

INVESTIGATIONS OF CONDUCT OF MEMBERS. Chapter LVI.

INVESTIGATIONS OF CONDUCT OF MEMBERS.

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1827. A Member on his own responsibility presenting a statement of a charge against another Member, a resolution of investigation was held to be privileged.

A Member who had moved an investigation requested that he be not appointed one of the committee, as he would have to appear as a witness.

On September 4, 1888,³ Mr. William D. Kelley, of Pennsylvania, as a question of privilege, offered the following resolution:

Resolved, That the special committee engaged in investigating the construction of the new Library building be directed to inquire and report to this House whether any Member of the House, acting by and for himself or in concert and combination with others, has sought by persuasion, intimidation, or other corrupt or improper means to influence or control the action of Mr. J. L. Smithmeyer, the architect of said building, in the selection, acceptance, or approval of inferior or improper materials to be used in the construction of said building.

Mr. Kelley supported this resolution by the statement on his own responsibility that there was evidence to sustain the charge and that he would produce it before the committee.

The Speaker⁴ said:

The Chair thinks this is a privileged resolution as it relates to the conduct of a Member of the House.

The resolution was agreed to, with an amendment providing that the investigation should be by a select committee.

Mr. Kelley requested that he be not appointed on the committee, because he should have to appear before the committee.

The Speaker appointed the committee on September 8, Mr. Kelley not being included in the number.

¹ As to the status, in reference to privilege, of a proposition to investigate the conduct of a Member at a time before he became a Member. Sec. 2725 of this volume.

² Instance wherein a committee failed to report the testimony at once. Sec. 2637 of this volume.

³ First session Fiftieth Congress, Journal, p. 2724; Record, pp. 8258, 8415.

⁴ John G. Carlisle, of Kentucky, Speaker.

1828. Propositions to investigate charges against Members have been presented as questions of privilege.—On June 11, 1862,¹ Mr. John A. Bingham, of Ohio, as a question of privilege, submitted the following preamble and resolution:

Whereas information has been received by the Government that Hon. Benjamin Wood, a Representative in Congress from the State of New York and a Member of this House, has been engaged in communicating or attempting to communicate important intelligence to the Confederate rebels in arms against the United States: Therefore,

Be it resolved, That the Committee on the Judiciary inquire into the alleged conduct of said Benjamin Wood in the premises, and, to that end, that said committee be authorized to send for persons and papers and to examine witnesses, upon oath or affirmation, and to employ a stenographer at the usual compensation and make report to the House.

1829. On March 23, 1864,² Mr. Francis P. Blair, jr., of Missouri, as a question of privilege, presented a resolution which, as amended by the House, was agreed to, as follows:

Resolved, That a select committee of three Members be appointed by the Speaker, with power to send for persons and papers and investigate the charges made by Hon. J. W. McClurg, of Missouri, against F. P. Blair, jr., a Member of the House of Representatives from the First district of Missouri, of violating the laws in the matter of an alleged liquor speculation; and to inquire into the genuineness or falsity of the alleged order for the purchase of liquor, bearing date June 3, 1863.

1830. On January 18, 1865,³ Mr. Green Clay Smith, of Kentucky, as a question of privilege, presented the following, which was considered and agreed to:

Whereas in a public document dated Lexington, Ky., September, 1864, signed by Brig. Gen. Speed S. Frye and John Mason Brown, colonel Forty-fifth Kentucky Volunteer Infantry, transmitted to the Kentucky legislature by Governor Thomas E. Bramlette, with his message of January 4, 1865, the Hon. Lucien Anderson, a Member of this body, is charged with corruption, bribery, and malfeasance in office: Therefore,

Resolved, That a committee of five Members of this House be appointed by the Speaker to investigate said charge, with power to send for persons and papers.

On March 3 the committee reported that “the charges were not sustained by the proof in the case.”

1831. A newspaper article charging that an unnamed member of a certain committee was corrupt in his representative capacity was held to involve a question of privilege.—On February 18, 1859,⁴ Mr. Mathias H. Nichols, of Ohio, as a question of privilege, submitted the following:

Whereas in the correspondence of the New York Daily Times, signed “S.,” under date of the 15th of February, A. D. 1858, as also in the correspondence of other papers, it is charged that a member of the Committee on Accounts of this House made a bargain to receive money as a consideration for passing certain claims in said committee, and that subsequently the said member demanded the consideration for said service; and whereas it is further alleged that a member of said committee compelled claimants before said committee to agree to give a portion of the bills before said committee in consideration for their allowance by the same: Therefore,

Be it resolved, That a committee of five Members be appointed by the Speaker to investigate said charge or charges; said committee to report before the close of the present session of Congress.

¹ Second session Thirty-seventh Congress, Journal, p. 841; Globe, p. 2666.

² First session Thirty-eighth Congress, Journal, p. 421; Globe, p. 1253.

³ Second session Thirty-eighth Congress, Journal, pp. 111, 112; Globe, pp. 316, 1411.

⁴ Second session Thirty-fifth Congress, Journal, pp. 438, 442, 568; Globe, pp. 1137, 1664.

Mr. Henry C. Burnett, of Kentucky, made the point of order that the resolution as drawn involved no question of privilege.

The Speaker¹ said:

The Chair is of the opinion, taking the preamble and resolution together, that they involve the privileges of the House.

The resolution and preamble were then agreed to.

On February 19 the Speaker appointed as the committee Messrs. Nichols, George Eustis, jr., of Louisiana; William G. Whiteley, of Delaware; and Clark B. Cochrane, of New York.²

On February 25, 1859, the committee reported, giving the testimony, and stating that very early in the examination the fact was developed that the person referred to in the resolution was John A. Searing, of New York, chairman of the Committee on Accounts. Thereupon the committee, by unanimous vote, determined to suspend the examination until Mr. Searing could be informed that he was at liberty to attend the examination, and confront and cross-examine the witnesses. Mr. Searing accordingly appeared but did not avail himself of the privilege of cross-examination of the witnesses. The committee recommended the adoption of the following resolution:

Resolved, That, upon a review of all the testimony taken in the matter of the charge against John A. Searing, a Member of this House from the State of New York, and chairman of the Committee on Accounts, the evidence would not warrant a conviction nor subject him to expulsion.

When this resolution was considered on March 3, Mr. William H. Kelsey, of New York, made a point of order against the report on the ground that the committee had no authority to try Mr. Searing, but that, under the parliamentary law, they should either have reported that there was no ground for the charges, or that there was probable cause, and recommended that further proceedings be instituted.

The Speaker said:

The Chair overrules the question of order upon the ground, in the first place, that it was competent for the committee to report such a resolution as they should see proper in reference to the case. Upon the latter point made by the gentleman from New York the Chair would remark that it was decided by a former House, and decided adversely to the view taken by the gentleman.

The resolution was then agreed to, after a motion to lay it on the table had been decided in the negative.

1832. A Member who had been defamed in his reputation as a Representative by a newspaper article presented the case as one of privilege, and the House ordered an investigation.—On January 10, 1871,³ Mr. James Brooks, of New York, rising to a question of privilege, read to the House an article from a newspaper in which the editor, Hugh J. Hastings, made charges affecting his character as a Representative. Mr. Brooks at the same time submitted a paper purporting to be the affidavit of the said Hastings, wherein the latter had confessed

¹James L. Orr, of South Carolina, Speaker.

²This is an instance of the mover of a resolution appointed chairman of the committee although he did not belong to the majority party in the House.

³Third session Forty-first Congress, Journal, pp. 131, 161, 178; Globe, pp. 416, 528, 590.

himself, while under indictment for libel, as a defamer of character. Mr. Brooks asked an investigation by a committee of the House.

A discussion arose as to how far the House would be justified in going in a case where it seemed so evident that the Member had been attacked by a man whose reliability was in question. It was urged that an attack from such a source should not be noticed by the House. Mr. Oliver J. Dickey, of Pennsylvania, proposed the following:

Resolved, That it would be unworthy the dignity of the House and unjust to the character of the gentleman from New York, Mr. Brooks, to found an investigation on charges made by one of such a character as his accuser.

On the other hand, it was urged that definite charges of corruption had been made against Mr. Brooks, and that he was entitled to an investigation. After further debate, on motion of Mr. Horace Maynard, of Tennessee,

Ordered, That the original resolution, together with the various amendments, be referred to a select committee of five Members, with power to send for persons and papers, and with leave to report at any time.

On January 16 a memorial of Mr. Hastings, denying the authenticity of the affidavit and protesting against the jurisdiction of the House in the matter of the controversy between himself and Mr. Brooks, was presented and referred to the select committee.

On January 18, Mr. John A. Bingham, of Ohio, from the select committee, reported a resolution, which was agreed to by the House, that Mr. Brooks was exonerated of the charges by reason of the refusal of said Hastings to testify before the select committee as to the truth of the accusations.

1833. The House has sometimes ordered investigations on the basis of general and more or less vague newspaper charges.—On June 26, 1862,² Mr. E. P. Walton, of Vermont, as a question of privilege, submitted the following:

Whereas the publishers of the New York Tribune, on the authority of one of their correspondents, have declared and published that “offers of a pecuniary nature” have been made, apparently for the purpose of obtaining the action of this House improperly, corruptly, and criminally, which charge, if true, involves a breach of the privileges of the House, and if false in respect to any Members of this House or others who are implicated is a breach of the privileges accorded to reporters by the courtesy of the House: Therefore,

Resolved, That the Committee on the Judiciary be instructed forthwith to inquire by whom and on what authority such charge, and any other contained in the article referred to, has been made, and to make thorough investigation as to their truth or falsity and report all the evidence to the House, with their opinion thereon, and such resolutions as to them shall seem meet, and that said committee have power to send for persons and papers and report at any time.

This resolution was agreed to, yeas 102, nays 8.

1834. On December 5, 1878,² the House ordered an investigation of a charge made by a Washington newspaper that there had been corruption in regard to the passage of certain District of Columbia legislation, and that a “Vermont Representative,” a “Chicago Member,” and a “Maryland Member” had received certain amounts of money corruptly.

¹ Second session Thirty-seventh Congress, Journal p. 941; Globe, p. 2954.

² Third session Forty-fifth Congress, Journal, p. 41; Record, pp. 41, 42.

1835. In 1846 the Senate investigated a general newspaper charge of corruption.—On March 12, 1846,¹ the Senate raised a select committee to investigate a general charge of corruption made against a portion of the Senate by a newspaper in Washington. This charge mentioned no individuals by name, but charged a portion of the Senate with having sold out to England in the settlement of the Oregon boundary question.

1836. A committee which had been empowered to investigate charges of corruption on the part of its members recommended that the evidence be transmitted to the Attorney-General.—On January 22, 1903,² Mr. George E. Foss, of Illinois, announcing that he was acting on instruction from the Committee on Naval Affairs, presented this resolution, which was agreed to by the House:

Whereas information has come to the Committee on Naval Affairs, through a member of said committee, of an attempt to corruptly influence his action respecting proposed legislation pending before said committee and the House:

Resolved, That the Committee on Naval Affairs, or such subcommittee thereof as said committee may appoint, be, and it is hereby, authorized and directed to fully investigate said matter, and for such purpose it is hereby authorized and empowered to send for persons and papers, to compel the attendance of witnesses, and to administer oaths. Said committee shall have authority to report at anytime, and the expenses incurred hereunder shall be paid out of the contingent fund of the House on vouchers approved by the chairman.

On February 3³ Mr. Robert W. Tayler, of Ohio, submitted the report, which presented the testimony and the following conclusions:

Your committee has most carefully heard and considered the testimony taken before it, and upon the same has come to the following conclusions:

1. That the charge made by Mr. Lessler that an attempt had been made to corruptly influence his action respecting proposed legislation is sustained by the evidence, such attempt, in the opinion of the committee, having been made by one Philip Doblin, on his own initiative and responsibility, with the idea of making money for himself if he should find Mr. Lessler corruptly approachable.
2. That there is no evidence to sustain the charge of an attempt by Lemuel E. Quigg to corruptly influence a member of the committee on Naval Affairs respecting proposed legislation pending before said committee and the House.
3. That there is no evidence to sustain the charge of an attempt by the Holland Submarine Boat Company or any of its agents to corruptly influence a member of the Committee on Naval Affairs respecting proposed legislation before said committee and the House.

In view of the foregoing, we recommend that the clerk of the committee be directed to certify to the Attorney-General of the United States a copy of the testimony taken at the hearing, with a request that he take such action as the law and the facts warrant.

The report, which was referred to the House Calendar, was not acted on by the House.

1837. The investigation of charges against Stanley Matthews, a Senator from Ohio.

Form of resolution providing for investigation of charges against a Senator.

The Senate requested of the House and received a copy of testimony taken before a House committee and implicating a Senator.

¹ First session Twenty-ninth Congress, Globe, p. 488.

² Second session Fifty-seventh Congress, Journal, p. 149; Record, p. 1070.

³ House Report No. 3482.

A Senate committee, with authority to take testimony in the recess between two sessions of the same Congress, was yet unable to compel testimony from a recalcitrant witness.

Stanley Matthews, a Senator from Ohio, was sworn and examined before a Senate committee appointed to investigate his conduct.

A Senate committee determined that a witness summoned to testify before it was not entitled to counsel.

On June 5, 1878,¹ in the Senate, Mr. Stanley Matthews, of Ohio, rose to a question of privilege, and having addressed the Senate upon the subject of certain statements made elsewhere, calculated to reflect upon his character and standing as a Member of the Senate, submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That a select committee of seven Senators be appointed to inquire into and consider all things touching the matter stated and referred to by the Senator from Ohio [Mr. Matthews] and the events connected therewith, and particularly what connection, if any, that Senator had with any real or pretended frauds or other wrongs committed in the conduct and returns of the election in the State of Louisiana in 1876, and with any promises of protection or reward, if any, made by anyone to one James E. Anderson or others, in consideration of, or connection with, any official conduct by said Anderson or others, in relation to said election or the returns thereof; and into all the circumstances of any recommendation by the said Senator of the said Anderson for appointment to office; and that said committee have power to send for persons and papers, to employ a clerk and stenographer, and have leave to sit during the recess.

Ordered, That the committee be appointed by the President pro tempore.

The committee appointed were: Messrs. George F. Edmunds, of Vermont; William B. Allison, of Iowa; John J. Ingalls, of Kansas; George F. Hoar, of Massachusetts; David Davis, of Illinois; William P. Whyte, of Maryland, and Charles W. Jones, of Florida.

On June 19, on motion of Mr. Allison:

Resolved, That the select committee appointed under the resolution of the 5th instant to make inquiry concerning the alleged connection of Senator Matthews with matters relative to the late Presidential election in Louisiana, in exercising the power heretofore granted to sit during the recess of Congress, may hold its sessions at such place or places as it shall deem most convenient for the purposes of the investigation.

On December 10, 1878, on motion of Mr. Allison:

Resolved, That the House of Representatives be respectfully requested to transmit to the Senate a copy of the testimony of one James E. Anderson relating to the Hon. Stanley Matthews, a Member of the Senate from the State of Ohio, understood to have been taken before one of the committees of the House of Representatives.

This testimony was duly communicated to the Senate by message from the House, and was referred to the select committee.

On March 1, 1879, Mr. Allison submitted the report of the committee, which was a recital of the proceedings of the committee:

The committee held its first meeting on the 11th June, 1878, and determined, on the 13th of June, to summon James E. Anderson, named in said resolution. Mr. Anderson appeared, but was not

¹ Second session Forty-fifth Congress, Record, p. 4119; Senate Document No. 11, special session Fifty-eighth Congress, pp. 670–691.

examined, for the reason that his presence was requested before a committee of the House, known as the Potter committee, as appears from the following letter addressed to the acting chairman:

HOUSE OF REPRESENTATIVES,
Washington, D. C., June 13, 1878.

MR. Senator Allison, *Chairman, etc.*:

Mrs. Jenks is about to be put on the stand, and we would prefer, if entirely agreeable to the Senate committee, that Mr. Anderson should be present during her examination. This is important to the House committee. At any other time take him.

W. R. MORRISON,
Acting Chairman.

The committee again met on the 21st of June, when Anderson, the witness, again appeared and refused to testify; the circumstances of his refusal are fully set forth in the printed proceedings of the committee herewith reported. Congress having adjourned on the 20th day of June, 1878, the committee had no power to compel the witness, Anderson, to testify. On motion of Mr. Whyte, the committee adjourned to meet again when called by the chairman of the committee, it being then understood that no meeting would be called during the recess of Congress, as the committee had no power to enforce its orders in vacation. The committee again met on the 10th day of December, 1878. The chairman stated that he had received a telegram from James E. Anderson, dated Eureka, Nev., saying that he would now appear before the committee if summoned. On motion of Mr. Edmunds, it was

"Ordered, That there be reported to the Senate the following:

"Resolved, That the House of Representatives be respectfully requested to transmit to the Senate a copy of the testimony of one James E. Anderson relating to the Hon. Stanley Matthews, a Member of the Senate from the State of Ohio, understood to have been taken before one of the committees of the House of Representatives.'

"Mr. Edmunds submitted a motion that James E. Anderson be reported to the Senate as in contempt of its authority for refusing to testify before this committee, and that the Senate be requested to take the proper proceedings to secure his attendance.

"The motion was not agreed to, there being three ayes: Messrs. Edmunds, Davis, and Whyte. The noes were: Messrs. Allison (chairman), Hoar, and Ingalls. Mr. Jones, absent.

"On motion of Mr. Whyte, the committee adjourned to meet at the call of the chairman"—

It being understood that the committee should await the action of the House on the resolution calling for the testimony of Anderson taken by the House committee, which resolution was reported to the Senate on the 10th of December, 1878, and agreed to. On the 28th day of January, 1879, the House of Representatives transmitted to the Senate the testimony of James E. Anderson in pursuance of the request made by resolution of the Senate heretofore referred to, passed on the 10th day of December 1878. This testimony was on the 28th day of January, 1879, referred to this committee and ordered to be printed. On the 7th February the committee met pursuant to the call of the chairman—

"Present: The chairman (Mr. Allison), Mr. Edmunds, Mr. Hoar, Mr. Davis, and Mr. Whyte"—

When the following proceedings were had:

"On motion of Mr. Edmunds, Senator Matthews was directed to be notified that the committee had received a copy of the testimony of James E. Anderson before a select committee of the House of Representatives, and was ready to hear what he had to say on the subject.

"The chairman having transmitted such notification, Hon. Stanley Matthews appeared before the committee.

Hon. Stanley Matthews was then sworn and examined.

The committee append to their report the records of the committee¹ showing the refusal of Mr. Anderson to testify:

FRIDAY, June 21, 1878.

The committee met pursuant to call.

Present: Messrs. Allison (acting chairman), Hoar, Ingalls, Davis, Whyte, and Jones.

Hon. Stanley Matthews was present by invitation.

¹ Pages 686–691 of Senate Document No. 11.

James E. Anderson, who had been summoned as a witness, appeared.

The ACTING CHAIRMAN. Will you be sworn?

Mr. ANDERSON. I will state to the committee before I take the oath that I desire to be represented here by counsel.

The ACTING CHAIRMAN. You desire to be represented by counsel?

Mr. ANDERSON. I desire to be represented by counsel.

The ACTING CHAIRMAN. A witness!

Mr. ANDERSON. A witness. I desire to be represented by counsel.

Mr. HOAR. Mr. Chairman, I suppose he does not desire to have counsel present before we determine the question whether he shall be sworn.

Mr. ANDERSON. I should like to have the question settled before I am sworn as to whether I can have counsel or not.

Mr. DAVIS. That is a matter we can dispose of hereafter. [To the acting chairman.] You can swear him and tell him we can discuss this matter afterwards. We can not dispose of this question now, probably.

The ACTING CHAIRMAN. Have you arranged for your counsel, if you have counsel?

Mr. ANDERSON. I will by tomorrow.

Mr. INGALLS. Mr. Chairman, I hope there will be no delay about swearing the witness.

Mr. DAVIS. Oh, no, Sir.

Mr. INGALLS. This is a question for the committee to discuss.

The ACTING CHAIRMAN. You will be sworn, Mr. Anderson.

The oath was administered.

The WITNESS. Now, I renew my request.

The ACTING CHAIRMAN. That we shall be obliged to consider.

Mr. DAVIS. With closed doors, of course.

The ACTING CHAIRMAN. I think we had better settle the question now.

The WITNESS. Can you excuse me for ten minutes?

The ACTING CHAIRMAN. No, we can not excuse you just at this moment.

The room was therefore cleared of all but members of the committee. After some time spent in deliberation the doors were reopened.

The ACTING CHAIRMAN. Mr. Anderson, the committee have decided that you are not entitled to counsel.

The WITNESS. I simply desire to say that I have no statement to make and no questions to answer.

Later, after Mr. Anderson had reiterated his request for counsel and had declined to testify otherwise, the following occurred:

The committee room was cleared for deliberation; and after some time spent in consultation, Mr. Matthews was invited to attend, and he accordingly appeared.

The ACTING CHAIRMAN. You have heard, Mr. Matthews, what Mr. Anderson has said. Have you any suggestion to make to the committee in reference to going on without Mr. Anderson's testimony?

Mr. DAVIS. In other words, you know that the committee decided that the case, whatever it was, should be made out, and then you should be put on the stand. You have seen how this ends for the present. Have you any suggestion to make? Until the Senate meets we have no way of compelling his attendance.

Mr. MATTHEWS. I dislike very much to take the responsibility of making any suggestions to the committee on the subject. I am ready here to-day, and shall be at any future time that the convenience of the committee shall fix, for the purpose of assisting the committee and facilitating it in any way within my power in the objects and purposes for which it was originated and authorized.

The only course, other than that of waiting until the committee can have the power of the Senate to compel the attendance of the witness, is to obtain from the committee of the other House the statements which he has already made under oath before it, and which constituted the ground on the basis of which I asked the Senate for the appointment of this committee. In case the committee think that that is sufficient for the purpose of the investigation with which they are charged, and obtain that

testimony, I am ready to go on as if it had been delivered again here. But whether the committee ought to take that course, I think, is a question which the committee ought to decide for themselves. I do not wish to be considered as giving any opinion or advice or expressing any wish in regard to that matter.

The ACTING CHAIRMAN. I think we can now relieve you from attendance, Mr. Matthews.

Mr. Matthews thereupon retired, and the doors were thrown open to the public generally.

The ACTING CHAIRMAN. Mr. Reporter, will you state what took place a moment ago, when Mr. Matthews was called in?

The stenographer read the statement made by Mr. Matthews.

The ACTING CHAIRMAN. The reporter has stated all that took place. Stand up, Mr. Anderson. [James E. Anderson rose.] The committee have decided that we will require the testimony of Mr. Anderson; and I now wish to ask you, Mr. Anderson, if you are willing to answer such questions as may be propounded to you by the committee or any member of it?

Mr. ANDERSON. I am not.

Q. You still persist?—A. I still persist.

Q. In refusing to answer any question pertaining to the matter before this committee?

Mr. ANDERSON. I do.

Q. And you therefore set the committee at defiance?

Mr. WHYTE. Mr. Chairman, in the absence of the Senate we have no power to punish Mr. Anderson for the contempt in refusing to answer our questions. Under these circumstances I move that this committee adjourn, subject to the call of the chairman.

The motion was agreed to.

1838. The investigation of charges against L. F. Grover, a Senator from Oregon.

Form of resolution for authorizing investigation of charges against a Senator.

Discussion as to the rules which should govern the admission of evidence before a legislative committee of investigation.

On March 9, 1877,¹ in the Senate, Mr. La Fayette Grover, of Oregon, presented the following, which was agreed to:

Resolved, That the thirteen memorials heretofore presented to the Senate by Hon. J. H. Mitchell, purporting to be signed by 369 citizens of the State of Oregon, reciting that it was currently reported and generally believed that the election of L. F. Grover as a Senator of the United States was procured by bribery, corruption, and other unlawful means in the legislature of the State of Oregon, and that the said L. F. Grover did corruptly and fraudulently issue a certificate of election to one E. A. Cronin as a Presidential elector on December 6, 1876, and that the said L. F. Grover did bear false witness before the Senate Committee on Privileges and Elections on or about January 6, 1877, be now referred to the Committee on Privileges and Elections, who shall thoroughly investigate and report upon the foregoing charges, with power to send for persons and papers.

On March 14,² Mr. John H. Mitchell, of Oregon, offered the following:

Resolved, That the Committee on Privileges and Elections be authorized to designate a subcommittee of three of its members who shall have authority to sit in the vacation for the purpose of taking testimony and making report to full committee at commencement of next session in pursuance of the resolution of the Senate authorizing an investigation into certain charges preferred against La Fayette Grover, Senator from Oregon; and such subcommittee shall have all the powers to send for persons and papers and administer oaths that the full committee now has.

¹ Special session of Senate, Forty-fifth Congress, Record, p. 39.

² Record, p. 41.

On March 17,¹ the resolution was considered, and Mr. Eli Saulsbury, of Delaware, proposed this amendment:

Strike out all after the word “resolved” and in lieu thereof insert:

That the Committee on Privileges and Elections, to which was referred a resolution of the Senate relating to the election of La Fayette Grover as Senator from the State of Oregon, be, and the said committee is, instructed to appoint the judge of the fourth judicial district of said State a commissioner to take testimony relating to the matters referred to in said resolution, and the said commissioner so appointed shall have power and authority, and it shall be his duty, to issue subpoenas for witnesses as well on behalf of the said La Fayette Grover as against him, and to give due notice of the time and place when and where the testimony will be taken. The testimony so taken shall be forwarded to the said committee, which shall report the same, with their conclusions thereon, at the next regular session of the Senate.

On motion by Mr. Mitchell to amend the amendment by striking out all after the word “instructed” and in lieu thereof inserting:

To appoint from its members a subcommittee of three, who shall take testimony relating to the matters referred to in said resolution and report to the full committee on the first Monday in December next; and for such purpose said subcommittee shall have power to sit in vacation; and if they deem expedient, go to the State of Oregon; and such committee shall have power to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the powers of the general committee to administer oaths and send for persons and papers; and the expenses of such subcommittee, not exceeding \$10,000, shall be paid out of the contingent fund of the Senate, upon vouchers to be approved by the chairman of such subcommittee.

After debate, it was determined in the affirmative.

On motion by Mr. Saulsbury to further amend the amendment by adding thereto the following:

And that the said L. F. Grover shall be notified of the sessions of the said subcommittee, with the right to be present at the examination of witnesses.

It was determined in the affirmative.

The amendment of Mr. Saulsbury, as amended, was then agreed to; and,

On the question to agree to the resolution as amended, as follows:

Resolved, That the Committee on Privileges and Elections, to which was referred a resolution of the Senate relating to the election of La Fayette Grover as Senator from the State of Oregon, be, and the said committee is, instructed to appoint from its members a subcommittee of three, who shall take testimony relating to the matters referred to in said resolution, and report to the full committee on the first Monday in December next; and for such purpose such subcommittee shall have power to sit in vacation, and, if they deem expedient, go to the State of Oregon; and such subcommittee shall have power to employ a clerk, stenographer, and sergeant-at-arms, and shall have all the power of the general committee to administer oaths and send for persons and papers; and the expenses of such subcommittee, not exceeding \$10,000, shall be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of such subcommittee; and that the said L. F. Grover shall be notified of the sessions of the said subcommittee, with the right to be present at the examination of witnesses.

It was determined in the affirmative, yeas 39, nays 8.

On June 15, 1878,² the committee submitted a report with a recommendation that the committee be discharged, the evidence not, in their opinion, sustaining the charge. Mr. Eli Saulsbury, of Delaware, in views filed by him as a part of the

¹ Record, pp. 43–46.

² Second session Forty-fifth Congress, Senate Report No. 540.

report, concurred with the findings of the committee, but criticised its method of procedure:

The undersigned, as a member of the subcommittee charged with the duty of making the investigations required by the first-mentioned resolution, begs leave respectfully to submit his own conclusions from the evidence taken.

An examination of the testimony will show that the widest latitude was given to the investigation by the subcommittee. Witnesses were not restricted to matters within their own knowledge, but were allowed to testify as to their beliefs and suspicions, unsupported by any facts, and to narrate hearsay evidence of no higher character than the fugitive rumors which are not unfrequently current on the streets of a State capital preceding the election of a United States Senator.

It may be at times impossible for a legislative committee to apply to an investigation with which it is charged the rules which govern the admissibility of evidence in courts of justice, but the undersigned must be allowed to express his conviction that in an investigation into the truth of allegations affecting the personal honor of a Member of the Senate, as well as his right to a seat in the body, no such wide departure should be allowed in the admission of testimony as the evidence in this case will show was permitted. While Senator Grover can have no cause to regret the latitude that was given to the inquiry into matters alleged against him or the regularity of his election, by reason of anything elicited against him or those to whom he owes his election to the Senate, it ought not to be allowed to become a precedent to govern similar investigations in the future.

The undersigned objected at the very commencement of the investigation to the latitude in the examination of witnesses which is usually allowed in investigations by legislative committees, and insisted on an observance, as far as possible, of the rules which obtain in courts of justice in that regard. Had his suggestion been adopted in practice, the testimony in this case would have been compressed into a very narrow compass and would have excluded a large mass of irrelevant testimony taken by the subcommittee.¹

1839. A Senator, having been indicted by a grand jury, asked and obtained an investigation by a committee of the Senate.

A question as to how far a legislative investigating committee should be governed by the rules of evidence.

A decision by a court that the statute prohibiting a Senator from receiving compensation for procuring an office for another does not apply to a Senator-elect.

On February 1, 1904,² in the Senate, Mr. Charles H. Dietrich, of Nebraska, said:

Mr. President, I rise to a question of personal privilege. By a Federal grand jury at Omaha I have recently been indicted for alleged violation of the laws of the United States, and on a trial of the indict-

¹ In 1858 (Election Cases, S. Doc. No. 11, special session 58th Cong., p. 949; 1st sess. 35th Cong., S. Report No. 314, Globe, pp. 2075–2079, 2123, 2163) the Senate considered the case of Henry M. Rice, Senator from Minnesota. May 12, 1858, the credentials of Mr. Rice were presented, and he took his seat in the Senate. On the same day the following resolution was submitted by Mr. Harlan, of Iowa, for consideration: “Resolved, That a committee be appointed to investigate the allegation of fraud and extortion made against Henry M. Rice as agent of the Secretary of War in the sale of the Fort Crawford Reservation, by settlers on said reservation, and that said committee have power to send for persons and papers.” This resolution was amended so that the Committee on Military Affairs were instructed to make the investigation. That committee reported June 9, 1858, that “after an examination of all the testimony adduced, they do not find that it sustains any allegation which imputes criminality to or arraigns the integrity of Mr. Rice, and finding nothing in the developments of the investigation which, in the opinion of the committee, tend to disqualify him for a seat in the Senate, they herewith submit the record in the case as a part of this report, and ask to be discharged from the further consideration of the subject.” The report was unanimously agreed to.

² Second session Fifty-eighth Congress, Record, p. 1447.

ments before a Federal court at Omaha was discharged by the Federal judge without the cause being heard upon its merits, upon the ground that my acts were no violation of the Federal law.

Before taking further part in the deliberations of this body I owe a duty to the Senate, whose honor has been assailed, to the State which in part I represent, whose credit has been attacked, and to myself, whose integrity has been impugned. If guilty of the least of these charges, I deserve to be driven from this high place in disgrace and receive the severest penalty of the criminal law. Confident in my innocence, I desire to submit the whole matter to the Senate.

Thereupon Mr. Dietrich submitted a resolution, which was agreed to, as follows:

Resolved, That the President pro tempore shall appoint a committee of five to investigate and report to the Senate all the facts connected with the appointment of Jacob Fisher as postmaster at Hastings, Nebr., and the leasing of the building used at this time for a post-office in that city, and particularly to investigate and report as to the action of Charles H. Dietrich, a Senator from Nebraska, in connection with such appointment and leasing.

The President pro tempore¹ appointed as the committee Messrs. George F. Hoar, of Massachusetts; Orville H. Platt, of Connecticut; John C. Spooner, of Wisconsin; Francis M. Cockrell, of Missouri, and Edmund W. Pettus, of Alabama.

On February 2 the Senate agreed to this resolution, which had been presented on the preceding day by Mr. Hoar:

Resolved, That the special committee appointed to inquire into certain charges affecting the Hon. Charles H. Dietrich, a Senator from the State of Nebraska, be authorized to employ a clerk and stenographer and, by themselves or any subcommittee of their number, to sit during the sessions of the Senate, to send for persons and papers, and to administer oaths.

On April 14² Mr. Platt presented the report of the committee, which found that—

Upon full consideration of all of the evidence, the committee is of opinion that Senator Dietrich has not been guilty of any violation of the statutes of the United States or of any corrupt or unworthy conduct relating either to the appointment of Jacob Fisher as postmaster at Hastings, Nebr., or the leasing of the building in question to the United States for the purposes of a post-office.

As to method of procedure the report says:

The committee, with the consent of Senator Dietrich, in order that no possible fact bearing upon the matter might be overlooked, received the statements of all of the witnesses in full, not regarding strictly the rules of evidence in that respect.

It will appear that the committee, with such consent of Senator Dietrich, admitted not only such evidence against him as would have been competent in a court of justice, but also a good deal of hearsay testimony—being all that was brought to their attention—as a possible clew to further information. The committee did not determine how far this proceeding would have been justified for any reason without such consent, even if they had carefully refrained from attaching any weight to it in their final decision; but it, in fact, did not in the least tend to shake or affect the conviction they have reached.

As to the charges against Senator Dietrich the report says:

Senator Dietrich was indicted in the district court of Nebraska in five different cases, afterwards remitted to the circuit court,³ the record in two of which is printed with the testimony taken by the

¹ Record, p. 1499.

² Record, pp. 4800, 4801.

³ In delivering the opinion of the court, Judge Van Devanter said:

"Section 1781 of the Revised Statutes, under which this action is brought, contains two distinct and separate prohibitions. The first paragraph, under which this indictment is brought, provides that 'every Member of Congress, officer, or agent of the Government' who commits certain acts shall be guilty of a misdemeanor, and provides for certain punishment. The other paragraph provides that

committee in this case, which record, as the committee thinks, fairly presents all the charges against him, so that the printing of the record in the other three cases is unnecessary.

In the first of the cases, the record of which is printed, Senator Dietrich is charged in effect that while a Senator in Congress from the State of Nebraska he took, received, and agreed to receive a bribe from Jacob Fisher for procuring and aiding to procure for said Fisher the office of postmaster at Hastings, Nebr. To this indictment Mr. Dietrich pleaded not guilty, and a jury was impaneled to try the case. After the opening statement of the United States district attorney, in which he admitted that the date of the offenses charged was prior to the taking of the oath of office of Senator by Mr. Dietrich, a verdict of acquittal was directed by Circuit Judge Van Devanter, who held that the statute in question did not apply to a Senator elect, and a verdict of acquittal was accordingly rendered.

In the second case, the record of which is printed, it is charged that Mr. Dietrich, while a Senator in Congress from the State of Nebraska, did hold and enjoy a contract theretofore entered into between himself and the United States for the use and occupation, for the purposes of a United States post-office at Hastings, Nebr., of a lot and building owned by the defendant. In this case a demurrer was entered, argued, and overruled, but subsequently, on the motion of the district attorney, a nolle prosequi was entered, and Senator Dietrich was discharged.

One of the other cases against Senator Dietrich differs from the first, the record of which is printed, only in the manner of charging the same offenses alleged in the first case, and in this case a nolle prosequi was also entered, upon the motion of the district attorney, and Senator Dietrich was discharged.

In the other two cases Senator Dietrich and Mr. Fisher were indicted jointly for a conspiracy to violate section 1781 of the Revised Statutes, the ground of such conspiracy being the alleged agreement between Messrs. Dietrich and Fisher, which was set up as a separate offense in the first case referred to. In these two cases demurrs were entered and sustained, upon the ground that the indictment did not charge a conspiracy, but only separate offenses against Dietrich and Fisher.

So that, eliminating technicalities, the offenses charged against Senator Dietrich were—

"First. That as Senator he received from Fisher either the sum of \$1,300 or \$500, or the equivalent of the same in property, for procuring for said Fisher the office of postmaster at Hastings; and

"Second. That as Senator he held and enjoyed a contract with the Government."

The statute which Senator Dietrich was alleged to have violated in the first case referred to is section 1781 of the Revised Statutes, as follows:

"Every Member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive from any person for procuring, or aiding to procure, any contract, office, or place from the Government or any department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office, or place to any person whomsoever, * * * shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than \$10,000. * * * And any Member of Congress or officer convicted of a violation of this section shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States."

every Member of Congress, officer, or agent of the Government 'after his election,' etc., shall be liable to the penalty provided for the commission of such acts."

The opinion then holds that a man elected to Congress does not actually become a member of that body until he has qualified and taken the oath at the bar of the House to which he has been elected. The last paragraph, said the court, refers to acts which may be committed by Members of Congress after their qualification or acceptance of duties of their offices.

"The two Houses of Congress under the Constitution," says the court, "are the only judges of whom shall sit as members of their respective bodies. The district attorney has admitted that there was no session of Congress from March 28, the date of the election by the legislature of Senator Dietrich, and December 2, the date of the convening of Congress. Until the latter date there could be no question raised as to his actual membership in the Senate, nor could he qualify before that body until that time. Until then it was not known whether he would be permitted to enter upon his duties as a United States Senator and as the representative of the people of Nebraska before that body.

"Our opinion, therefore, is that this defendant was not a United States Senator at the time of the acts charged in this indictment, within the inhibition of this statute. The jury is instructed to find a verdict of not guilty."

The statute which he was alleged to have violated in the second case is section 3739 of the Revised Statutes, which is here quoted, together with the pertinent sections, 3740 and 3741:

"SEC. 3739. No Member of or Delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined \$3,000. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.

"SEC. 3740. Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement made or entered into or accepted by any incorporated company where such contract or agreement is made for the general benefit of such incorporation or company, nor to the purchase or sale of bills of exchange or other property by any Member of (or Delegate to) Congress where the same are ready for delivery and payment thereof is made at the time of making or entering into the contract or agreement.

"SEC. 3741. In every such contract or agreement to be made or entered into or accepted by or on behalf of the United States there shall be inserted an express condition that no Member of (or Delegate to) Congress shall be admitted to any share or part of such contract or agreement or to any benefit to arise thereupon."

The committee found no evidence to sustain the charge that the postmaster in question had been appointed for a corrupt consideration.

As to the rental of the building the committee found the transaction proper and not open to criticism.

1840. When testimony elicited by a committee involves a Member, the committee is to report to the House that the Member may be heard and special authority be given to inquire concerning him.—Section XI of Jefferson's Manual provides:

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him, but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. (9 Grey, 523.)

1841. A committee charged with an investigation sometimes adopts rules to govern the examination of witnesses and the use of the testimony by persons implicated.—On March 3, 1838,¹ the select committee appointed to investigate the causes of the death of Jonathan Cilley, of Maine, agreed to the following resolution:

Resolved, That the following interrogatory be put to all the witnesses who shall be examined before this committee:

Please state what you know in regard to the causes which led to the death of the Hon. Jonathan Cilley, late a Member of the House of Representatives, and the circumstances connected therewith; and if present on the field, state further all that transpired, in the order in which it occurred; what were the propositions made for settling the difference; and what was said and responded on each proposition, in the words of the persons speaking.

¹ Second session Twenty-fifth Congress, House Report No. 825, pp. 150, 159–161.

On March 14, 1838, the committee agreed to the following:

The committee having, in reply to the general interrogatory propounded, received written statements from Messrs. Crittenden and Pierce, of the Senate, Messrs. Wise, Bynum, Jones, Menefee, Duncan, Hawes, and Calhoun, of the House of Representatives, and Messrs. Claiborne, Schaumberg, Foltz, Fuller, and Brown, in relation to the causes which led to the death of the Hon. Jonathan Cilley, and the circumstances connected therewith, adopts the following rules for the examination of witnesses:

Resolved, That the clerk shall prepare three files of all the testimony above mentioned; one of which shall be given to Mr. Graves, one to Mr. Wise and the two friends of Mr. Graves, who acted with him on the field, and one to Mr. Jones and the two friends of Mr. Cilley who acted with him on the field, in the confidence that they will be used for the sole purpose of preparing additional interrogatories.

2. The further examination shall be by written interrogatories, prepared and submitted to the committee, and which, if approved, shall be propounded to the witnesses by the chairman, and his answer immediately taken down by the Clerk, or written by the witness, in the presence of the committee.

3. The order of proceeding shall be as follows:

1. The witness being called before the committee, the statement made by him shall be read by the Clerk, if he desire it.

2. The additional interrogatories shall then be proposed.

3. Interrogatories, in conclusion, may then be proposed by the committee.

4. These being answered, the witness shall subscribe his testimony, and his examination be finally closed.

Resolved, That this committee will grant leave to any person who may be implicated to propound interrogatories in the usual mode, and the evidence taken shall be open to his examination for that purpose, in the hands of the clerk.

1842. On January 20, 1839,¹ the select committee appointed to investigate the defalcations in the custom-house at New York, adopted the following:

Resolved, That the Member who shall name or cause a witness to be summoned shall have the right to proceed first with the examination of such witness; and when said Member shall have concluded, the Members, in alphabetical order, shall have the right to examine the witness. No Member having the witness under examination shall be interrupted by a question from another Member, without his consent; and after each has been called for examination in chief, the Members shall again be called alphabetically for cross-examination, until all have concluded.

1843. Charges against a Member having developed during examination by a committee, a resolution directing the committee to report them was offered as of privilege, and agreed to by the House.—On July 21, 1854,² Mr. Thomas H. Bayly, of Virginia, submitted, as a question of privilege, the following resolution:

Resolved, That the special committee of which the Hon. Mr. Letcher is chairman be instructed to communicate to this House any communication made to that committee reflecting upon the representative character of T. H. Bayly, a Member of this House, by B. E. Green or others, with a view that the House may take such action as to it may seem proper, the said committee having decided that it was not within their jurisdiction.

The record of debates shows that this was assumed to be a question of privilege, and no point was insisted upon against its consideration, although objection was made that the matter before the committee should not thus be taken up by the House.

¹ Third session Twenty-fifth Congress, House Report No. 313, p. 316.

² First session Thirty-third Congress, Journal, p. 1178: Globe, p. 1835.

The resolution was agreed to, and Mr. Letcher at once communicated the letter of B. E. Green.

This letter, on motion of Mr. Bayly, was referred to a special committee of investigation.

1844. Examination by committees into alleged corrupt practices having implicated Members, the committees reported recommendations without first seeking the order of the House.

The rule of Parliament relating to Members implicated by testimony, discussed but not applied.

On February 19, 1857,¹ Mr. Henry Winter Davis, of Maryland, from the select committee appointed to investigate certain alleged corrupt combinations among Members of Congress, made a report having reference to William A. Gilbert, a Member of the House from the State of New York.

Mr. Galusha A. Grow, of Pennsylvania, objected to the reception of the report on the ground that, as it implicated a Member of the House, it could not be received as a question of privilege. He cited the precedent in the case of the Graves-Cilley duel in support of this contention. There was debate, during which it was urged, on the authority of the parliamentary law, that the committee should have reported to the House that a Member was implicated, so that the House might take action; and that a recommendation for final action and punishment should not be thus presented.

The resolutions with which the report concluded were as follows:

Resolved, That William A. Gilbert, a Member of this House from New York, did agree with F. F. C. Triplett to procure the passage of a resolution or bill through the present Congress for the purchase by Congress of certain copies of the book of the said Triplett on the pension and bounty land laws, in consideration that the said Triplett should allow him to receive a certain sum of money out of the appropriation for the purchase of the book.

Resolved, That William A. Gilbert did cast his vote on the Iowa land bill, depending heretofore before this Congress, for a corrupt consideration consisting of seven square miles of land and some stock given or to be given to him.

Resolved, That William A. Gilbert, a Member of this House from New York, be forthwith expelled from this House.

After the reading of the report and the resolutions, and further debate, the House, by a vote of 168 yeas and 5 nays, received the report.

1845. Method of procedure where testimony before an investigating committee implicates Members of the House.—On February 19, 1857,² the select committee³ appointed to investigate charges that Members of the House, not named, had entered into corrupt combinations made a general report. The report gives the following as its rule of action:

Where testimony was taken tending to implicate any Member of the House, a copy of such testimony should be furnished to such Member, and an opportunity given him to explain or contradict it by

¹ Third session Thirty-fourth Congress, Journal, p. 475; Globe, pp. 760–772.

² Third session Thirty-fourth Congress, House Report No. 243, p. 28.

³ The members of this committee were Messrs. William H. Kelsey, of New York, James L. Orr, of South Carolina, H. Winter Davis, of Maryland, David Ritchie, of Pennsylvania, and Hiram Warner, of Georgia.

other evidence; or, if the Member desired to do so, by his own statement, under oath or not under oath, as he might think proper. This course was regarded by the committee as more liberal toward the Members whose conduct might be called in question than to pursue the practice in some former cases of merely reading the testimony to them. And every Member, who is in any degree implicated by the testimony taken, was informed that if he desired it the witness or witnesses by whom he was implicated would be recalled by the committee for examination.

1846. The committee investigating charges made by a Member of the House against a member of the press gallery allowed the Member to be represented by counsel.—In the proceedings of the select committee to investigate the charges made by Mr. J. Warren Keifer, of Ohio, on the floor of the House against H. V. Boynton, a member of the press gallery, the committee determined that the examination of witnesses for the prosecution should be conducted by counsel for Mr. Keifer, and that the examination of witnesses for Mr. Boynton be conducted in chief by the committee.¹

1847. A Member's character being impeached by the statement of another Member before an investigating committee, the committee allowed both Members to be represented by counsel.—On September 11, 1888,² the select committee appointed by the House to inquire “whether any Member of the House” had been guilty of improper conduct in relation to certain contracts for the new library met, and Hon. William D. Kelley, of Pennsylvania, who had proposed the resolution of inquiry, appeared, and announced that the Member against whom the resolution was directed was Mr. William G. Stahlnecker.

The committee thereupon granted the privilege to both Mr. Kelley and Mr. Stahlnecker that they should be represented by counsel.

Mr. Kelley was requested to furnish a bill of particulars of the charges against Mr. Stahlnecker, and also to furnish a copy to Mr. Stahlnecker.

1848. A Member implicated by the testimony taken by a committee was permitted to read the testimony, testify himself, and call witnesses.—On May 29, 1856,³ the select committee of the House appointed to take into consideration the assault upon Senator Charles Sumner, of Massachusetts, by Representative Preston S. Brooks, of South Carolina, were informed by their chairman that he had, in accordance with their order, called on Mr. Lawrence M. Keitt, of South Carolina, a Member implicated by the testimony, and informed him that he should have the opportunity of reading the testimony, of testifying himself, and of calling witnesses that he might see fit to have subpoenaed.

1849. A citizen who considered himself implicated by the investigation of a committee was allowed to insert an explanation in the report.—In 1843⁴ the Committee on Indian Affairs allowed a citizen who considered himself implicated by statements contained in a report published as part of the committee's report to the House to submit an explanation, and this was included among the documents printed as part of the report to the House.

¹ First session Forty-eighth Congress, House Report No. 1112, p. 16.

² First session Fiftieth Congress, Report No. 3516, p. 3.

³ First session Thirty-fourth Congress, journal of the committee, Globe, p. 1367.

⁴ House Report No. 271, p. 17, third session Twenty-seventh Congress.

1850. A committee of the House having reported that it had taken testimony which inculpated a Senator, the House directed that it be transmitted to the Senate.—On March 21, 1867,¹ the Committee on Public Expenditures of the House reported that while engaged in the investigation ordered by the House they had taken testimony which apparently inculpated one or more Members of the Senate, and in the opinion of the committee it was proper to report the fact to the House, that such action might be taken as comported with the courtesy due from one House of Congress to the other. The committee therefore recommend the adoption of the following resolution:

Resolved, That the House having been informed by one of its committees that testimony has been brought to the knowledge of said committee, which testimony apparently inculpates one or more Members of the Senate, the House therefore direct that all such testimony be transmitted to the Senate for its information.

The House agreed to the resolution.

1851. Testimony affecting a Senator, when taken by a House committee in open session, need not be under seal when transmitted to the Senate.

A modification of the rule of Parliament in reference to the communication of testimony.

On February 4, 1873,² Mr. Luke P. Poland, of Vermont, from the select committee appointed to investigate the Credit Mobilier, reported the following:

Whereas the evidence taken by the select committee of the House appointed December 2, 1872, for the purpose of examining into charges of bribery of Members of this House contains matter affecting Members of the Senate: Therefore,

Resolved, That the Clerk of the House be directed to transmit to the Senate a copy of all evidence thus far reported to the House by said committee, together with a copy of that resolution.

Mr. Poland said that the parliamentary law seemed to require the evidence to be transmitted under seal, but such procedure presupposed the evidence to be taken by the committee without the knowledge of the outside world. But in this case a different rule had been followed, so he proposed the resolution in this form.

The resolution was agreed to.

1852. A committee of the House having taken testimony affecting a Senator, it was ordered that a copy of it be sent to him.—On March 26, 1867,³ Mr. Charles A. Eldridge, of Wisconsin, offered the following resolution relating to testimony affecting a Senator, and the House agreed to the same:

Resolved, That the Clerk of this House be, and is hereby, instructed to make and certify a copy of the testimony of Davis A. Hull, taken before the Committee on Public Expenditures in its investigation of the New York custom-house frauds, and deliver the same so certified to Senator Patterson, of Tennessee; and said committee is hereby authorized to allow the Clerk the opportunity to make said copy of said testimony.

1853. Testimony taken by the Senate having implicated a Member of the House, the House ordered an investigation, although the testimony had not been transmitted.—On February 22, 1873,⁴ Mr. Michael C. Kerr, of

¹ First session Fortieth Congress, Cong. Globe, p. 253.

² Third session Forty-second Congress, Journal, p. 309; Globe, p. 1078.

³ First session Fortieth Congress, Journal, p. 116; Globe, p. 361.

⁴ Third session Forty-second Congress, Journal, p. 466; Globe, p. 1638.

Indiana, presented as a question of privilege a resolution providing for an investigation of certain allegations against a Member of the House in certain testimony taken before the Senate Committee on Privileges and Elections. The resolution as at first presented provided that "said testimony taken before said Senate Committee be referred" to the committee proposed for the investigation; but the debate developed the fact that the testimony had not been transmitted to the House, and the resolution was modified. The Member affected stated that he had asked the opportunity to appear before the committee of the Senate and rebut the charges, but they had denied him this privilege on the ground that he was not under investigation in that committee.

The preamble and resolution as agreed to provided—

Whereas it is alleged, in testimony recently taken before the Committee on Privileges and Elections of the Senate, that Mr. J. Hale Sypher, a Member of this House from the State of Louisiana, in 1870, at and before the general election in that year in said State for Representatives in Congress, and when said Sypher was a candidate for election as a Member of the present House, did unlawfully and corruptly procure to be made false and fraudulent registrations, and did with like intent procure to be cast and counted for himself and others false and fraudulent votes, and did procure gross frauds to be committed in connection with the conduct of said election, in his own interests and in the interests of others; and whereas the honor of this House and duty toward the country require that said charges be fully investigated: Therefore,

Resolved, That the Committee on Elections be directed at once to investigate said several charges, and to that end have authority to send for persons and papers, and that said testimony taken before said Senate committee, as printed, be referred to said Committee on Elections, and that said committee be directed to report its conclusions to the House as soon as practicable.

On March 3,¹ Mr. George W. McCrary, of Iowa, submitted a report stating that in the limited time allowed it had been found impossible to make an investigation, and proposing a resolution discharging the Committee of Elections from the further consideration of the subject, and laying the resolution on the table.

This resolution was agreed to without division, after debate by Mr. Sypher.

1854. Testimony taken before a joint select committee tending to impeach the official characters of a Senator and a Representative, the committee ordered the testimony to be reported to each House.—On January 9, 1872,² a report was submitted in the House from the joint select committee to inquire into the condition of the late insurrectionary States in regard to certain testimony tending to impeach the official character of a Senator and Members of the House. This report was signed by the chairman on the part of the Senate and the chairman on the part of the House.

On the same day, January 9, 1872,³ in the Senate, Mr. John Scott, of Pennsylvania, from the Joint Select Committee to Investigate Alleged Outrages in Southern States, submitted the following report (No. 15):

At a meeting of "the Joint Select Committee to Inquire into the Condition of the late Insurrectionary States, so far as regards the execution of the laws and the safety of the lives and property of the

¹ Journal, p. 560; Globe, pp. 2106, 2108; House Report No. 91; Smith, p. 107; Rowell's Digest, p. 283.

² Second session Forty-second Congress, Journal, p. 127; Globe, p. 321.

³ Second session Forty-second Congress, Senate Report No. 15; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 444; Third session Forty-second Congress, Report No. 512.

citizens of the United States," convened at their room in the Capitol on the 22d of September, 1871, Messrs. Scott, Pool, and Blair were appointed a subcommittee to examine the witnesses then in attendance; which subcommittee organized on the 23d of September, 1871, and examined Edward Wheeler, of Arkansas. On the 25th of September, 1871, said subcommittee examined William G. Whipple, of Arkansas.

The testimony of these witnesses tends to impeach the official character and conduct of a Member of the United States Senate from the State of Arkansas, and also to affect the right of a Member of the House of Representatives from that State to retain his seat in the House. Other evidence of the same character was offered, and one of the gentlemen affected by this testimony claimed the right to bring witnesses before the committee to contradict or explain the same. The committee, however, upon consideration decided that the subject-matter to which said testimony related did not come within the limits of the investigation they were directed to make, and therefore declined to prosecute the inquiry any further, discharging a witness who had been subpoenaed and was then awaiting an examination.

The joint select committee, pursuing what they deemed to be the proper parliamentary course, at a meeting on December 21, 1871, adopted the following resolution:

"Resolved, That the committee report the testimony taken before the committee affecting Senator Clayton and Mr. Edwards, a Representative from Arkansas, to the Senate and House of Representatives, with a recommendation that each House take such action as it may deem proper."

Agreeably to this resolution of said joint select committee, the undersigned, the chairman on the part of the Senate and the chairman on the part of the House of Representatives, beg leave to submit the testimony hereto annexed of Edward Wheeler and William G. Whipple, both of the State of Arkansas, said Wheeler and Whipple having been the only witnesses from that State who were examined by the committee, to the Senate and House of Representatives, respectively, for such action as each House may deem advisable.

JOHN SCOTT,

Chairman on the part of the Senate.

LUKE P. POLAND,

Chairman on the part of the House of Representatives.

The Senate proceeded, by unanimous consent, to consider the report, and Mr. Clayton, having addressed the Senate on the subject thereof, concluded his remarks with the request that a select committee be appointed to investigate the allegations against him therein referred to;

Whereupon Mr. Wright submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the report of the committee and the testimony accompanying be referred to a special committee of three, with power to send for persons and papers, to investigate and report upon the charges therein contained against Hon. Powell Clayton, a Member of this body.

June 10, 1872, the committee reported that the investigation was completed, but that the committee were unable at that time to arrange the testimony and report back such parts of it as were relevant; that they held it but the plainest justice to Mr. Clayton that they should make known the general result of their investigation; that they consequently submitted a partial report, reserving the right to submit a final report with the testimony, and recommending that the Senate delay action on the subject until such time; that the charges were not sustained, and that the testimony failed to impeach the Senator's official conduct or character. There was a minority report, which did not enter into the merits of the case, but held that the action of the committee in reporting at that time was premature. February 26, 1873, the committee submitted the evidence, and made a final report, recommending the adoption of a resolution that the charges referred to the committee were not sustained, and that they be discharged from the further consideration of the subject.

There was a minority report holding that the charge made of procuring his seat by the corrupt use of money was sustained by the evidence, and that he also obtained 5 votes, which made his majority, by giving to electors lucrative offices when he was governor, as a consideration for their votes. March 25, 1873, the resolution was agreed to.

1855. The Senate having requested from the House the testimony taken by a certain investigating committee, the House ordered it communicated in secrecy, with the injunction that it be returned.—On February 14, 1872,¹ a message from the Senate in executive session transmitted to the House the following:

Resolved, That the House of Representatives be requested to furnish to the Senate, in executive session, the testimony taken by the committee who investigated the question of attempted bribery in the impeachment trial of Andrew Johnson.

The message having been communicated, Mr. Henry L. Dawes, of Massachusetts, offered the following resolution, which was agreed to:

Resolved, That the Clerk of the House be directed to furnish the Senate, in confidence, the testimony taken by the committee who investigated the question of attempted bribery in the impeachment trial of Andrew Johnson, as requested by its resolution of the 13th of February, 1872, and that the same be communicated to the Senate in secrecy in executive session; and that when no longer required by the Senate it be returned to the House for its safe custody.

¹ Second session Forty-second Congress, Journal, p. 346; Globe, p. 1033.