, and it certainly can not be true that the Senate is powerless in such case to elicit the facts. What the ultimate action of the Senate should or may be upon the facts when ascertained is not the question for the court to determine, but simply whether the inquiry instituted forms a subject-matter properly and constitutionally within the cognizance and jurisdiction of the Senate. That the subject-matter was within its jurisdiction we entertain no doubt. And having power and jurisdiction of the subject-matter of inquiry, the Senate by its committee had full and ample power to compel the attendance of the appellant as a witness and to require him to answer any question pertinent to the matter of inquiry embraced by the resolutions. There is no pretense that the answers to the questions propounded would or could criminate the witness in any way, and it was his clear duty as a citizen to obey the law and to answer the questions without respect to the persons to be affected. His refusal was at his peril and he must abide the consequences prescribed by the statute.

It has been strongly insisted in argument that because the specific ulterior purpose of the investigation was not avowed or declared on the face of the resolutions, and thus made to appear affirmatively and in terms, that the Senate by instituting the investigation intended the exercise of some of its acknowledged powers, such as the expulsion or censure of its Members, the punishment of parties for attempting to corrupt Members, or for conduct otherwise calculated to bring the body into scandal and contempt with the people, therefore there was no power to require disclosure of facts, though pertinent to the inquiry, authorized to be made. But to the correctness of this contention we can not consent. The subject-matter of inquiry being within the jurisdiction of the Senate, the court can not assume that the body intended the investigation as a mere idle, prying, inquisitive proceeding, without ultimate aim or object. We must assume that the object and design of the inquiry was intended for legitimate purposes and not for the accomplishment of that which would be unlawful.

The resolutions of reference to the committee do not, in terms, require the committee to report their proceedings to the Senate. But that was necessarily a part of their duty, for it is an established principle "that when their acts and proceedings are agreed to they become the acts and proceedings of the House; it is consequently the duty of committees both to proceed under the authority given them and to report their proceedings to the House." (Cush. Parl. Law, sec. 1930.)

(3) The last question to be considered is whether the questions propounded to the appellant were pertinent to the subject-matter of inquiry before the committee. This question would seem to need but little to be said in regard to it. Each and all of the questions had reference to and sought to elicit the information whether the stockbrokers' firm, to which the appellant belonged, had bought or sold during the months of February, March, April, and May, 1894, sugar stocks for or in the interest, directly or indirectly, of any United States Senator, or were carrying such stocks for said Senators. If these questions had been answered in the negative, this fact thus proved would have gone far toward relieving Senators of the charge or imputation of using and abusing their position as Senators for the purpose of making selfish gain in the stock market. While, on the other hand, if the answers had been in the affirmative, the fact thus disclosed would have subjected the Senator or Senators involved not only to the animadversion of the public, but to censure, if not expulsion, from the body to which he or they belonged by his or their fellow Senators. This was plainly within the scope of the inquiry, and was that to which the resolution referred when it directed the committee to inquire "whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." Whether the questions propounded by the committee or by the Senate were pertinent is a judicial question and is an essential element in the offense charged; but we are clearly of opinion that the questions set out in the indictment and which the appellant refused to answer were all pertinent to the inquiry given in charge to the committee.

Upon the whole, this court is of the opinion that the indictment is good and sufficient, and that the demurrer thereto was properly overruled by the court below; and that the demurrer in the similar case of the United States against John W. Macartney, also on appeal to this court, and submitted with and to be determined on the arguments in the case against Chapman, the present appellant, was also properly overruled by the court below; and that the judgments entered on the demurrers in both cases must be affirmed; and it is so ordered.

Judgments affirmed.

The case was carried to the Supreme Court of the United States, and at the October term of 1896 that tribunal decided—

that this tribunal has no jurisdiction to review, on writ of error, a judgment of the court of appeals of the District of Columbia in a criminal case under section 8 of the act of February 9, 1893.[1]

1614. The case of Elverton R. Chapman, continued.

In 1894 Elverton R. Chapman was committed by the courts for contempt of the United States Senate in declining, as a witness, to answer a pertinent question.

In the Chapman case the Supreme Court held that the power to punish for contempt remains with each House in cases to which its power properly extends.

Each House possesses the inherent power of self protection.

An inquiry as to the integrity of Senators was held to be within the power of the Senate, and questions relating thereto were not unreasonable intrusions into the affairs of the citizen.

It is not essential that a resolution authorizing an investigation of the conduct of Senators shall specify censure or expulsion in order that the Senate may constitutionally compel testimony.

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[1] 164 U. S., p. 436.

Chapman, being committed, applied to the Supreme Court of the United States for a writ of habeas corpus. On April 19, 1897,[1] the court rendered its decision, and held in the first place that sections 102 and 104 of the Revised Statutes, when reasonably construed, were not open to the objection that they conflicted with the Constitution of the United States, and that Congress possesses the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legislative functions.

The decision further found that—

while Congress can not divest itself or either of its Houses of the inherent power to punish for contempt it may provide that contumacy in a witness called to testify in a matter properly under consideration by either House and deliberately refusing to answer questions pertinent thereto shall be a misdemeanor the United States.

The opinion, delivered by Mr. Chief Justice Fuller, has the following discussion of certain phases of the case:

Under the Constitution the Senate of the United States has the power to try impeachments; to judge of the elections, returns, and qualifications of its own Members; to determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member; and it necessarily possesses the inherent power of self-protection.

According to the preamble and resolutions, the integrity and purity of Members of the Senate had been questioned in a manner calculated to destroy public confidence in the body and in such respects as might subject Members to censure or expulsion. The Senate, by the action taken, signified its judgment that it was called upon to vindicate itself from aspersion and to deal with such of its members as might have been guilty of misbehavior and brought reproach upon it, obviously had jurisdiction of the subject-matter of the inquiry it directed and power to compel the attendance of witnesses, and to require them to answer any question pertinent thereto. And the pursuit of such inquiry by the questions propounded in this instance was not, in our judgment, in violation of the security against unreasonable searches and seizures protected by the fourth amendment.

In Kilbourn *v.* Thompson (103 U. S., 168), among other important rulings, it was held that there existed no general power in Congress, or in either House, to make inquiry into the private affairs of a citizen; that neither House could, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, investigate the affairs of that partnership as a mere matter of private concern; and that consequently there was no authority in either House to compel a witness to testify on the subject. The case at bar is wholly different. Specific charges publicly made against Senators had been brought to the attention of the Senate; and the Senate had determined that investigation was necessary. The subject-matter as affecting the Senate was within the jurisdiction of the Senate. The questions were not intrusions into the affairs of the citizen; they did not seek to ascertain any facts as to the conduct, methods, extent, or details of the business of the firm in question, but only whether that firm, confessedly engaged in buying and selling stocks and the particular stock named, was employed by any Senator to buy or sell for him any of that stock, whose market price might be affected by the Senate's action. We can not regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree connected with the alleged transactions, and as investigations of this sort are within the power of either of the two Houses they can not be defeated on purely sentimental grounds.

The questions were undoubtedly pertinent to the subject-matter of the inquiry. The resolutions directed the committee to inquire "whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." What the Senate might or might not do upon the facts when ascertained we can not say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative

[1]166 U. S., p. 661.

answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers.

Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolutions did not specify that the proceedings were taken for the purpose of censure or expulsion if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate. The resolutions adequately indicated that the transactions referred to were deemed by the Senate reprehensible and deserving of condemnation and punishment. The right to expel extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a Member.

After a citation and comment on authorities, the opinion proceeds:

Counsel contends with great ability that the law under consideration is necessarily subject to being impaled on one or the other of two horns of a dilemma, either inflicting a fatal wound. The one alternative is that the law delegates to the District of Columbia criminal court the exclusive jurisdiction and power to punish as contempt the acts denounced, and thus deprive the Houses of Congress of their constitutional functions in the particular class of cases. The other alternative is that if the law should be interpreted as leaving in the Houses the power to punish such acts, and vesting in addition jurisdiction in the District criminal court to punish the same acts as misdemeanors, then the law is invalid because subjecting recalcitrant witnesses to be twice put in jeopardy for the same offense contrary to the fifth amendment.

The refusal to answer pertinent questions in a matter of inquiry within the jurisdiction of the Senate, of course, constitutes a contempt of that body, and by the statute this is also made an offense against the United States.

The history of Congressional investigations demonstrates the difficulties under which the two Houses have labored, respectively, in compelling unwilling witnesses to disclose acts deemed essential to taking definitive action, and we quite agree with Chief Justice Alvey, delivering the opinion of the court of appeals, "that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions;" and that it was to affect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof. We grant that Congress could not divest itself, or either of its Houses, of the essential and inherent power to punish for contempt in cases to which the power of either House properly extended; but because Congress, by the act of 1857, sought to aid each of the Houses in the discharge of its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved; and the statute is not open to objection on that account.

Nevertheless, although the power to punish for contempt still remains in each House, we must decline to decide that this law is invalid because it provides that contumacy in a witness called to testify in a matter properly under consideration by either House and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States, who are interested that the authority of neither of their departments, nor of any branch thereof, shall be defied and set at naught. It is improbable that in any case cumulative penalties would be imposed, whether by way of punishment merely or of eliciting the answers desired, but it is quite clear that the contumacious witness is not subjected to jeopardy twice for the same offense, since the same act may be an offense against one jurisdiction and also an offense against another; and indictable statutory offenses may be punished as such, while the offenders may likewise be subjected to punishment for the same acts as contempts, the two being diverso intuitu and capable of standing together.

1615. The President, by message, complained to the House that his secretary, immediately after delivering a message to the House, had been assaulted in the Capitol.

Discussion of the theory that the House has the inherent power to punish for contempts wherever committed.

On May 16, 1828,[1] Mr. George McDuffie, of South Carolina, from the select committee to whom was referred the message[2] of the President of the United States relative to an assault committed upon his private secretary, made a report accompanying and recommending the adoption of the following resolution:

Resolved, That the assault committed by Russel Jarvis on the person of John Adams, the private secretary of the President, in the Rotunda of the Capitol, immediately after the said John Adams had delivered a message from the President to the House of Representatives and while he was in the act of retiring from it, was a violation of privilege which merits the censure of this House.

Resolved, That it is not expedient to have any further proceedings in this case.

The committee decided that the act was in contempt of the authority and dignity of the House, involving not only a violation of its own peculiar privileges, but of the immunity which it was bound, upon every principle, to guarantee to the person selected by the President as the organ of his official communications to the House. The proceedings of Congress could not be more effectually arrested by preventing Members of either House from going to the Hall of their deliberations than they might be by preventing the President from making official communications essentially connected with the legislation of the country. The power of punishing for contempts was not peculiar to the common law of England, but belonged essentially to every judicial tribunal and legislative body. The power in question grows out of the great law of self-preservation and, from its nature, is not susceptible of precise definition and precise limitation.

The minority views, submitted by Mr. P. P. Barbour, of Virginia, agreed with the majority as to the facts of the case, but took the ground that it was not competent for the House to "punish Russel Jarvis for the assault upon the private secretary of the President as for a contempt to the House." The minority denied the doctrine of the inherent right of the House to punish for contempts, holding that the House had only such powers in this direction as were given by the Constitution. This instrument, which defined so carefully the privileges of the Members and the powers of the House to give itself organization and action, surely did not mean to leave the House "at liberty to range in the boundless field of wild and capricious precedent in search of power to punish its fellow-citizens." The Constitution had, moreover, declared that the trial of all crimes, except in cases of impeachment, should be by trial by jury, and that no man should be deprived of his life, liberty, or property without due process of law. The two Houses of Congress might remove any disorder or disturbance within their respective Chambers, so as to prevent any obstruction to the progress of their business, but they had not the power of imprisoning for contempt. But if they had this power, still it could not be extended to embrace any case beyond their own Chambers; for if it were, where would be the limits? The court, in the case of Anderson *v.* Dunn, give the answer. They say that they know no bounds to the process of this House for contempt but those of the United States. This principle could not be admitted to be correct. Tremendous would be that power which could drag before it any citizen from Maine to Florida and punish him for contempt, of which the sole criterion would be the discretion of the power punishing.

[1] First session Twentieth Congress, Congressional Debates, p. 2715.

[2] For this message see Journal, p. 587.

On May 23 Mr. Barbour moved to postpone the orders of the day in order to consider the question, his object being to test the sense of the House on the expediency of considering the question during the present session. The motion failed, 69 to 69. So the matter was not settled by the House.

1616. For assaulting a Member for words spoken in debate, Samuel Houston was censured by the House in 1832.

The complaint of a Member that he had been assaulted for words spoken in debate was made in the form of a letter to the Speaker accompanied by an affidavit.

After debate the House ordered a warrant to issue for arrest of a person who had violated its privileges by assaulting a Member.

Samuel Houston, arrested for a breach of privilege, was arraigned at the bar of the House, informed of the charge, and informed that he might summon witnesses and employ counsel.

On April 14, 1832,[1] the Speaker laid before the House a communication addressed to the House by Mr. William Stanberry, of Ohio, a Member, in which the latter said that on the previous night he was waylaid on the street near his boarding house, attacked, knocked down by a bludgeon, and severely bruised and wounded by Samuel Houston, late of Tennessee, for words spoken in his place in the House of Representatives.

The letter being read, Mr. Joseph Vance, of Ohio, moved the following resolution, which was adopted, 106 yeas to 65 nays.

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take in custody, wherever to be found, the body of Samuel Houston; and the same in his custody to keep, subject to the further order and direction of this House.

An affidavit of Mr. Stanberry was presented, wherein he made oath to the truth of the facts stated in his letter.

Mr. Vance's resolution was the subject of extended debate. He had followed the precedents of 1795 and 1818,[2] as he considered the present assault as gross a breach of privilege as the offering of a bribe. Mr. James K. Polk, of Tennessee, took the ground that the law of the District of Columbia was the proper remedy for the Member, and indorsed the sentiment that precedents from the House of Commons were repugnant to the spirit and genius of republican institutions. Among those who favored the resolution, Mr. Edward Everett, of Massachusetts, took the ground that the freedom of debate, the dearest privilege of freedom, was involved. Why had Congress left Philadelphia? Was it not because an insult had been offered a Member in a public theater because, as it was believed, of the part he had taken in public business? The legislature of Pennsylvania had promised to protect Congress if it would stay, but they determined to go where they could protect themselves.[3] If the time should ever come when the House would not assume the injuries inflicted on its Members as done to itself, the Constitution would no longer be worth living under.

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[1] First session Twenty-second Congress, Journal, pp. 590, 593, 595, 600, 604, 610, 713, 725, 730, 736; Debates, pp. 2511, 2534, 2540, 2548, 2550, 2563, 2822, 2839.

[2] See secs. 1599 and 1606 of this chapter.

[3] This evidently refers to the case of Mr. Randolph. (See sec. 2680 of Volume III.)

The resolution, as presented by Mr. Vance, was adopted by a vote of 145 yeas to 25 nays.

Pursuant to the resolution, a warrant was prepared, signed by the Speaker under his seal, attested by the Clerk, and delivered to the Sergeant-at-Arms, with orders forthwith to execute the same and make due return thereof to the House.

1617. The case of Samuel Houston, continued.

For the trial of Samuel Houston for contempt a committee on privileges reported on a method of procedure.

In 1832 the Speaker was empowered to administer the oath to witnesses in the contempt case of Samuel Houston.

For the trial of Samuel Houston a committe was appointed to examine witnesses at the bar of the House.

The House declined to permit Samuel Houston, on trial at its bar for contempt, to challenge the right of a Member to sit in the trial.

On April 16, the Speaker having announced to the House that the Sergeant-at-Arms had the body of Samuel Houston in custody, on motion of Mr. John Davis, of Massachusetts,

Resolved, That Samuel Houston be brought to the bar of the House to answer the charge of having assaulted and beaten William Stanberry, a Member of this House from the State of Ohio, for words spoken by said Stanberry in his place as a Member of this House, in a debate upon a question depending before the House, and that he be forthwith furnished by the Clerk with a copy of the said charge as set forth in the letter of said William Stanberry.

Samuel Houston was then brought to the bar of the House by the Sergeant-at-Arms, and the Speaker addressed him, informing him of the charge against him and that he would be allowed to employ counsel and summon witnesses.

He was then remanded and retired from the bar in the custody of the Sergeant-at-Arms; when

On motion of Mr. Davis, of Massachusetts, it was [2]

Resolved, That a committee of privileges, consisting of seven Members, be appointed and instructed to report a mode of proceeding in the case of Samuel Houston, who is now in custody by virtue of an order of this House, and that said committee have leave to execute the duty assigned them immediately.

The committee was constituted of Messrs. John Davis, of Massachusetts; William Drayton, of South Carolina; John W. Taylor, of New York; Henry A. Muhlenberg, of Pennsylvania; James M. Wayne, of Georgia; Clement C. Clay, of Alabama, and William W. Ellsworth, of Connecticut.

On April 17 Mr. Davis, from the committee, reported the mode of proceeding.

This report was in the form of an order,[3] which was adopted by the House and provided the following procedure:

Said Samuel Houston shall be again placed at the bar of the House, and the letter of William Stanberry shall be read to him; after which the Speaker shall put to him the following interrogatory:

Do you admit or deny that you assaulted and beat the said Stanberry, as he has represented in the letter which has been read, a copy of which has been delivered to you by order of the House?

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[1] For statement of Speaker in full see Journal, p. 595; Debates, p. 2540.

[2] Journal., p. 596.

[3] Journal, p. 600; Debates, pp. 2550–2553.

If the said Samuel Houston admit that he did assault and beat the said Stanberry as in said letter is represented, then the Speaker shall put to him the following interrogatory:

Do you admit or deny that the same assault and beating were done for and on account of words spoken by said Stanberry in the House of Representatives in debate?

But if the said Samuel Houston deny the assault and beating, or that the same were done for the cause aforesaid, or refuse or evade answering the said interrogatories, then the said William Stanberry shall be examined as a witness touching the said charge; after which the said Samuel Houston shall be allowed to introduce any competent evidence in his defense, and then any further evidence the House may direct shall also be introduced.

If parol evidence is offered, the witnesses shall be sworn by the Speaker and be examined at the bar, unless they are Members of the House, in which case they may be examined in their places. A committee shall be appointed to examine witnesses. The questions put shall be reduced to writing (by a person to be appointed for that purpose) before the same are proposed to the witness, and the answer shall also be reduced to writing. Every question put by a Member not of the committee shall be reduced to writing by such Member and be propounded to the witness by the Speaker, if not objected to; but if any question shall be objected to or any testimony offered shall be objected to by any Member, the Member so objecting and the accused or his counsel shall be heard thereon, after which the question shall be decided without further debate.

When the evidence is all before the House the said Samuel Houston shall be heard on the whole matter by himself or his counsel, as he may elect.

After the said Samuel Houston shall have been so heard he shall be directed to withdraw, and the House shall proceed to consider the subject and to take such order thereon as may seem just and proper.

Said Samuel Houston shall be furnished with a copy of this order.

Messrs. Davis, of Massachusetts; Richard Coulter, of Pennsylvania; Jabez W. Huntington, of Connecticut; John M. Patton, of Virginia, and Samuel Beardsley, of New York, were appointed the committee to examine witnesses

Then, on motion of Mr. Davis, it was

Resolved, That this House will proceed to the trial of Samuel Houston to-morrow, at 12 o'clock meridian.

On April 18[1] the House, on motion of Mr. Cave Johnson, of Tennessee,

Resolved, That Samuel Houston be permitted to have counsel to aid him in the defense of the proceedings instituted against him in the House of Representatives, and that a seat be assigned to said counsel within the bar of the House.

A resolution forbidding publication of the testimony by newspapers while the trial was going on was offered, but being antagonized strongly was withdrawn.[2]

The Sergeant-at-Arms was then directed by the Speaker to place Samuel Houston at the bar of the House; whereupon Samuel Houston was placed at the bar, accompanied by Francis S. Key, as his counsel, when the Speaker addressed him as follows:

Samuel Houston, you stand charged before the House of Representatives of the United States with having assaulted William Stanberry, one of its Members from Ohio, for words spoken by him in the House of Representatives, in debate.

By order of the House you have been brought this day to its bar to answer this charge.

Before I propound to you any interrogatory touching this matter you will say whether you are now ready to proceed to trial in the mode prescribed by the order of the House, of which you have been informed, or whether you have any request to make of the House before you are put upon your trial. If you have, it will now be received and considered by the House.

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[1] Journal, p. 604; Debates, p. 2556.

[2] Debates, pp. 2556–2562.

Samuel Houston then answered in the words following:

The accused, put to the bar of this House to answer for an alleged offense, begs leave respectfully to protest against the authority of this House to institute the present proceeding, and under this protest is prepared to submit to whatever course the House may order concerning the investigation they may think proper to make.

Before, however, the House proceeds further in the inquiry, he asks permission to make, by his counsel, a motion which from its nature must be preliminary to any trial on which he may be put.

Which answer being read by the Clerk, a motion was made by Mr. James M. Wayne, of Georgia, that Samuel Houston be permitted to make the motion indicated in his answer, which had been read and delivered in by him.

This motion being agreed to, Samuel Houston made the motion in the words following:

The accused asks leave to object to an honorable Member of this House, sitting and voting in the House upon the questions that may arise on the present proceeding against him, on the ground that such Member has formed and expressed opinions in relation to the accused and in relation to the accusation unfavorable to the accused, and committing himself upon the subject of the accusation.

A motion was then made by Mr. George McDuffie, of South Carolina, that the said Samuel Houston be removed from the bar of the House.

Mr. Clement C. Clay, of Alabama, urged [1] that the prisoner and his counsel should not be compelled to retire until they had been allowed to offer argument in support of their motion; but Mr. McDuffie replied that if there was any question that the House owed it to its own dignity to decide without argument it was this.

The House thereupon agreed to the motion that the prisoner and his counsel be removed, and Samuel Houston was conducted from the bar.

The request was then debated, and was objected to on the ground that it was a challenge of one of the judges; that it amounted to a call upon the House to expel one of its Members temporarily, a proceeding impracticable; and that, if the right of challenge was admitted, it might be carried to great lengths.[2]

A motion was then made by Mr. William S. Archer, of Virginia, that the said Samuel Houston be again brought to the bar of the House and that he have leave to withdraw his said motion.

The motion being agreed to, Samuel Houston, accompanied by his counsel, was then again brought to the bar of the House and withdrew his said motion.

1618. The case of Samuel Houston, continued.

The House declined to release Samuel Houston on bail pending his trial by the House for contempt.

In the examination of witnesses in the contempt case of Samuel Houston, the House declined to permit a witness to state opinions.

In the trial of Samuel Houston for contempt, the House permitted an affidavit to be read.

Thereupon the Speaker put the following interrogatory to the said Samuel Houston:

Are you ready to proceed to your trial?
Answer.—I am ready to go to trial.

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[1] Debates, p. 2564.

[2] Debates pp. 2564–2566.

The Speaker thereupon had the letter of William Stanberry read, and then propounded the first interrogatory prescribed by the rules.

Mr. Houston's reply was given from a written paper read by his counsel. The reply admitted the assault and beating because of words reported to have been uttered in debate by Mr. Stanberry; but denied any intention to commit any contempt or breach of privilege, or that such had really been committed.

The House then postponed further hearing of the case until the succeeding day.

Then, by unanimous consent, Mr. Henry W. Connor, of North Carolina, offered this resolution:[1]

Resolved, That Samuel Houston be released from the custody of the Sergeant-at-Arms, on giving security for his appearance at the bar of this House from day to day, and from time to time, until the termination of his trial. The amount of the security and terms of the bond to be prescribed by the Speaker of the House.

Mr. John Dickson, of New York, questioned whether precedent could be found for such proceeding, either in the House of Commons or of the House of Representatives; and Mr. Richard H. Wilde, of Georgia, raised questions as to what would happen in case the bond should be forfeited, there being no rules or statutes to authorize an officer of the House to prosecute. Mr. William S. Archer, of Virginia, said that it was not usual for the British Parliament to take bail in similar cases.

The debate continuing on April 19, and a proposition to discharge Mr. Houston being suggested as an amendment, Mr. Dickson defended the procedure, citing precedents of Parliament since 1550. In the sixteenth century the course in such cases had been to apply to the King to cause the offender to be prosecuted; but since then the course pursued in every case had been to arrest the offender in the first instance—thus the cases of the Earl of Shaftesbury in 1677, Sir Alexander Murray in 1671, and Sir Francis Burdett in 1810. In the last case actions had been brought against the Sergeant-at-Arms and the Speaker; but the court had sustained the power of the House. In this country an instance had occurred in New York State where the legislature had arrested and imprisoned until the end of the session an individual who had challenged De Witt Clinton. In the House of Representatives also were cited the cases of Randall, Whitney, and Anderson.

Mr. Connor's motion was withdrawn.

Samuel Houston, accompanied by his counsel, was then placed at the bar of the House; and, having responded that he was ready to proceed, the proceedings began.[2]

Mr. William Stanberry, the Member who complained to the House, was sworn in his place, and gave his testimony, which appears in full in the Journal, as does all the testimony. During his testimony witness was questioned both by the accused and by the committee. The witness testified in relation to his speech which had given offense to Mr. Houston.

On April 19,[3] during the testimony of Mr. Stanberry, a question was asked on behalf of the accused that elicited an answer suggesting, in connection with charges

[1] Journal, pp. 607, 610; Debates, pp. 2567, 2570.

[2] Journal, p. 610; Debates, p. 2571.

[3] Journal, p. 615; Debates, p. 2572.

against Mr. Houston, fraud on the part of the late Secretary of War. This response at once caused objection and debate, but resulted in no definite action. On April 20, however, while the witness was stating reasons which led him to believe that Mr. Houston had been engaged in an attempted fraud through a Government contract, he was stopped by a Member, and after debate the House agreed to this motion:[1]

That the witness be precluded from stating his belief of any fraud committed by Governor Houston or in which he participated, but may be permitted to state any evidence which he then had or now has tending to prove it.

On April 20 also an effort was made, in order to save the time of the House, to confine the examination of witnesses and discussion of questions arising out of testimony to the committee, but objection was made and the proposition was withdrawn.

On April 20[2] also Mr. Stanberry, in the course of his testimony, presented a paper purporting to be the affidavit of one Luther Blake, charging Samuel Houston with fraud. Counsel for Mr. Houston claimed that the paper should not be considered evidence until it should be shown how taken, and objection was made to reading it.

The question being put, the House decided that the paper should be read; but on the succeeding day an affidavit in explanation of certain defects of this paper was not received.

1619. The case of Samuel Houston, continued.

Discussion as to the right of the House to punish for a contempt not committed in its actual presence.

Argument that the parliamentary law as to contempt does not apply to the House.

The House ordered spread on its Journal the paper in which Samuel Houston protested against the right of the House to punish him for contempt.

Rule for examining Members as witnesses in a trial at the bar of the House for contempt.

The trial continued, and on April 26 Mr. Key began his argument[3] for the defense. He was prevented by illness from concluding until May 3. On May 7 Mr. Houston spoke[4] at the bar in his own defense.

Thereupon Mr. John M. Harper, of New Hampshire, offered the following resolution:[5]

Resolved, That Samuel Houston, now in the custody of the Sergeant-at-Arms, be forthwith discharged.

Mr. Jabez W. Huntington, of Connecticut, moved to amend this by striking out all after the word "Resolved," and inserting: "That Samuel Houston has been guilty of contempt and a violation of the privileges of this House."

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[1] Journal, p. 620.

[2] Journal, p. 621; Debates, p. 2581.

[3] Debates, p. 2597. The argument of counsel does not appear in the Journal.

[4] Journal, p. 713; Debates, p. 2810.

[5] Journal, p. 713; Debates, p. 2822.

On the next day an extended debate took place on these propositions, Mr. Polk supporting the original resolution in an exhaustive speech.

Mr. Polk, in favoring the original resolution, stated [1] that upon full examination of the question he was confirmed in the opinion that the House was invested with no authority, under the Constitution or laws of the land, to punish as for a contempt or violation of its privileges any offense committed not in the presence of the House during its session or in such manner as to disturb its proceedings. The precedents of Parliament were not applicable, for Congress was limited by a written Constitution, and the parliamentary law of privilege was not the law of privilege of either House of Congress. The Constitution had conferred no such power, and even if it had it could not be exercised until the offense was defined and the punishment prescribed. Mr. Polk argued in support of his position with exhaustive citations from authorities.

The debate continued until May 11, [2] being closed by Mr. Dickson, of New York, who argued that the inherent right of the House to punish for breach of its privileges was sustained by precedents of Parliament, legislatures of the States, of the Continental Congress, and of the House itself. The Constitution itself in this case was evidently authority for the procedure, for it could not be that it meant to protect them from arrest in going to and returning from the House and yet leave them subject to individual lawless violence because of words spoken in debate.

He was answered by Mr. Ellsworth, of Connecticut, and thereafter the debate continued at length and with an exhaustive citation of authorities and precedents.

Finally, on May 11, the Huntington amendment was agreed to, 106 yeas to 88 nays, and then the following was adopted:

Resolved, That Samuel Houston be brought to the bar of the House on Monday next, at 12 o'clock, and be there reprimanded by the Speaker for the contempt and violation of the privileges of the House of which he has been guilty, and that he be then discharged from the custody of the Sergeant-at-Arms.

This was agreed to, 96 yeas to 84 nays, and on May 14 Mr. Houston was censured by the Speaker for invading the rights and privileges of the House.[3]

As Mr. Houston was brought to the bar he was allowed to present a paper protesting against the punishment inflicted on him. This paper was, by vote of the House, spread on the Journal.[4]

1620. It being doubtful whether or not an assault on a Member had been for words spoken in debate, no action was taken.

A person who had assaulted a Member was permitted to be present at the investigation by a select committee and cross-examine witnesses.

On February 28, 1835,[5] the Speaker laid before the House a letter from Hon. John Ewing, of Indiana, in which the latter apologized for his absence from the House and explained that while on his way to his boarding house after the adjournment on the evening of the 26th instant he was waylaid and assaulted in a most

[1] Debates, p. 2822.

[2] Debates, p. 3002.

[3] Journal, p. 736; Debates, p. 3021.

[4] Journal, p. 735; Debates, p. 3020.

[5] Second session Twenty-third Congress, Journal, pp. 485, 489, 518; Globe, p. 314.

outrageous and dastardly manner by John F. Lane, a lieutenant in the United States Army and son of the Hon. A. Lane, of Indiana, for no other known cause than for words spoken in debate some weeks since, in reply to his father, on the floor of the House of Representatives. Mr. Ewing stated that he had but a casual acquaintance with the person who committed this outrage, and no intercourse whatever with him to lead to the assault. A blow from an iron cane with a leaden head accompanied the first notice of the attack, and was repeated by several others. Mr. Ewing regretted his disability at such an important and pressing period of the session.

After this letter had been read Mr. Edward A. Hannegan, of Ohio, moved the following resolution:

Resolved, That a committee of seven Members be appointed to investigate the circumstances of the assault on the Hon. John Ewing, and to report the facts to this House.

After unsuccessful motions to lay the resolution on the table and to postpone it until March 3, it passed, 127 yeas to 63 nays.

Mr. Hannegan was made chairman of the committee, which on March 3 brought in their report.[1] They took testimony in the presence of Lieutenant Lane, to whom the privilege of cross-examination of witnesses was given. After the testimony on the part of the committee had been closed Lieutenant Lane gave the committee to understand that he did not feel bound to introduce any evidence going to show what his private motives were for the assault upon Mr. Ewing. After reciting the circumstances the committee say that they have been unable to discover any cause other than that assigned by Mr. Ewing. The committee had no grounds for supposing this to be the cause of the assault other than the supposition of Mr. Ewing and the absence of all apparent cause besides. Lieutenant Lane had disclaimed any such intention or motive. Therefore the committee, as the time allowed was brief, declined suggesting any action by the House.

1621. A proposition relating to an assault on a Senator by a Member was held in order as a question of privilege.

The House failed to agree to a resolution to expel a Member for assaulting a Senator.

The House censured a Member for being concerned in an assault on a Senator.

The House declined to censure two Members in one resolution, taking such action as enabled a vote to be taken as to each.

On May 23, 1856,[2] Mr. Lewis D. Campbell, of Ohio, submitted a preamble and resolution, which he subsequently modified to read as follows, viz:

Whereas it is represented that on the 22d day of May, 1856, the Hon. Preston S. Brooks and the Hon. Lawrence M. Keitt, Members of this House from the State of South Carolina, and other Members, either as principals or accessories, perpetrated a violent assault on the person of the Hon. Charles Sumner, a Senator of the United States from the State of Massachusetts, while remaining in his seat in the Senate Chamber in performance of duties pertaining to his official station: Therefore,

Resolved, That a select committee of five Members be appointed by the Speaker to investigate the subject and report the facts, with such resolutions in reference thereto as in their judgment may be proper and necessary for the vindication of the character of this House; and that said committee have power to send for persons and papers and to employ a clerk; also to sit during the sessions of the House.

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[1] Reports of committees, second session Twenty-third Congress, No. 135, House of Representative.

[2] First session Thirty-fourth Congress, Journal, pp. 1023, 1029, 1076, 1077, 1185–7, 1193–7, 1193–4, 1197–1201, 1205–1221; Globe, pp. 1290, 1348–1352, 1578.

Mr. Thomas L. Clingman, of North Carolina, made the point of order that no question of privilege was involved in the proposition, and that it could not supersede the regular order of business.

The Speaker[1] decided that a question of privilege was involved in the proposition, saying:

The Chair is of opinion that the resolution involves a question of privilege. * * * If a personal difficulty occurred between two Members of this House, either during its session or immediately upon its adjournment, growing out of the proceedings in the House, the Chair is of the opinion that its investigation would be legitimately a question of privilege. His opinion is in accordance with many precedents involving the same circumstances.

The resolution refers to an assault by a Member of this House upon a member of the Senate while in his seat in the Senate Chamber. It does not, it is true, affect the privileges of the House or its Members with that directness which would exist if the assault had occurred between Members of the House in its presence. It is, however, only one step removed, and that removal is not such as to change the nature of the question. The members of the Senate are entitled under the Constitution to the privileges as Members of the House of Representatives; and whenever it shall appear, either by a message from the Senate or by an admitted statement on the part of any Member of this House, that the privileges of the Senate have been violated in the manner charged by the gentleman from Ohio, the Chair believes it to be a duty to submit it to the House as a subject of privilege. * * * The language of the resolution is, "whilst remaining in his seat in the Senate Chamber;" and the presumption is, from that language, "in the performance of the official duties pertaining to his station."

As a matter of right, the Senate has no cognizance of any violation of privilege upon the part of a Member of the House. This House is the protector exclusively of the privileges of its own Members; and the Chair would not recognize the right of the Senate to interfere with the privilege of any Member of the House, either here or elsewhere, upon the ground of an offense against the privileges of the Senate. It belongs to the House, if a Member has in any manner violated its own privileges or those of the Senate, to inquire into the facts, and come to such determination as its own dignity and regard for the privileges of the Senate may require. The Senate is not a tribunal competent to investigate and determine the privileges of Members of the House. The Chair is of opinion, therefore, that upon the facts stated in the resolution presented by the gentleman from Ohio, such a question of privilege is presented as will supersede ordinary subjects of legislation. The Chair is at liberty, undoubtedly, to refer the matter to the House for its decision. In the case lately decided by the House the Chair was not cognizant of the facts. No privilege of the Senate, or of any other person, was asserted, and the Chair declined to decide whether it was a question of privilege or not, and submitted it to the House for decision. But in this instance it is stated that a Member of the House has violated the privileges of the Senate by an assault upon one of its Members while in his seat in the performance of his duty; and the Chair believes he can not consistently decide that it is not a question of privilege.

As a precedent upon this point, the Chair refers to the action of the House of Representatives in the case of an assault committed upon the private secretary of the President of the United States,[2] not by a Member of Congress, but by a citizen. The information was transmitted to the House by the President in a special message. The House took cognizance of the subject as a question of privilege, and ordered a committee of investigation. The Chair decides this to involve a question of privilege.

Mr. Clingman having appealed from this decision, the appeal was laid on the table by a vote of 85 to 71.

The Speaker then announced the appointment of the following committee: Messrs. Lewis D. Campbell, of Ohio; Howell Cobb, of Georgia; Alfred B. Greenwood, of Arkansas; Francis E. Spinner, of New York, and Alexander C. M. Pennington, of New Jersey.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] See section 1615 of this chapter.

On June 2, 1856,[1] the committee reported. They came to the conclusion that the assault was a breach of the privilege of the Senate, but that the Senate could not therefor arrest and try and punish a Member of the House. Therefore only the House could punish. The act was an aggravated assault upon the freedom of speech guaranteed by the Constitution. The committee did not discuss the powers of the House to punish its disorderly Members, nor argue the general question of privilege. The passage of the resolution by the House was regarded as declaratory on the part of the House of its power to call its Members to account for such acts as violated the privileges of the Senate.

The views of the minority, submitted by Howell Cobb and Alfred B. Greenwood, concluded with a resolution declaring that the House had no jurisdiction of the case, and therefore deemed it improper to express any opinion on the subject. After reciting the facts the report argues elaborately the question of privilege, taking with strictness the ground that the privileges of the House are only such as are expressly given by the fifth and sixth sections of the first article of the Constitution or set forth in some law passed in pursuance thereof or some rule adopted under the authority of the same, and denying that either the Senate or House possessed the inherent right to declare what its privileges were. To admit this inherent right would be to establish the despotism of the privileges of Parliament. To illustrate the nature of these privileges, the precedents from the minority report of P. P. Barbour in 1828 were given.[2]

The framers of our Constitution had too much regard for the liberty of the citizen to give such power to either House of Congress. As to the assault upon the freedom of speech, the report questioned whether the Constitution contemplated such an assault as this, which was made in violation of the criminal law, and suggested that the constitutional intent was rather to protect Members from legal liability under the law for words spoken. While each House should guard its own privileges, it was not charged with guarding the privileges of the other body. The Constitution expressly gave each House the power to punish its Members for disorderly behavior, but the minority Members took the view that this referred only to the actual sessions of the House.

In the debate on the question those who sustained the report of the majority drew the distinction between two branches of the crime—the offense against the individual, which the courts could punish, and the offense against the people, whose majesty had been violated, and which could be punished by no tribunal but the House or Senate. The narrow construction of the provision as to disorderly behavior was also combated, as tending inevitably to reduce that provision of the Constitution to a mockery. The inherent right of the House to punish for contempts such as this, even though the offender had also violated the civil law, was urged from the precedents of Gunn and Frelinghuysen in 1796,[3] Robert Randall in 1795,[4] and the opinion of the Supreme Court in the case Anderson *v.* Dunn.[5] Mr. John

[1] Journal, p. 1076; Globe, pp. 1348–1367. The report and journal of the committee are published in full in the Globe.

[2] See section 1615 of this chapter.

[3] See section 2677 of Vol III. of this work.

[4] See section 1599 of this chapter.

[5] See section 1606 of this chapter.

A. Bingham, of Ohio, contended that for a Member of the House to violate the freedom of debate in the Senate was disorderly conduct, for which the House might expel him, Justice Story had said "that this power in the House to punish and expel its Members for aggravated misconduct was indispensable, not as a common, but as an ultimate, redress for the grievance."

Mr. Bingham summed up his statement by the claim that the House had the power to punish and expel its Members for breach of its privileges, for contempt of its authority, and for such high crimes and misdemeanors as are inconsistent with their public trusts and duties as Members, whether committed in the presence of the House and during its actual session or not. The opinions of jurists and the decision of the highest court most clearly established this. Beyond question, the act committed by the Member from South Carolina was a contempt of the House, a violation of his duty as a Member thereof, and a high crime against the people and their right of representation.

The question was put on the adoption of the preamble and resolutions recommended by the committee on July 9:

Whereas the Senate of the United States have transmitted to this House a message complaining that Preston S. Brooks, a Representative from the State of South Carolina, committed upon the person of Charles Sumner, a Senator from the State of Massachusetts, while seated at his desk in the Senate Chamber, after the adjournment of that body on the 22d of May last, a violent assault, which disabled him from attending to his duties in the Senate, and declaring that the said assault was a breach of the privileges of that body; and

Whereas, from respect to the privileges of the House, the Senate have further declared that, inasmuch as the said Preston S. Brooks is a Member of this House, they can not arrest, and, a fortiori can not try or punish him for a breach of their privileges; that they can not proceed further in the case than to make their complaint to this House, and that the power to arrest, try, and punish devolves solely on this body; and

Whereas upon full investigation it appears to this House that the said Preston S. Brooks has been guilty of the assault complained of by the Senate, with most aggravated circumstances of violence; that the same was a breach of the privileges not only of the Senate, but of the Senator assailed, and of this House as a coordinate branch of the legislative department of the Government, in direct violation of the Constitution of the United States, which declares that Senators and Representatives "for any speech or debate in either House shall not be questioned in any other place;" and

Whereas this House is of opinion that it has the power and ought to punish the said Preston S. Brooks for the said assault, not only as a breach of the privileges of the Senator assailed and of the Senate and House, as declared by the Constitution, but as an act of disorderly behavior; and

Whereas it further appears from such investigation that Henry A. Edmundson, a Representative from the State of Virginia, and Lawrence M. Keitt, a Representative from the State of South Carolina, some time previous to the said assault, were informed that it was the purpose of the said Preston S. Brooks to commit violence upon the person of the said Charles Sumner for words used by him in debate as a Senator in the Senate, and took no measures to discourage or prevent the same, but, on the contrary, anticipating the commission of such violence, were present on one or more occasions to witness the as friends of the assailant: Therefore

Resolved, That Preston S. Brooks be, and he is forthwith, expelled from this House as a Representative from the State of South Carolina.

Resolved, That this House hereby declare its disapprobation of the said act of Henry A. Edmundson and Lawrence M. Keitt in regard to the said assault.

Mr. Howell Cobb's proposition, to substitute a resolution that the House had no jurisdiction over the case, having been disagreed to, on July 14 [1] the House voted on

[1] Journal, p. 1201; Globe, p. 1628.

the first resolution for the explusion of Mr. Brooks, and there were 121 yeas and 95 nays—not the required two-thirds, so the resolution was not agreed to.

On July 15[1] the resolution relating to Mr. Edmundson and Mr. Keitt was decided in the negative—yeas 70 nays 125—it being urged that the cases of the two men should be voted on separately. This vote was then reconsidered, and then the resolution was amended by substituting a resolution of two branches, one relating to Mr. Keitt and the other to Mr. Edmundson. The resolution relating to Mr. Keitt was agreed to—yeas 106, nays 96. The second resolution, expressing disapprobation of Mr. Edmundson, was disagreed to—yeas 60, nays 136.

The preamble was then amended in relation to Mr. Edmundson, and then agreed to.

Both Mr. Brooks and Mr. Keitt resigned from the House immediately.

1622. A Member of the House having assaulted a Senator for words spoken in debate, the Senate examined the breach of privilege and transmitted the report to the House for action.

The Senate did not attempt to exercise any authority over a Member of the House who had committed a breach of the Senate's privilege.

The Senate having communicated the report of a breach of the Senate's privilege by a Member of the House. The House Journal records the fact but not the report.

On May 23, 1856,[2] in the Senate, Mr. Henry Wilson, of Massachusetts, announced the assault which had been made the day before on his colleague, Mr. Charles Sumner, of Massachusetts, by Mr. Preston S. Brooks, of South Carolina, a Member of the House of Representatives. Mr. Wilson then offered this resolution:

Resolved, That a committee of five Members be elected by the Senate to inquire into the circumstances attending the assault committed on the person of the Hon. Charles Sumner, a Member of the Senate, in the Senate Chamber yesterday, and that the said committee be instructed to report a statement of the facts, together with their opinion thereon, to the Senate.

This resolution was agreed to, and the following were chosen of the committee: Lewis Cass, of Michigan, Philip Allen, of Rhode Island, Henry Dodge, of Wisconsin, Henry S. Geyer, of Missouri, and James A. Pearce, of Maryland.

This committee, which subsequently was given authority to send for persons and papers, reported on May 28. On the same clay the resolution accompanying the report was agreed to. The report begins:

That from the testimony taken by them it appears that the Hon. Preston S. Brooks, a Member of the House of Representatives from the State of South Carolina, did, on the 22d day of the present month, after the adjournment of the Senate and while Mr. Sumner was seated at his desk in the Senate Chamber, assault him with considerable violence, striking him numerous blows on and about the head with a walking stick, which cut his head and disabled him for the time being from attending to his duties in the Senate. The cause of this assault was certain language used by Mr. Sumner in debates on the Monday and Tuesday preceding, which Mr. Brooks considered libelous of the State of South Carolina and slanderous of his near kinsman, Mr. Butler, a Senator from that State, who at the time was absent from the Senate and the city.

The committee forbear to comment upon the various circumstances which preceded and attended this affair, whether of aggravation or extenuation, for reasons which will be sufficiently obvious in the latter part of the report.

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[1] Journal. pp. 1206–1216; Globe, pp. 1638–1643.

[2] First session Thirty-fourth Congress, Journal of the House, p. 1070; Globe, pp. 1279, 1317.

They have examined the precedents, which are to be found only in the proceedings of the House of Representatives, the Senate never having been called on to pronounce its judgment in a similar case. In the House of Representatives, though different opinions have at various times been expressed by gentlemen of great eminence and ability, among whom may be mentioned the late President of the United States, Mr. Polk, the late Judge Barbour, of the Supreme Court, and Mr. Beardsley, of New York, yet the judgment of the House has always pronounced an assault for words spoken in debate to be a violation of the privileges of the House.

The report then goes on to refer to the cases of Baldwin and Gunn in 1796, Russel Jarvis and John Adams in 1828, of Samuel Houston in 1832,[1] and, after indorsing the views given by Mr. McDuffie in the Jarvis case, continues:

But, while it is the opinion of the committee that this assault was a breach of the privileges of the Senate, they also think that it is not within the jurisdiction of the Senate, and can only be punished by the House of Representatives, of which Mr. Brooks is a Member. This opinion is in strict conformity with the recognized parliamentary law. Hatsell, in his precedents, says as follows:

"The leading principle which appears to pervade all the proceedings of the two Houses of Parliament is that there shall subsist a perfect equality with respect to each other, and that they shall be in every respect totally independent one of the other. From hence it is that neither House can claim, much less exercise, authority over a Member of the other; but, if there is any ground of complaint against an act of the House itself, against any individual Member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offense is charged to be committed; and the nature and mode of redress or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed, any other proceeding would soon introduce disorder and confusion, as it appears actually to have done in those instances where both Houses, claiming a power independent of each other, have exercised that power upon the same subject, but with different views and contrary purpose. (3 Hatsell, 67.)

"We see from the several precedents above cited, that neither House of Parliament can take upon themselves any breach of privilege offered to them by any Member of the other House; but that in such cases the usual mode of proceeding is to examine into the fact, and then to lay a statement of that evidence before the House of which the person complained of is a Member." (Ibid., 71.)

Mr. Jefferson, in the Manual of Parliamentary Practice prepared by him, lays down the following rule:

"Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is a Member, and leave the punishment to them."

A brief examination of the constitutional privileges of Senators and Representatives will show the soundness of this rule of parliamentary law.

The Constitution provides, article 1, section 6, that "They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, in going to and returning from the same." But the Senate is not a court of criminal judicature, empowered to try the excepted offenses, and can not take cognizance of a breach of the peace, as such. It can not take any notice of the assault except as a breach of its privileges, and in this aspect it is not one of the cases in which the privilege from arrest is excepted.

The Senate, therefore, for a breach of its privileges can not arrest a Member of the House of Representatives, and a fortiori can not try and punish him. That authority devolves solely on the House of which he is a Member.

It is the opinion of the committee, therefore, that the Senate can not proceed further in the present case than to make complaint to the House of Representatives of the assault committed by one of its Members, the Hon. Preston S. Brooks, upon the Hon. Charles Sumner, a Senator from the State of Massachusetts.

The committee submit herewith certain affidavits taken by them in the case, and the following resolution:

Resolved, That the above report be accepted, and that a copy thereof and the affidavits accompanying the same be transmitted to the House of Representatives."

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[1] See secs. 156, 161, 162, of this work.

The Secretary of the Senate, in delivering this report to the House on May 29, stated, according to the House Journal:

I am directed by the Senate to communicate to this House a resolution and report relating to a breach of the privileges of the Senate by a Member of this House.

The House Journal contains only this statement, the report not being given in full. The message was referred to the select committee to whom the House committed the subject of the assault, the House already, on May 23, having taken cognizance of the breach of privilege.[1]

1623. A letter from a Member of the House disclaiming any intention of invading the privileges of the Senate in assaulting a Senator, was, after some discussion, read to the Senate.—On June 2, 1856,[2] the President pro tempore of the Senate, Jesse D. Bright, laid before the Senate a communication from Representative Preston S. Brooks, of South Carolina, disclaiming any intention of causing a breach of the privileges of the Senate in assaulting Senator Charles Sumner, upon which assault the Senate had taken action as a breach of privilege. The letter, after some discussion, was read and ordered to be printed.

1624. An assault upon a Member within the walls of the Capitol, when the House was not in session, was deemed a breach of privilege, although it arose from a cause not connected with the Member's representative capacity.—On November 30, 1809,[3] the Speaker laid before the House the following letter:

To the Speaker of the House of Representatives:

SIR: An occurrence having recently taken place between a Member of the House of Representatives and myself, produced by circumstances not at all connected with his official duties or opinions, which from the time and place may be considered disrespectful to the House of Representatives, I take the liberty of tendering through you my most respectful declarations that I am the last who would willfully manifest a deficiency of that reverence which is due to the Representatives of my country, or that sacred regard which is also due to their privileges.

To yourself, sir, personally, I tender the assurances of my very great respect.

I. A. COLES.

NOVEMBER 29, 1809.

On December 8 a select committee was appointed to report on the facts and their opinion in the matter. Mr. John Taylor, of South Carolina, was made chairman.

On December 29 the committee reported that they had taken the deposition of the Hon. James Turner, a Senator of the United States, and of Mr. Samuel Sprigg, which depositions they reported to the House. The report continues:

From these depositions it was established to the satisfactory belief of your committee that Mr. I.A. Coles, without any immediate previous altercation or provocation, did assault and strike a Member of this House within the walls of the north wing of the Capitol, and this act was done on Monday, the 27th ultimo, about 1 o'clock p.m., and after this House had adjourned over to the following day.

That from the assertion of Mr. Coles, and from the actual admission of the Member assaulted, your committee were satisfied that the provocation or supposed provocation which occasioned the attack did

[1] See sec. 1620 of this chapter.

[2] First session Thirty-fourth Congress, Globe, p. 1347.

[3] Second session Eleventh Congress, Journal, pp. 111, 123, 147, 148 (Gales & Seaton ed.); Annals, pp. 685, 705, 987.

not arise from anything said or from any act done by the Member of this House in the fulfillment of his duties as a Representative in the Congress of the United States.

Your committee are of opinion that this latter circumstance may be received in extenuation, but can not be admitted in justification of the act done by Mr. Coles, and from all the circumstances of the case they are of opinion that mid assault and violence offered to the Member was a breach of the privileges of this House.

In view, however, of the acknowledgments and apologies made to the Speaker, and also in a letter to the committee, the committee recommended the adoption of this resolution:

Resolved, That any further proceeding in the above case is unnecessary.

On December 30 by a vote of 76 yeas to 25 nays the House voted to have the report printed and that it be committed to the Committee of the Whole for next Thursday. It does not seem to have been acted on thereafter.

1625. For attempted intimidation and assault upon a Member, A.P. Field was arrested and censured at the bar of the House for breach of privilege.—On February 7, 1865,[1] Mr. F. C. Beaman, from the select committee[2] to investigate the assault upon the Hon. William D. Kelley by A.P. Field, a citizen of Louisiana, made a report recommending the adoption of the following resolutions:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of A.P. Field, convicted of a breach of the privilege of the House in the attempt, by language of intimidation and bullying, to deter William D. Kelley, a Representative in this House from the Fourth district of the State of Pennsylvania, from the free and fearless exercise of his rights and duties as a Member of Congress, and voting and deciding upon a pending subject of legislation, and in following up the the said attempt at intimidation and bullying by an assault upon the person of said Representative Kelley, and forthwith bring him to the bar of the House, and thereupon said A.P. Field be reprimanded by the Speaker.

Resolved, That so much of the resolution of this House of the 5th day of December last granting the privilege of the hall to the claimants for seats from the State of Louisiana as applies to the said A.P. Field be rescinded.

The testimony before the committee showed that Field had assaulted Mr. Kelley with a knife at a hotel in Washington. Field admitted the assault, but excused himself on the ground that he was at the time laboring under much excitement.

On February 21[3] the first resolution was agreed to, yeas 82, nays 49. The second resolution was laid on the table, yeas 71, nays 64.

On February 22[4] the Sergeant-at-Arms appeared at the bar of the House, having in custody A.P. Field, and the Speaker administered to him a reprimand for his "flagrant breach of privilege."

1626. The case of Patrick Woods, in contempt of the House in 1870.

A Member having, in a letter to the Speaker complained that he had been assaulted on his way to attend the House, the matter was held to be a question of privilege.

A person who had assaulted a Member on his way to the House, but at a place distant therefrom, was arrested on warrant of the Speaker and arraigned at the bar.

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[1] Second session Thirty-eighth Congress, House Report No. 10.

[2] This committee was authorized by resolution presented January 23, 1865, second session Thirtyeighth Congress, Journal, p. 135.

Second session Thirty-eighth Congress, Journal, pp. 298, 299.

[4] Journal, pp. 301, 302.

Members are not permitted to communicate with a prisoner arraigned at the bar of the House.

On June 10, 1870,[1] the Speaker, as a question of privilege, laid before the House a communication from Mr. Charles H. Porter, of Virginia, detailing the circumstances of an assault made upon him in the city of Richmond, Va., on the 30th ultimo, by Patrick Woods, alias Pat. Dooley.

The same having been read, Mr. Hamilton Ward, of New York, submitted the following resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take in custody, wherever to be found, the body of Patrick Woods, alias Pat. Dooley, and the same in his custody to keep, subject to the farther order and direction of this House.

Mr. Ward drew this resolution in accordance with the precedent of 1832.[2]

Mr. Charles A. Eldridge, of Wisconsin, raised the point of order that the paper presented did not show that the assault was made on the gentleman from Virginia in his capacity as a Member of Congress, or that it was designed to interfere with him as a Member of Congress, and that this, therefore, was not a question of privilege.

The Speaker[3] decided that any assault on a Member, which that Member, in his capacity as such, brings to the attention of the House, must be ruled as a question of privilege. The gentleman from Virginia, Mr. Porter, was absent by leave of the House, and he stated that at the time of the assault he was on his return to the House of Representatives for the purpose of attending to his public duties. The Chair could not imagine that there could be a, difference of opinion as to its being a question of privilege.

The resolution was agreed to, 126 yeas to 40 nays; and on June 11, 1870,[4] the Sergeant-at-Arms appeared at the bar having Woods in charge.

When the prisoner was arraigned at the bar, Mr. Logan H. Roots, of Arkansas, made the point of order that no Member had the right to converse with the prisoner at the bar while in custody. Jurors were not permitted to hold communication with the prisoner at the bar.

The Chair sustained the point of order.

1627. The case of Patrick Woods, continued.

In 1870 the investigation of a breach of privilege was committed to a standing committee.

A prisoner of the House was taken by its order and in custody of the Sergeant-at-Arms to testify in the court of a State.

Reference to English precedents as to power to punish for contempt.

Mr. William B. Allison, of Iowa, presented this resolution, which was agreed to:

Resolved, That the matter of privilege, being an assault upon Hon. Charles H. Porter, be referred to the Judiciary Committee of this House for examination, and report what action this House should take in the premises; that the committee have power to send for persons and papers, and that in the meantime the person at the bar be retained in the custody of the Sergeant-at-Arms.

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[1] Second session Forty-first Congress, Journal, pp. 1199, 1200; Record, pp. 4317, 4325, 4352, 5253.

[2] See Section 1616 of this chapter.

[3] James G. Blaine, of Maine, Speaker.

[4] Journal, p. 965; Globe, p. 4352.

On June 16,[1] on recommendation of the Committee on Judiciary, the House agreed to the following resolution:

Resolved, That the Sergeant-at-Arms of this House, or his assistant, John W. Le Barnes, be ordered to take Patrick Woods, now in the custody of the Sergeant-at-Arms, and being so held by order of this House for a breach of the privileges thereof, to Richmond, Va., there to testify in the court of hustings as a witness in the case of the Commonwealth of Virginia against John Gurhiser, on Monday next, the 20th instant; and that the Sergeant-it-Arms, or his assistant, John W. Le Barnes, shall continue to keep said Woods in his custody, and shall, immediately after he shall have so testified, return with said Woods to this House.

On June 25 Mr. John A. Bingham, of Ohio, from the Committee on the Judiciary, submitted the report of the committee:[2]

It appears, from an uninterrupted series of cases, both in this country and in England, from which we derived our parliamentary law, that all assaults made upon the reputation, character, and persons of Members have ever been held as breaches of the privileges of the legislative body of which the Member was a part, and as high crimes and misdemeanors. The uniformity of the decisions and action in these cases relieves your committee of the necessity of any review of the specific cases. In the Commons, on the 12th of April, 1733, it was resolved and declared, nem. con., "That the assaulting, insulting, or menacing any member of this House, or upon account of his behavior in Parliament, is a high infringement of the privileges of this House, a most outrageous and dangerous violation of the rights of Parliament, and a high crime and misdemeanor." This precedent has been constantly followed by the House and Senate during continuance of the Government, the earliest case being that of Duane for a libel on the Senate in 1800. Were we left unadvised by precedent the case would stand too clear for dispute upon principle. If, while in attendance or going from or returning to the House, a Member may be assaulted so that his life is endangered, insomuch that he can not attend the sessions of the House, such assault would clearly seem to be a breach of the privilege of the House, which has a right to the attendance of all its Members. So much is certain, that if one Member may be so assaulted all may be, or such a part as would interfere with a quorum of the House, and that such assaults as the one under consideration might be made for the purpose of interfering by disabling Members from attendance, and assaulting and maiming Members might become an inconvenient but sure method of changing a majority in the House in high party times, especially where that majority was not large. It can not seriously be imagined that the Constitution has left both Houses of Congress so impotent for self-protection in that regard as would be true in that case.

As to the power of punishment the committee based its recommendation on the decision in the case of Anderson *v.* Dunn, wherein it was laid down, "And even as to the duration of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is indispensable to its continuance; and although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with the adjournment." In England in the Case of Stockdale *v.* Hansard, in 1839, Lord Denham, chief justice, used the following language: "However flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties of it, yet his offense being committed the day before the prorogation, if the House ordered his imprisonment but for a week, every court in Westminster Hall and all the judges of all the courts would be bound to discharge him by habeas corpus."

[1] Journal, p. 1016; Globe, p. 4511.

[2] House Report No. 105, second session Forty-first Congress.

The committee therefore came to the conclusion "that the power of the House to punish for contempt of its privileges by imprisonment extends only to the terms of the Members of the then existing House. Thus, the limit of imprisonment of the offender at bar by the present House will be the 4th of March next. * * * It has been thought by some that the term of imprisonment must be limited only by the session, but your committee are satisfied that such is not the limitation either by precedent or reason. It has been early decided in England that the common law which required the release of the prisoner at the end of the session never applied to an adjournment even when it was in the nature of a prorogation." [1]

The minority views, signed by Messrs. C. A. Eldridge and M. C. Kerr, dissents from the statement of facts made by the majority, and holds that the assault had no connection with any official act of Mr. Porter, and was not made with any intention to detain him from his seat in the House, and in fact did not so detain him. The conelusion was then (1) that Congress derives no power whatever from the En&h parliamentary law; (2) that the Members of Congress are exempt only as defined in the Constitution; (3) that they have the same protection as all other citizens for their rights of person and property, no more and no less; (4) that Congress has the power to protect its free deliberation so far as it does not create any privileges in its Members or others; (5) that to give to Members of Congress a double protection to their persons or property from that enjoyed by other citizens will be to make them a privileged class, (6) and that, therefore, this House has no right to inflict punishment on Patrick Woods for assault on Mr. Porter, thus giving Porter double remedies against Woods, while Woods would only have a single one against Porter. On the question of punishment, the minority held that the prisoner could not be committed for a longer time than the adjournment of the session, and that he could not be kept until the expiration of the Congress.

1628. The case of Patrick Woods, continued.

For assaulting a Member returning to the House from an absence on leave, Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House.

Form of Speaker's warrant for commitment of a person in contempt, and of Sergeant-at-Arms's return thereon.

On July 7 [2] the House agreed, by a vote of 119 yeas to 57 nays, to the preamble and resolution recommended by the committee:

Whereas Patrick Woods, on the 13th day of May last past, at Richmond, did make a violent, unprovoked, and felonious assault upon Hon. Charles H. Porter, then being a Member of the House of Representatives, on his way returning thereto from a leave of absence, and did cut, bruise, and disable said Porter, being then a Member of the House, from attending to his duties therein, Woods well knowing that Mr. Porter was then Member of Congress, and on his way to Washington, and making such assault because of that knowledge; and whereas said Woods being brought to the bar of the House, and being fully heard in his defense by counsel and witnesses, before the Committee on the Judiciary, all the facts before recited fully appeared: Therefore,

[1] Woods was committed on July 8, 1870, and the second session ended July 15, 1870; but Congress did not terminate until March 3, 1871, there being a third session.

[2] Journal, pp. 1163–1168; Globe, pp. 5253, 5297.

Resolved, That Patrick Woods, now held at the bar of the House to answer for a breach of the privileges of the House for his offense, be, and hereby is, ordered to be punished by imprisonment in the jail of the District of Columbia, as other criminals are, for three months; and that a warrant in due form, under the hand of the Speaker, be issued to the Sergeant-at-Arms, directing the execution of this order.

On July 9, 1870,[1] the Speaker, by unanimous consent, laid before the House the return of the Sergeant-at-Arms in the case of Patrick Woods; which was read, ordered to be placed upon the Journal, and is as follows:

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
JULY 7, 1870.

TO NEHEMIAH G. ORDWAY, Esq., *Sergeant-at-Arms.*

SIR: The following resolution was this day adopted by the House of Representatives, to wit:

"Resolved, That Patrick Woods, now held at the bar of the House to answer for a breach of the privileges of the House, for his offense be, and he is hereby, ordered to be punished by imprisonment in the jail of the District of Columbia, as other criminals are, for three months; and that a warrant be made out in form, under the hand of the Speaker, and issued to the Sergeant-at-Arms, directing the execution of this order."

Now, therefore, this is to require you, Nehemiah G. Ordway, Sergeant-at-Arms of the House of Representatives of the United States, to execute the foregoing order of the House of Representatives.

Given under my hand and the seal of the House of Representatives the day and year above written.

[L.S.]

J.G. BLAINE.
Speaker of the House of Representatives.

Attest:

EDWARD MCPHERSON, *Clerk.*

OFFICE OF THE SERGEANT-AT-ARMS,
UNITED STATES HOUSE OF REPRESENTITIVES,
July 8, 1870.

I have executed the within warrant of the House of Representatives upon Patrick Woods, by delivering him to the warden of the jail in the District of Columbia, together with an attested copy of said warrant, and with the following further order addressed to him by me, to wit:

TO THE WARDEN OF THE JAIL OF THE DISTRICT OF COLUMBIA:

Sir: Pursuant to the order of the United States House of Representatives, a true copy of which is hereto annexed, you are hereby required to receive Patrick Woods into the jail aforesaid, and him there detain for the full term of three months named in said order of the United States House of Representatives; and you will not surrender said Woods to any authority except that issuing from said House of Representatives until the expiration of his sentence without further orders.

N. G. ORDWAY,
SERGEANT-AT-ARM U. S. HOUSE OF REPRESENTATIVES.
JULY 8, 1870.

I have this day received into the jail of the District of Columbia the above-mamed Patrick Woods.

JOHN S. CROKER,
Warden United States Jail.
Per D. B. MACK.

1629. An assault upon the clerk of a committee within the walls of the Capitol was held to be a breach of privilege.

A discussion as to the power of the House to imprison for a period after the adjournment of the session.

An instance wherein the House turned over to the jurisdiction of the courts an offender guilty of contempt.

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[1] Journal, p. 1199; Globe, p. 5422.

On July 17, 1866,[1] Mr. John B. Alley, of Massachusetts, as a question of privilege, submitted the following resolution:

Resolved, That whereas a violent personal assault, within the walls of this Capitol, has been committed upon the person of U. H. Painter, the clerk of the Committee on Post-Office and Post-Roads, by Benjamin B. Beveridge and Edward Towers, who are now in the custody of the police officers of the Capitol, the Sergeant-at-Arms is hereby directed to take into his custody the said assailants and to detain them until the further order of the House upon the subject, and that a committee of five Members be appointed to investigate and report upon the said assault, with power to send for persons and papers.

The Speaker[2] said:

As the Chair understands, the point is raised that this is not a question of privilege. The Chair rules that it is a question of privilege, which may properly receive the action of the House. This House has even gone so far as to bring citizens before the bar for disorder in the galleries. If this could be done then unquestionably when an officer of the House has been beaten or assailed within the walls of the Capitol the House has power to take action in the matter.

The committee were appointed, Mr. Alley being chairman. On July 18 he reported that the committee did not find evidence to show that Mr. Towers was implicated in the assault, and recommended his discharge from arrest, which was concurred in by the House.

On July 23, 1866, the committee reported as to the facts, and also in favor of turning the prisoner over to the civil authorities, because the House was about to adjourn and might not imprison him beyond the day whereon the session should end. A minority of the committee dissented from this view, holding that the House had power to imprison until the 4th of March next, when the existence of the House would expire. Mr. Alley replied by referring to the opinions of able lawyers in the House and to the commentators in support of the view that the House did not have power to imprison during a recess between two sessions of the same Congress.

Without bringing into the question the issue the House agreed to the following resolution without division:

Resolved, That the Sergeant-at-Arms be directed to deliver to the custody of the civil authorities Benjamin F. Beveridge and to prosecute said Beveridge before the criminal courts of this District for his assault upon the person of Uriah H. Painter, an officer of this House, within the walls of the Capitol, and that the evidence taken in the case by the special committee of the House be delivered to the United States district attorney for the District of Columbia.

1630. One reporter having assaulted another in the presence of the House, punishment for breach of privilege was inflicted.

In 1836 the House committed the examination of a breach of privilege to a select committee.

A breach of privilege which occurred during the reading of the Journal was at once disposed of, after which the reading of the Journal was concluded.

On June 11, 1836,[3] while the Clerk was reading the Journal of the last day's session of the House, an assault was committed within the Hall, and in the presence

[1] First session Thirty-ninth Congress, Journal, pp. 1031, 1042, 1088; Globe, pp. 3885, 3908, 4054, 4055.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Twenty-fourth Congress, Journal, pp. 983, 985, 1021; Globe, pp. 436, 437, 450.

of the House, by a person admitted to a place on the floor as a reporter or stenographer, to take down the debates, upon the person of another reporter or stenographer, also admitted to a place on the floor for the same purpose; whereupon Mr. Lewis Williams, of North Carolina, submitted the following motion, which was agreed to:

That both the persons be taken into custody, to await the order of the House in the premises.

During the consideration of the resolution Mr. John Bell, of Tennessee, offered a substitute proposing to turn the offenders over to the civil authorities, to be dealt with according to law, but expressly specifying that in adopting this proposition the House would not be influenced by any opinion of a deficiency of authority in the House to punish for disorderly conduct in their presence. Mx. Aaron Vanderpool, of New York, supported this substitute on the ground that, while the House could vindicate its privileges if it chose, it was not wise to do so with so much public business to dispose of. Mr. Bell withdrew his proposition after some further debate.

The resolution having been agreed to, thereupon the Sergeant-at-Arms executed the order by taking both the persons into his custody.

The reading of the Journal was then resumed and completed, and after a motion to amend the Journal had been disposed of Mr. Judson moved the following resolution, which was agreed to after debate:

Resolved, That a select committee be forthwith appointed, whose duty it shall be forthwith to inquire into an assault committed within the Hall of the House of Representatives this morning, while this House was in session, and for and on account of which two persons are now in custody of the Sergeant-at-Arms; and said committee are to make their report to this House; and that said committee be authorized to administer oaths and to cause the attendance of witnesses.

Messrs. Andrew T. Judson, of Connecticut; John Bell, of Tennessee; Lewis Willams, of North Carolina; Abijah Mann, jr., of New York, and James M. Mason, of Virginia, were the committee.

On June 16 the select committee reported the following resolutions:

Resolved, That Henry G. Wheeler has been guilty of a contempt and breach of the privileges of this House by committing the said assault in the Hall of the House of Representatives while the House was in session.

Resolved, That the said Henry G. Wheeler be excluded from any place on the floor or elsewhere in the Hall as a stenographer to take down the debates of this House.

Resolved, That the said Henry G. Wheeler be securely imprisoned by the Sergeant-at-Arms of this House for the remainder of the session, and that the Speaker of this House do issue his warrant to carry into effect this resolution.

On motion made and carried, Henry G. Wheeler was placed at the bar of the House. The first resolution was then agreed to. The second resolution was amended so as to exclude the prisoner from the floor only during the present session, and as amended the resolution was agreed to. Of the third resolution, on motion of Mr. Hawes, all after the word "*Resolved*" was stricken out and the following was inserted:

That Henry G. Wheeler be discharged from the custody of the officer of this House.

The report [1] of the committee accompanying the resolutions shows that Wheeler acknowledged his offense readily, and thus relieved the committee of the perplexities which often accompany cases of disorder, contempt, and breach of privilege. Therefore the committee recommended that the punishment be not vindictive. Wheeler had assaulted Robert Codd with a cane in the presence of the House, and so admitted.

In the House when the resolutions were presented Mr. Judson said that the committee, in view of the precedent of 1798,[2] felt bound to report the resolution for imprisonment, but they would readily accept the amendment proposed.

1631. A resolution as to an alleged false and scandalous report of the proceedings of the House by one of its reporters presented as a matter of privilege.—On February 9, 1847,[3] Mr. Stephen A. Douglas offered the following resolution as a question of privilege: [4]

Resolved, That "James A. Houston, reporter for the Union," having published a card in that paper of last evening, assuming the responsibility in toto of the false and scandalous report of the proceedings of this House on Saturday last, be, and he is hereby, expelled from this House.

After debate, the House decided the question on agreeing to the resolution in the negative by a vote of 11 yeas to 133 nays.

1632. In 1855 the House expelled from the floor William B. Chace, a reporter, who refused to testify before a committee.

In 1855 the House declined to punish a contumacious witness.

On February 5, 1855, [5] Mr. John Letcher, of Virginia, called up, as a question of privilege, the report submitted by him on the 15th ultimo, from the Select Committee on Colt's Patent and Other Bills, on the subject of the refusal of Mr. William B. Chace to appear and testify further before the said committee. [6]

This committee was appointed to investigate alleged improper means used to influence legislation for the extension of the Colt patent. Witnesses summoned before them having refused to testify, the committee reported the fact to the House and asked action to compel the witnesses to testify. The House declined to take action at the time. On February 5 the chairman of the committee again asked for action. This led to a debate on the powers of the House in relation to contumacious witnesses . [7] It appeared that in testimony which he had given before the committee Chace had admitted that he was to receive compensation for services in behalf of the Colt patent. This was in direct violation of the nineteenth [8] rule, which provided that no person should be admitted as a reporter or stenographer who should be employed "as an agent to prosecute any claim pending before Congress." Therefore T&. Letcher considered the right of the House to expel the reporter undoubted.

[1] House Report No. 762, first session Twenty-fourth Congress.

[2] See section 1642 of this volume.

[3] Second session Twenty-ninth Congress, Journal, p. 320; Globe, p. 359.

[4] The Cong. Globe (p. 359) indicates that the privileged character of the resolution was accepted as a matter of course, no question being raised. The nature of the alleged insulting report is given on p. 350 of the Globe.

[5] Second session Thirty-third Congress, Journal, p. 315.

[6] House Report No. 132, second session Thirty-third Congress.

[7] Cong. Globe, second session Thirty-third Congress, p. 572.

[8] This was of the old system of rules. Rule XXVI now relates to reporters.

Chace also questioned the right of the House to compel his attendance before the committee, and to require him to disclose facts within his knowledge affecting the conduct of Members in connection with pending legislation. Mr. Letcher took the ground that the House certainly had the right to imprison, quoting in support the precedents in the cases of Randall and Anderson. [1]

Mr. Thomas Henry Bayly, of Virginia, took the opposite view—that the House had no power to inflict punishment, since it had no criminal jurisdiction. The House had no authority which was not delegated, or which was not necessary and proper to carry into effect the powers which were delegated to it. If the House should try and convict, how would they punish? Were they to imprison, where was the jail? The decisions read on the other side merely established that the House has a right to preserve order, and to an uninterrupted deliberation with respect to public questions. That was all. If any disturber should commit a criminal offense, like entering the Hall and shooting down a Member, the House could only turn him over to the civil courts.

Mr. Joseph R. Chandler, of Pennsylvania, cited a case where the legislature of Pennsylvania, in 1835, had arrested and confined contumacious witnesses, himself among the number. It appeared from the debate that the jailer refused to receive them, however. The case of Nugent, confined by the Senate, was also cited.

Mr. Letcher having proposed the following resolutions:

Resolved, That the Speaker of this House be directed to revoke the privilege under which W. B. Chace holds a reporter's desk on the floor; and that said W. B. Chace be excluded from the Hall.

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of W. B. Chace, and the same in his custody to keep, subject to the further order and direction of this House.

The House agreed to the former of these resolutions, but laid the latter upon the table.

1633. The supposed author of an anonymous newspaper charge against a Member not named was arrested and interrogated at the bar of the House.

The House being about to examine a person at its bar, a form of procedure as to questions was agreed to.

Form of oath administered by the Speaker to a person about to be examined at the bar of the House.

A person under examination at the bar was allowed to state his reasons why he should not answer a question, and also to have entered on the Journal a statement.

A person under examination at the bar of the House withdrew while the House passed on a request made by him.

On February 12, 1838,[2] Mr. Henry A. Wise, of Virginia, by consent, moved a resolution which, after amendment, was agreed to by the House in the following form, yeas 142, nays 46:

Whereas the following publication appears in the New York Courier and Inquirer:

"Corruption in Congress.—We published yesterday a letter from 'The Spy in Washington,' directly charging a Member of Congress with corruption, and offering to prove the charge before a committee of

[1] See sections 1599 and 1606 of this volume.

[2] Second session Twenty-fifth Congress, Journal pp. 379, 384–387; Globe, pp. 173, 178.

either House, when called upon for that purpose. We republish the charge to-day, and call upon Congress promptly to institute the investigation thus challenged, both as an act of justice to itself and the country. 'The Spy in Washington,' it may be said, is not an ostensible or responsible person; but we desire at once to obviate this difficulty by stating, as we now do, that he is known to us, and that whenever called upon by a committee of Congress we pledge ourselves that he shall be forthcoming, and that he is one whose standing warrants an immediate proceeding on the part of Congress.

"Extract from yesterday's Courier and Inquirer.—The more brief my statement the better it will be understood. It is in my power, if brought to the bar of either House, or before a committee, and process allowed me to compel the attendance of witnesses, to prove, by the oath of a respectable and unimpeachable citizen as well as by written documentary evidence, that there is at least one Member of Congress who has offered to barter his services and his influence with a department or departments for compensation. 'Why, sir,' said the applicant for a contract, 'if my proposition has merit, it will be received; if it has not, I do not expect it will be accepted.' And what do you think was the answer of the honorable Member? I will give it to you in his own emphatic language. 'Merit,' said he, 'why, things do not go here by merit, but by pulling the right strings. Make it my interest, and I will pull the strings for you.'"

"THE SPY IN WASHINGTON."

Therefore

Resolved, That Matthew L. Davis be forthwith subpoenaed to the bar of the House to testify and give evidence what he may know respecting the name of the Member implicated, if a Member of this House, and the authors of his information.

This resolution and preamble were adopted only after considerable debate as to the propriety of giving attention to an anonymous charge in a newspaper publication.

In obedience to the order of the House the Speaker issued a subpoena, directed to the Sergeant-at-Arms; to whom it was delivered for service.

After debate and reference to the parliamentary law, the House, on motion of Mr. Benjamin C. Howard, of Maryland, agreed to the following procedure:

Resolved, That the Speaker direct the publication in the Courier and Inquirer to be read to the witness, and then propound to him the following interrogatories:

First. Are you the author of the above letter? And, whether he declines or not to answer the above question, then the Speaker shall put the following:

Second. Do you know who is alluded to, or intended to be charged in the preceding letter? Answer yea or nay as the fact may be without giving the name.

Third. Is the person thus alluded to a Member of the House of Representatives? If the answer be in the affirmative, then,

Fourth. What is the name of that Member? And, in case the witness shall reply that a Member of the House of Representatives was not alluded to, he shall be forthwith discharged; and all proceedings under this inquiry shall cease.

The Speaker announced to the House that the Sergeant-at-Arms had made return that the subpoena for Matthew L. Davis had been served and that the witness was in attendance.

Matthew L. Davis then appeared, and was sworn [1] by the Speaker.

In pursuance of the order of the House, the publication in the Courier and Inquirer was read to the witness; and thereupon the Speaker propounded the first interrogatory agreed upon by the House, viz:

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[1] This oath was as follows: "You do solemnly swear that the evidence you will give to the House of Representatives, touching the matter now under examination, shall be the truth, the whole truth, and nothing but the truth; so help you God." Journal, p. 388.

1. Are you the author of the above letter? Whereupon the witness requested to.be permitted to assign reason why this interrogatory should not be answered.

The Speaker stated the question to the House, and thereupon propounded the question: "Shall the witness have leave to assign reasons why the interrogatory should not be answered?"

Debate arising, the witness, by direction of the House, withdrew from the bar, and, after the House had deliberated some time upon his request, the previous question was moved by Mr. Howard; and, being demanded by a majority of the Members present, it passed in the affirmative, and the main question was put:

"Shall the witness have leave to assign reasons why the interrogatory should not be answered?"

It passed in the affirmative, yeas 103, nays 90.

The witness was then again called to the bar, and the decision of the House, on his request, was announced to him by the Speaker. He thereupon gave his reasons why the interrogatory should not be answered, and declined to answer the same, and sent up to the Clerk a paper, in writing, which he requested should be entered on the Journal; and no objection being made thereto, it is entered accordingly, and is as follows:

I deny the right of this House to ask, and therefore decline to answer the question, whether I am, or am not, the author of the Spy in Washington; or the extract from the letter referred to in the interrogatory; but at the same time respectfully state that I know the Member of Congress to whom the Spy alludes, and am prepared to name him at the bar of this House or elsewhere.

The second interrogatory, viz: "is the person thus alluded to a Member of the House of Representatives?" was propounded to and answered by the witness.

Whereupon, in pursuance of the order of the House that "in case the witness shall reply that a member of the House of Representatives was not alluded to, he shall be forthwith discharged, and all proceedings under this inquiry shall thereupon cease," the witness was forthwith discharged by the Speaker, and withdrew from the bar; and all further proceedings under this inquiry ceased.

1634. Expulsion of a reporter from the floor for improper conduct. On February 19, 1857,[1] the select committee appointed to investigate charges that Members of the House had entered into corrupt combinations, made a general report, in which they stated that James W. Simonton, the regular Washington correspondent of the New York Times, had given contradictory testimony during the progress of the investigation, and had admitted that, while occupying a seat on the floor as a reporter, he had personally aided in the passage of the Wisconsin land bill under promise of receiving a certain compensation if the bill should pass, and also that he had accepted a small compensation for assisting a friend to pass a bill through the Senate. The committee, therefore, reported this resolution:

Resolved, That James W. Simonton be expelled from the floor of this House as a reporter.

On February 28 the House amended the resolution by adding the name of F. F. C. Triplett, and as amended the resolution was agreed to.

[1] Third session Thirty-fourth Congress, House Report No. 243, pp. 32, 38; Journal p. 567; Globe, p. 952.

1635. The House arrested and arraigned at the bar a newspaper reporter for alleged statements reflecting on the integrity of a Member.

A person arraigned at the bar of the House must be dealt with in strict accordance with the terms of the resolution ordering his arrest and arraignment.

A person arraigned for contempt submitted a statement in writing which did not appear in full in the Journal.

A person being under examination at the bar, the questions propounded to him were first approved by the House.

A person being under examination at the bar, the questions and answers were recorded in the Journal.

On June 10, 1870,[1] Mr. Thomas Fitch, of Nevada, rising to a question of privilege, laid before the House certain articles in a newspaper reflecting on his integrity as a Representative, tending to show that he might have accepted bribes from those favoring the recognition of the Cuban Republic. Mr. Fitch then offered the following:

Resolved, That W. Scott Smith, the reporter of the New York Evening Post, be brought to the bar of this House to show cause, if he can, why he should not be expelled from the reporters' gallery for libellous statements reflecting upon the integrity of Members of this House.

The chairman of the committee, which investigated the matter, who had been quoted in the article as authority for the doubt cast on Mr. Fitch's integrity, having stated to the House that the evidence exonerated Mr. Fitch, the resolution was agreed to, yeas 126, nays 40.

On the same day W. Scott Smith was brought to the bar of the House by the Sergeant-at-Arms, and by direction of the Speaker the resolution of the House and the newspaper extracts which Mr. Fitch had presented to the House were read.

The Speaker[2] then announced to the respondent that he was at liberty to answer in accordance with the terms of the resolution.

The respondent then submitted a statement in writing, which was read to the House, but was not entered in the Journal.

It being proposed to interrogate the prisoner, and Members proposing interrogatories, the Speaker held that if a Member wished to submit a question he should propose it in writing and the question would be submitted to the House to be approved by unanimous consent without debate. The prisoner at the bar could make his answer in writing if he should choose.

A question proposed by Mr. Fitch having been approved by the House and propounded to the respondent, he returned an answer in part, and in part declined, on the ground that he could not divulge the source of his information. This question and the answer appear in the Journal. The answer was in writing.

The answer having been read, Mr. Samuel S. Cox, of New York, offered the following:

Resolved, That all proceedings in the case of Mr. W. Scott Smith pending be suspended, and the party be, and he is hereby, discharged.

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[1] Second session Forty-first Congress, Journal pp. 957, 961, 963, 1068; Globe pp. 4314, 4318, 4692.

[2] James G. Blaine, of Maine, Speaker,

Mr. Fitch, on the ground that the answer was evasive, moved that the witness be compelled to answer, by holding him in contempt of the House until he should answer.

The Speaker held in regard to this motion:

The Chair has very grave doubts about the propriety of entertaining any such motion. The resolution of the House directed that William Scott Smith, the reporter of the New York Evening Post, be brought to the bar of this House to show cause, if he can, why he should not be expelled from the reporters' gallery of the House for libelous statements reflecting on Members of the House. It has always been the practice of the House, in the prosecution of similar inquiries and investigations, carefully to limit action according to the terms of the resolution under which any respondent may be brought to the bar of the House. The Chair, therefore, does not at all agree that it is in the nature of a privileged question, after this respondent has been brought to the bar of the House, to compel him to answer inquiries not within the purview of the order which brought him here.

The question recurring on the resolution offered by Mr. Cox, the following substitute was proposed by Mr. Aaron A. Sargent, of California:

That W. Scott Smith, having failed to purge himself of the charge of having slandered a Member of this House, and having declined to give the sources of the information upon which he alleges he based his statement, be expelled from the reporters' gallery.

After debate, the House, on motion of Mr. John Farnsworth, of Illinois, voted to refer the subject to a select committee of five.

The Speaker then informed the respondent that he was no longer in the custody of the House.

Mr. Luke P. Poland, of Vermont, chairman of the select committee, reported, on June 22, a recommendation that the resolution referred to them be laid on the table. The report of the committee was ordered printed.

1636. For publications affecting the reputations of Members reporters have been expelled from the House.—On March 4, 1846,[1] Mr. William Sawyer, of Ohio, sent to the Clerk's table a copy of a public newspaper printed in New York, called "The New York Tribune," containing a letter purporting to have been written by a correspondent of that paper in Washington, personally abusive of Mr. Sawyer, and requested that the letter might be read by the Clerk.

The letter having been read and Mr. Sawyer having concluded his remarks, Mr. Jacob Brinkerhoff, of Ohio, offered the following resolution:

Resolved, That the reporters and letter writers for the New York Tribune be expelled from this House.

Under the operation of the previous question the resolution was agreed to, yeas 122, nays 48.

1637. On February 9, 1847,[2] Mr. Stephen A. Douglas, of Illinois, offered the following as a question of privilege:

Resolved, That "James A. Houston, reporter for the Union," having published a card in that paper of last evening, assuming the responsibility in toto of the false and scandalous report of the proceedings of this House on Saturday last, be, and he is hereby, expelled from this House.

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[1] First session Twenty-ninth Congress, Journal, p. 483; Globe, pp. 457, 458.

[2] Second session Twenty-ninth Congress, Journal, p. 320.

After debate, which related principally to whether or not the report was intentionally inaccurate, the resolution was rejected, yeas 11, nays 133.[1]

1638. For improper conduct in connection with legislation reporters have been expelled from the House.—On May 17, 1860,[2] Mr. Warren Winslow, of North Carolina, from the Select Committee on the Subject of Executive Influence in the House, reported the testimony of F. W. Walker, and a portion of the testimony of C. Wendell, relating to the acceptance of money by Walker from Wendell. Walker was a newspaper correspondent and had accepted money from Wendell for furthering, in the press, the interests of Wendell before Congress. The report was accompanied by the following resolution:

Resolved, That F. W. Walker be expelled from the reporters' gallery of the House.

This resolution was agreed to.

1639. On March 3, 1875,[3] the House agreed to the following resolution, reported from the Committee on Ways and Means:

Resolved, That any reporter or correspondent having a seat in the gallery by permission of the Speaker who has received any fee, bribe, or reward in connection with any legislation pending in either House of Congress should be deprived of such privilege; and such conduct as disclosed before the Committee on Ways and Means is severely censured by the House.

1640. The Senate committed John Nugent for contempt in publishing a treaty pending in executive session.

In the Nugent case, in 1848, the Court held that the Senate and House were the sole judges of their own contempts.

The Senate has power, when acting in a case within its jurisdiction, to punish all contempts of its authority.

No court "may inquire directly into the correctness or propriety" of a commitment by either House, or discharge the prisoner on habeas corpus.

A warrant of commitment "need not set forth the particular facts which constitute the alleged contempt."

Form of warrant for commitment of John Nugent.

Each House has a right to hold secret sessions whenever in its judgment the proceedings should require secrecy.

In 1848 the Senate committed John Nugent, his contempt growing out of the publication of a treaty pending before the Senate in executive session. The proceedings in this case were conducted in executive session.

Nugent petitioned for discharge on writ of habeas corpus; and on May 11, 1848, Judge Cranch, of the circuit court of the District of Columbia, handed down a decision (Nugent *v.* Beale, Cranch's Reports, D. C.). The summary sets forth:

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[1] In the Twenty-ninth Congress (1846–47) the Senate expelled from its floor and gallery the representatives of two papers which had published articles libelous on the Senate. (Smith's Digest, Senate Mis. Doc. No. 278, second session Fifty-third Congress, pp. 45–77.)

On January 27, 1848, the Senate passed a resolution readmitting to a seat in the reporters' gallery Jesse E. Dow, who was excluded by an order of the Senate of March 16, 1846. (First session Thirtieth Congress, Globe, p. 262.)

[2] First session Thirty-sixth Congress, Journal, pp. 851, 852; Globe, pp. 2157, 2158.

[3] Second session Forty-third Congress, Journal, p. 636.

1. Every court, including the Senate and House of Representatives, is the sole judge of its own contempts; and in case of commitment for contempt, in such case, no other court can have a right to inquire directly into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus.

2. The warrant of commitment need not set forth the particular facts which constitute the alleged contempt.

3. The Senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction, and an inquiry whether any person, and who, had violated the rule of the Senate which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy, is a matter within the jurisdiction of the Senate.

4. The Senate of the United States has a right to hold secret sessions whenever in its judgment the proceeding shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session.

The warrant of arrest, as to which a question was raised, appears as follows in the decision:

UNITED STATES OF AMERICA.—

To the Sergeant-at-Arms of the Senate of the United States, Robert Beale:

Whereas John Nugent, having been summoned, and having appeared at the bar of the Senate, and having been sworn as a witness, he answered the following interrogatories:

1. Have you any connection with or agency for the proprietor of the newspaper published in the city of New York, and called the New York Herald? If yea, state what is that connection or agency.

2. Do you know that an instrument purporting to be a copy of the treaty between the United States of America and the Mexican Republic, with the amendments made by the Senate thereto, and the proceedings of the Senate thereon, was published in that newspaper? Declare.

3. Do you know by whom the copy of the instrument, with the amendments thereto and proceedings thereon in the last preceding interrogatory specified, was furnished to the editor or publishers, or any agent of the editor or publishers of the said newspaper called the New York Herald? If yea, declare and specify such person or persons.

4. Did you copy the parts purporting to be amendments of the treaty yourself for the purpose of sending them to the editor of the New York Herald, or for any other purpose? If you answer in the negative, then say if you know by whom they were copied.

5. Where, at what place or house, and at what time, were the said amendments of the treaty copied? And having refused to answer the following interrogatories:

6. Where, in what place or what house, and at what time, did you first receive a printed copy of the confidential document containing the treaty, the President's message, and also the other confidential documents printed in the Herald?

7. In answer to the third interrogatory, you have stated that you furnished the papers therein referred to, to the editor of the New York Herald. State from whom you received the said treaty with Mexico, with the amendments and the said portion of the proceedings of the Senate.

8. In your answer to the fourth interrogatory, you state that the amendments there referred to were communicated to the Herald in your handwriting. Did you copy the same, and from whom did you procure the original from which you copied the same?

9. You say in answer to the last question that you decline to answer the same, because you can not answer it with accuracy. State why you can not answer it with accuracy. Is it because you do not recollect the facts inquired of?

10. What portion of the facts do you not recollect with accuracy; is it as to the person from whom you obtained the papers, or either of them referred to?

11. State from whom you received the treaty.

12. State from whom you received the documents.

13. State from whom you received the proceedings of the Senate heretofore inquired of.

14. Was the copy of the treaty you forwarded to the Herald a printed copy?

———has, by so refusing, committed a contempt against the Senate and has, by the Senate, been ordered into the custody of the Sergeant-at-arms, there to remain until the further order of the Senate.

These are, therefore, to authorize and require you, and you are hereby authorized and required to take into your custody the body of the said John-Nugent, and him safely keep until he answers the said interrogatories, or until the further order of the Senate of the United States in this behalf, and for so doing this shall be your sufficient warrant.

Given under my hand this thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-eight.

G.M. DALLAS,
Vice-President of the United States and President of the Senate.

Attest:

ASBURY DICKENS,
Secretary of the Senate of the United States.

The opinion of Judge Cranch, which was supported by numerous citations and discussions of authorities, especially English, lays down the following principles:

The jurisdiction of the Senate in cases of contempt of its authority depends upon the same grounds and reasons upon which the acknowledged jurisdiction of other judicial tribunal rests, to wit, the necessity of such a jurisdiction to enable the Senate to exercise its high constitutional functions—a necessity at least equal to that which supports the like jurisdiction which has been exercised by all judicial tribunals and legislative assemblies in this country from its first settlement, and in England from time immemorial. That the Senate of the United States may punish contempts of its authority seemed to be admitted by the prisoner's counsel, provided it be in a case within their cognizance and jurisdiction; but whether admitted or not, such is the law as laid down by the Supreme Court of the United States in Anderson *v.* Dunn, 6 Wheat., 224, and in Kearney's Case, 7 Wheat., 41.

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These case [cited] and authorities, we think, show conclusively that the Senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction; that every court, including the Senate and House of Representatives, is the sole judge of its own contempts, and that in case of the commitment for contempt in such a case no other court can have a right to inquire directly into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus, and that the warrant of commitment need not set forth the particular facts which constitute the alleged contempt.

There were many cases cited in the argument to show that when the question of privilege or contempt came incidentally before the court, the court could and must decide it; but those cases have no bearing upon this, which is a case of habeas corpus, where it is admitted on all hands that the question of contempt is brought directly before the court.

But if, upon this point, it should be thought that the majority of the judges of this court have (as it is suggested) stated the principle too broadly in respect to the conclusive effect of a judgment of contempt and if it should be deemed necessary that it should appear in the return of the hapeas corpus that at the time of the supposed contempt the Senate were acting in a matter of which they had jurisdiction—we all think it does sufficiently appear in the return that the Senate were, at that time, engaged in a matter within their jurisdiction, to wit, an inquiry whether any person, and who, had violated the rule of the Senate which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy. This appears by the interrogatories propounded to the witness (the prisoner), as stated in the return, and by the recital, in part, of the answers of the witness to a part of those interrogatories.

But it has been contended also in argument that the power of the Senate to punish for contempts is confined to their authority over their own members.

It is true that by the Constitution, Article I, Section 5, "each House may determine the rules of its proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." But it says nothing of contempts. These were left to the operation of the common-law principle that every court has a right to protect itself from insult and contempt, without which right of self protection they could not discharge their high and important duties. It is not at all probable that the framers of the Constitution, by giving an express power to the Senate to punish its members for disorderly behavior, and even to expel a member, intended to deprive the Senate of that protection from insult, which they knew very well belonged to and was enjoyed by both Houses of Parliament and the legis-

latures of the former colonies and now States of this Union. The provision of the Constitution may have been intended to remove a doubt, whether a member of the Senate, appointed by and responsible to a State legislature, could be guilty of a contempt to a body of which he himself was a member; or it may have been intended to apply only to such disorderly behavior as did not amount to a contempt of the House; or to remove a doubt whether the Senate had power to expel a member. But whatever may have been the intention we think the provision does not justify an inference that their power to punish for contempts can be executed only upon members of the Senate.

* * * * * * *

It was also contended in argument that although the Senate might hold secret sessions, they could not, in secret session, punish a man for contempt. The court, however, can not perceive any reason why the Senate should not have the same power of punishing contempts in secret as in open session. In the early years of this Government the sessions of the Senate were always secret.

The Constitution of the United States, Article I, section 5, requires that "each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy." The journal can not be kept secret unless the proceedings themselves be kept secret. Hence, each House has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy. The necessity of the power to hold secret sessions, especially of the Senate, is so obvious that no argument in its favor is required by the court.

The Senate, besides being a branch of the Legislature, is the executive council of the President, and stands in intimate communion with him in regard to all our foreign diplomatic relations. Nothing, therefore, can be more proper than that all executive sessions of the Senate, and all confidential communications relating to treaties should be with closed doors and under seal of secrecy. Hence the standing rule of the Senate (No. 38) requires that all confidential communications made by the President of the United States to the Senate shall be, by the members thereof, kept secret; and all treaties which may be laid before the Senate shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy. And by the standing rule of the Senate (No. 39), "All information or remarks touching or concerning the character and qualifications of any person nominated by the President to office shall be kept secret." By the fortieth rule of the Senate, "'When acting on confidential or executive business, the Senate shall be cleared of all persons. except the Secretary, the principal or executive clerk, the Sergeant-at-Arms, and Doorkeeper and Assistant Doorkeeper." By the forty-first rule of the Senate, "The legislative proceedings, the executive proceedings, and the confidential legislative proceedings of the Senate shall be kept in separate and distinct books."

These rules were established under the power given to the Senate by the Constitution of the United States, Article I, section 5, "To determine the rules of its proceedings, "and are, therefore, until repealed, as obligatory as if they had been inserted in the Constitution itself; so that it is not only the privilege, but the duty of the Senate to hold its executive sessions in secret. No odium, therefore, can attach to the Senate from the circumstance that the judgment for contempt was pronounced in secret session, upon a transaction which took place in secret session. It could not have been done otherwise. The offense must be punished in secret session or go unpunished; leaving the Senate exposed to all sorts of insults in the discharge of their solemn constitutional duties.

After an anxious and careful consideration of the whole case, the court is unanimously of opinion that the Senate of the United States has power, when acting in a case within its jurisdiction, to punish all contempts of its authority, and that the prisoner, having been committed by the Senate for such a contempt, and being still held and detained for that cause by their officer, this court has, upon the habeas corpus, no jurisdiction to inquire further into the cause of commitment and must remand the prisoner.[1]

Prisoner remanded.

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[1] In 1871 (First session Forty-second Congress), the Senate arrested Z.L. White and H.J. Ramsdel for the publication of the treaty of Washington, and prolonged proceedings arose from their contumacy.