Chapter CXL.

SESSIONS AND ADJOURNMENTS.[1]

6672. Neither House during a session of Congress may, without the consent of the other, adjourn for more than three days, or to another place. When the two Houses disagree as to adjournment, the President may adjourn them.

Section 5 of Article I of the Constitution provides:

Neither House during the session of Congress shall, without the consent of the other,[7] adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

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[1] See also Chapter I of Volume I, sections 1–13, for precedents as to the meeting of Congress.

[2] The Senate sitting for an impeachment trial may adjourn for more than three days. (Sec. 2423 of Vol. III.)

[3] Forms of resolutions providing for adjournment sine die or for a recess, and then privileged nature. (Sec. 4031 of Vol. IV.)

[4] Adjournment in the midst of a roll call. (Sec. 6325 of this volume.)

[5] As to Sunday, 7245, 7246 of this volume.

[6] Distinction between the legislative and calendar day. (Sec. 3192 of Vol. IV.)

Fixing the hour of daily meetings. (Sections 104–117 of Vol. I.)

[7] December 21, 1882 (second session Forty-seventh Congress, Record, p. 490), when the concurrent resolution of the House proposing a holiday recess of the Congress was received in the Senate, an amendment was offered to permit the House alone to take such recess, leaving the Senate in session. The Senate declined to agree to the amendment. Procedure like this has never been taken, the two Houses always having continued in session together except in instances wherein the President has convened the Senate alone in extraordinary session.

Also in section 3 of Article II, in the enumeration of the duties of the President of the United States, it is provided that—

he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper.

6673. Sunday is not taken into account in making the constitutional adjournment of "not more than three days."

The constitutional adjournment for not "more than three days" must take into the count either the day of adjourning or the day of meeting.

On Saturday, December 28, 1895,[1] Mr. Nelson Dingley, of Maine, rising to a parliamentary inquiry, asked:

My parliamentary inquiry is whether under the Constitution a recess can be taken from to-day until next Thursday, or whether that would be an adjournment for more than three legislative days. I do not know what the precedents have been. If the motion is permissible, I will move that when the House adjourns to-day it adjourns to meet on Thursday next.

The Speaker[2] said:

Sunday is not taken into account in these cases, but the Chair thinks the adjournment can not be to a later day than next Wednesday.[3]

6674. On May 29, 1850,[4] the House adjourned over from Thursday until Monday without any question as to Sunday being included.

6675. The House has by standing order provided that it should meet on two days only of each week instead of daily.

The device by which, in 1897, the House confined itself to a certain matter of legislation, avoiding the consideration of general bills.

On May 6, 1897,[5] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to:

Resolved, That from and after this day the House shall meet only on Mondays and Thursdays of each week until the further order of the House.[6]

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[1] First session Fifty-fourth Congress, Record, p. 401.

[2] Thomas B. Reed, of Maine, Speaker.

[3] There has been one ruling going farther than this: On the legislative day of April 4, 1898 (first session Fiftieth Congress, Journal, p. 1553; Record, p. 2841), but on the calendar day of Tuesday, April 10, Mr. J. B. Weaver, of Iowa, moved that when the House adjourn it be to meet on Thursday next.

Mr. Timothy E. Tarsney, of Michigan, moved to amend by striking out "Thursday" and inserting "Saturday."

Mr. Samuel Dibble, of South Carolina, made the point of order that the motion of Mr. Tarsney required an adjournment for more than three days without the consent of the Senate, which was forbidden by the Constitution.

After debate the Speaker pro tempore (William H. Hatch, Speaker pro tempore) said:

"Upon reflection and a count of the days, excluding to-day, the Chair thinks the point of order of the gentleman from South Carolina, Mr. Dibble, is not well taken, and that an adjournment from Tuesday until Saturday is in order, taking the three legislative days Wednesday, Thursday, and Friday as the recess and meeting again on the succeeding day, which is Saturday. The Chair therefore overrules the point of order."

[4] First session Thirty-first Congress, Journal, p. 976; Globe, p. 1088.

[5] First session Fifty-fifth Congress, Record, p. 933.

[6] This rule was the subject of much discussion. (See debates in Senate, May 29, 1897, et seq.; see also Art. I, sec. 5, and Art. II, sec. 2, of Constitution; Miller on Constitution, p. 198; Cushing's Manual, secs. 254, 263, 264, 361, 362, 368, 369, 503, 504, 507, 509, 510, 511, 514, 516, 525, 527; People *v.* Hatch, 33 Ill., 9.)

This rule was in operation until the end of the session, July 24, 1897.[1]

At the beginning of the next session, on December 6, 1897,[2] it was repealed by the adoption of the following resolution, reported from the Committee on Rules by Mr. David B. Henderson, of Iowa:

Resolved, From and after this date the House shall meet at 12 o'clock daily.

6676. When the two Houses adjourn for more than three days, and not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated.—On December 20, 1865,[3] the two Houses of Congress agreed to the following concurrent resolution:

Resolved,[4] That when the two Houses of Congress adjourn on Thursday, the 21st instant, they adjourn to meet on Friday, January 5, 1866.

On December 21 Mr. Justin S. Morrill, of Vermont, moved, at 3.20 p. m., that the House adjourn. This motion being decided in the affirmative, the Speaker, in pursuance of the concurrent resolution of the two Houses, declared the House adjourned until the 5th of January next.

On January 5, 1866, the two Houses reassembled, it still being the first session of the Thirty-ninth Congress.[5]

6677. On December 20, 1866,[6] Mr. James M. Ashley, of Ohio, moved, at 3 o'clock and 40 minutes p. m., that the House adjourn, which motion was agreed to.

Whereupon the Speaker, in pursuance of the concurrent resolution of the two Houses, declared the House adjourned until Thursday, the 3d day of January next.

On the 3d day of January the session was resumed, being still the second session of the Thirty-ninth Congress.

6678. In the earlier days of Congress the holiday recess was not often taken.

The two Houses do not notify the President when they are about to adjourn for the holiday recess. (Footnote.)

On December 20, 1820,[7] the House decided, 110 to 42, against a proposition for a holiday recess from December 22 to January 2. One Member asked the reason for the recess, but there seems to have been little debate. This seems to have been the first time it was proposed.

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[1] The House at this time was awaiting the action of the Senate on a general tariff bill and adopted the order in order as part of a programme to avoid any other legislation during the existing extraordinary session. In other Congresses the same result had been attained by an order limiting legislation. See sections 3064–3069 of Vol. IV of this work.

[2] Second session Fifty-fifth Congress, Record, p. 11.

[3] First session Thirty-ninth Congress, Journal, pp. 107, 108; Globe, p. 127.

[4] The resolving clause of a concurrent resolution is, in the modern usage, in this form if it originates in the House: "Resolved by the House of Representatives (the Senate concurring)."

[5] This is the regular holiday recess, generally taken each year. It was omitted in 1895 (first session Fifty-fourth Congress).

[6] Second session Thirty-ninth Congress, Journal, p. 106; Globe, p. 237.

[7] Second session Sixteenth Congress, Journal, pp. 81, 85; (Gales and Seaton, ed.), Annals, p. 682.

6679. On December 23, 1824,[1] Mr. Martin Beaty, of Kentucky, moved this resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized to adjourn their respective Houses from the 23d day of December, instant, to Monday, the 29th instant.

Mr. James K. Polk, of Tennessee, said that an adjournment over of the two Houses by a joint resolution was unprecedented. Therefore he moved that the resolution be laid on the table. The motion was agreed to, yeas 158, nays 27.

6680. On December 23, 1828,[2] the House agreed to the following resolution of the Senate:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That when the two Houses adjourn on Wednesday next [December 24], they adjourn to meet on Monday following [December 29].

There is no record of any debate over this resolution, which provided for a holiday recess, and no notice of the decision of the House was directed to be sent to the President.[3]

6681. On December 22, 1829,[4] the House, by a vote of 121 nays to 62 yeas, disagreed to a resolution from the Senate proposing a "temporary adjournment of Congress."

On December 24 the House adjourned over to December 28.

At the second session of this Congress there was no concurrent adjournment for the holidays.

6682. On Monday, December 23, 1833,[5] Mr. Edward Everett, of Massachusetts, offered this resolution:

Resolved (if the Senate concur therein), That when the two Houses of Congress adjourn to-morrow they adjourn to meet on Monday next.

On December 24, after some opposition, the House gave the resolution three readings [6] and passed it.

In the Senate Mr. Henry Clay, of Kentucky, opposed the resolution, urging the distressed condition of the country and the need of prompt legislation. So the Senate refused to concur.

6683. On Monday, December 24, 1849,[7] the House adjourned until Thursday, December 27, and on the latter day adjourned until Monday the 31st. A proposition was made in the House for a longer adjournment by concurrent resolution of the two Houses, but was not acted on.

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[1] Second session Twenty-third Cor[gress, Journal, p. 124; Debates, p. 845.

[2] Second session Twentieth Congress, Journal, p. 94.

[3] It is not the practice to notify the President that the two Houses are about to adjourn for the holiday recess. (Fifty-ninth Congress, first session, Journal, p. 204, second session, Journal, p. 131.

[4] First session Twenty-first Congress, Journal, pp. 80, 97.

[5] First session Twenty-third Congress, Journal, pp. 116, 121, 123; Debates, pp. 58, 2243.

[6] Resolutions do not, in the present practice, receive the three readings of bills.

[7] First session Thirty-first Congress, Journal, pp. 183, 189; Globe, p. 69.

6684. On December 20, 1858,[1] the Senate sent to the House the following resolution, which was, after considerable opposition, agreed to by the House:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That when the two Houses adjourn on the twenty-third instant they adjourn to meet on Tuesday the fourth of January next.

6685. In 1866[2] the subject of the holiday recess by adjournment of both Houses for more than three days was discussed at length in the Senate. It had not then become established as a custom, but was favored by the majority because Members could not be induced to remain in Washington, and so the recess would have to be taken by three day adjournments if not by concurrent action.

From 1866 onward the practice of taking the holiday recess has been more constant; but in 1882[3] the Senate disagreed to the concurrent resolution of the House proposing a holiday recess, and the two Houses by separate action merely adjourned from the 23d to the 27th.[4]

In 1895[5] also, the holiday recess was omitted; but, as in 1882 the action was exceptional.

6686. The two Houses may by concurrent resolution provide for an adjournment to a certain day, with a provision that if there be no quorum present on that day the session shall terminate.

The two Houses have the power to provide that their presiding officers shall declare an adjournment sine die in case that after a recess a quorum shall be lacking in either House.

The process whereby the Fortieth Congress prolonged its first session by successive recesses, with a provision for adjournment sine die in a certain contingency.

On March 29, 1867,[6] the House agreed to this concurrent resolution, which had already been agreed to by the Senate:

The President of the Senate and the Speaker of the House of Representatives are hereby directed to adjourn their respective Houses on Saturday, March 30, 1867, at 12 o'clock m., to the first Wednesday of July, 1867, at noon, when the roll of each House shall be immediately called, and immediately thereafter the presiding officer of each House shall cause the presiding officer of the other to be informed whether or not a quorum of its body has appeared, and, thereupon, if a quorum of the two Houses respectively shall not have appeared upon such call of the roll, the President of the Senate and the Speaker of the House of Representatives shall immediately adjourn their respective Houses without day.[7]

On March 30, 1867, the hour of 12 o'clock m. having arrived, the Speaker, in accordance with the concurrent resolution of the two Houses, declared the first

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[1] Second session Thirty-fifth Congress, Journal, pp. 83, 91; Globe, pp. 138, 153.

[2] Second session Thirty-ninth Congress, Globe, p. 131.

[3] Second session Forty-seventh Congress, Record, pp. 490–496.

[4] Record, pp. 630, 633.

[5] First session Fifty-fourth Congress.

[6] First session Fortieth Congress, Journal, pp. 157, 158, 184; Globe, pp. 454, 589.

[7] This resolution was adopted after prolonged disagreement between the two Houses. (First session Fortieth Congress, Journal, pp. 133, 146, 148; Globe, pp. 438, 454.) On July 3, 1867, in the Senate, Mr. Charles Sumner, of Massachusetts, made a protest against the constitutionality of it. (First session Fortieth Congress, Globe, pp. 463, 464.)

session of the Fortieth Congress adjourned to the first Wednesday of July next, at noon.

On Wednesday, July 3,[1] the two Houses met, and on July 11 Mr. George S. Boutwell in the House submitted this resolution:

Resolved (the Senate concurring), That the two Houses of Congress shall adjourn on the—day of July instant; the adjournment shall be to Wednesday, the 16th day of October next, at noon, and the two Houses shall then reassemble without further order.

To this Mr. Rufus P. Spalding, of Ohio, offered the following amendment as a substitute:

That the President of the Senate and the Speaker of the House are hereby directed, upon the adjournment of their respective Houses, to adjourn the same to the 16th day of October, 1867, at 12 o'clock m., when the roll of each House shall be called, and immediately thereafter the presiding officer of each House shall cause the presiding officer of the other to be informed whether or not a quorum of its body has appeared; and thereupon, if a quorum of the two Houses respectively shall not have appeared upon such call of the roll, the President of the Senate and the Speaker of the House of Representatives shall immediately adjourn their respective Houses without delay.

Against this amendment Mr. Robert C. Schenck, of Ohio, raised a point of order, saying:

Congress has powers prescribed by the Constitution. They are general when Congress finds itself with a quorum in each body composing Congress prepared to do business. There is a special power when that case does not occur and when each House finds itself without a quorum. How is it when there is not a quorum present? The Constitution then intervenes and makes a rule. When Congress finds itself assembled without a quorum in either branch the Constitution prescribes what it can do, what it may do, what if it chooses it must do, but gives no latitude to any other body, or to the body itself, outside of its action when the case occurs, to prescribe in advance that it shall do certain things and only certain things. I say that the power of Congress, therefore, to take a recess or to adjourn is limited to fixing the time when it shall reassemble; and when reassembled the Constitution intervenes, and if there be a quorum present, provides that it may go on and exercise its general powers; but if there be no quorum, that it shall have the specific power to adjourn from day to day and compel the attendance of absent Members. An attempt, therefore, to prescribe in advance a rule by which you shall disarm the Congress of the United States of its power to legislate, or of its power to compel the attendance of absent Members, is to substitute your rule for the Constitution.

The Speaker,[3] before ruling, had read the fourth clause of the fifth section of the Constitution:

Each House shall be the judge of the election, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members in such manner and under such penalties as each House may provide.

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[1] On July 3, 1867, when the House assembled after a recess that had begun on March 30 preceding, as soon as the roll had been called and the presence of a quorum ascertained, resolutions were adopted notifying the President pro tempore of the Senate and the President of the United States of that fact. The President pro tempore of the Senate was notified instead of the Senate, probably because of the terms of the concurrent resolution by which Congress had taken the recess. (First session Fortieth Congress, Journal, p. 161; Globe, 468.)

[2] This was at the time of a conflict between Congress and the President, when the two Houses did not wish to leave the President in full control of the Government.

[3] Schuyler Colfax, of Indiana, Speaker.

The Speaker then said:

The first part of that clause declares that "each House shall be the judge of the election, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business.' This is the broad charter given in the Constitution by which the two Houses transact all their legislative business. It includes, of course, within its range of power the authority to lay down an order of business, to decide when they shall meet, and what business they shall or shall not take up when they do meet. This is the power conferred by the Constitution upon a quorum of each House.

The clause then concludes by giving certain powers to less than a quorum. "A smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, but in such manner and under such penalties as each house may provide." They must, therefore, compel the attendance of absent Members in such Manner as each House (which means a quorum thereof) shall have provided anterior to that time. It follows, the Chair thinks, by the plain reading of the Constitution, that a minority of each House, less than a quorum, can not have, as the gentleman from Ohio (Mr. Schenck) argues, larger power than a majority of each House sitting as a legislative body. If the point of order made is correct, less than a quorum has more power than more than a quorum, an anomaly never recognized by parliamentary law nor conferred by the Constitution, in the opinion of the Chair. The limitation of the power of less than a quorum is absolute. They may do certain things in such manner and form and under such penalties as each House (which means a majority thereof) shall have previously provided.

The Chair, therefore, overrules the point of order on three grounds: First, that both Houses of Congress, at the opening meeting of the first session of this Congress, considered this provision of the Constitution, when it declared for exactly such an adjournment as is provided for in the pending resolution. That is a parliamentary precedent not questioned at that time, as the Chair understands, by any Member in either branch—certainly not appealed from in either branch—but spoken of latterly, when it was supposed there might not be a quorum present on the 3d day of July.

The Chair overrules it for a second reason, which is, that a majority of each House, when there was a quorum present, have determined that when Congress assembled on the 3d of July, if there was not a quorum present the absent Members should not be coerced, but that the presiding officers of both branches, who were simply the organs and servants of the two Houses to execute their orders, should then adjourn Congress without day, with full notice to every Senator and Representative of what would be the specific order of business on the 3d day of July, and what would be the result if a majority of either House failed to appear on that day.

The Chair overrules it on the third ground, that at the conclusion of long sessions the two Houses have sometimes provided for an adjournment at a specified day and hour, but that after a certain date only formal business, such as the signing of bills, shall be transacted, and at the final adjournment of such first session less than a quorum has been present.

If the point of order made by the gentleman from Ohio be correct, then if there were no quorum present at such a time the absence of a quorum would render null the concurrent resolutions of quorum of both the House and the Senate.

Mr. Schenck having appealed, the Chair was sustained, yeas 125, nays 14.

On July 20,[1] the Congress took another recess until November 21. When it reassembled the roll of the House was not called, and no notice of the presence of a, quorum was sent to either Senate or House. The Speaker (Mr. Colfax) also assumed that the first business in order was the reading of the Journal of the last day before the recess.

6687. A recess of Congress is a real, not imaginary time, when it is not sitting in regular or extraordinary session.

[1] First session Fortieth Congress, Journal, p. 253; Globe, p. 768. The resolution providing for this recess was in the ordinary form, providing simply that the presiding officers adjourn their respective Houses to meet on November 21. (Journal, p. 250.)

Discussion of the term "recess of the Senate" as related to the President's power of appointment.

On March 2, 1905,[1] in the Senate, Mr. John C. Spooner, of Wisconsin, from the Committee on the Judiciary, presented the following report:

The Committee on the Judiciary, to whom was referred the following resolution (being Resolution No. 51, Fifty-eighth Congress, second session, submitted by Mr. Tillman December 11, 1903)—

Whereas article two, section two, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;"

And further:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March fourth last to November ninth, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such case—

having considered the same, presents the following report:

The Senate has instructed this committee, by resolution, to report what in its opinion constitutes a recess of the Senate under the provisions of Article II, section 2, of the Constitution.

The word "recess" is one of ordinary, not technical, signification, and it is evidently used in the constitutional provision in its common and popular sense. It means in Article II, above referred to, precisely what it means in Article III, in which it is again used. Conferring power upon the executive of a State to make temporary appointment of a Senator, it says:

And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

It means just what was meant by it in the Articles of Confederation, in which it is found in the following provision:

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated a committee of the States, and to consist of one delegate from each State.

It was evidently intended by the framers of the Constitution that it should mean something real, not something imaginary; something actual, not something fictitious. They used the word as the mass of mankind then understood it and now understand it. It means, in our judgment, in this connection the period of time when the Senate *is not sitting in regular or extraordinary session as a branch of the*

[1] Third session Fifty-eighth Congress, Senate Report No. 4389; Record, pp. 3823, 3824.

Congress, or in extraordinary session for the discharge of executive functions; when its members owe no duty of attendance; when its Chamber is empty; when, because of its absence, it can not receive communications from the President or participate as a body in making appointments.

It is easy for a lawyer to comprehend the words "constructive appropriation," "constructive notice," "constructive fraud," "constructive contempt," "constructive damages," "constructive malice," but it would seem quite difficult for lawyer or layman to comprehend a "constructive recess" of Congress, or of the State legislature or of the Senate. It would seem quite as natural that there should be a "constructive session" of Congress or of the Senate as a "constructive recess." We think there can not be any "constructive end" of a session or a "constructive beginning" of a session of Congress or of the Senate.

The Constitution clearly confers upon the President the power to nominate and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, "and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." Congress in the same clause is empowered by law to "vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments."

"Human intention can not be made plainer by human language" than it is made clear by the Constitution that except as to the "inferior officers" referred to no Federal officer can be *appointed* save by and with the advice and consent of the Senate.

But it was obvious that without some provision for temporary appointments to fill up vacancies which might happen while the Senate was not in session to participate in making appointments grave inconvenience and harm to the public interest would ensue. To meet this difficulty it was by common consent provided that—

> the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

This is essentially a proviso to the provision relative to appointments by and with the advice and consent of the Senate. It was carefully devised so as to accomplish the purpose in view, without in the slightest degree changing the policy of the Constitution, that such appointments are only to be made with the participation of the Senate. Its sole purpose was to render it certain that at all times there should be, whether the Senate was in session or not, an officer for every office, entitled to discharge the duties thereof.

It can not by any possibility be deemed within the intent of the Constitution that when the Senate is in position to receive a nomination by the President, and, therefore, to exercise its function of advice and consent, the President can issue, without such advice and consent, commissions which will be lawful warrant for the assumption of the duties of a Federal office.

The framers of the Constitution were providing against a real danger to the public interest, not an imaginary one. They had in mind a *period of time* during which it would be *harmful* if an office were not filled; not a constructive, inferred, or imputed recess, as opposed to an actual one.

They gave power to issue these commissions only where a vacancy (1) happened (2) during a recess of the Senate, and they specifically provided that the commission shall expire at the end of the next session of the Senate.

The commissions granted during the recess prior to the convening of Congress in extraordinary session November 9, 1903, of course furnished lawful warrant for the assumption by the persons named therein of the duties of the offices to which they were, respectively, commissioned. Their names were regularly sent to the Senate thereafter. If confirmed, of course they would hold under appointment initiated by the nomination without any regard to the recess commission. If not confirmed, their right to hold under the recess commission absolutely ended at 12 o'clock meridian on the 7th of December, 1903, for at that hour the extraordinary session ended and the regular session of Congress began by operation of law. An extraordinary session and a. regular session can not coexist, and the beginning of the regular session at 12 o'clock was the end of the extraordinary session; not a constructive end of it, but an actual end of it. At 12 o'clock December 7 the President pro tempore of the Senate said:

> Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day.

Aside from the statement upon the record that the "hour had struck" which marked the ending of the one and the beginning of the other, the declaration of the President pro tempore was without efficacy. It did not operate to adjourn without day either the Congress or the Senate. Under the law the arrival of the hour did both.

The constitutional provision that the commission shall expire at the end of the next session is self-executing, and when the session expires the right to hold under the commission expires with it. If there be no appreciable point of time between the end of one session and the beginning of another, since of necessity one ends and another begins, the tenure under the commission as absolutely terminates as if months of recess supervened.

There was no time during which the President might not, had he chosen, have sent nominations to the Senate. It was in session to receive any nomination or message he might communicate. There was no "recess" within the letter or spirit of the Constitution, and therefore there was no right to issue commissions and induct the officers commissioned into office.

The theory of "constructive recess" constitutes a heavy draft upon the imagination, for it involves a constructive ending of one session, a constructive beginning of another, and a constructive recess between the two.

Senate Document No. 147, Fifty-eighth Congress, second session, is a letter from the Hon. Elihu Root, then Secretary of War, which makes clear the embarrassments of the situation, and presents both views of the constitutional question we are considering, the Secretary of Wax, confessedly one of the ablest lawyers of the country, frankly stating the strong inclination of his mind to the view which we adopt, that the Constitution means a real recess, not a constructive one.

The President, evidently acting under the advice of the Secretary of War, pursued the course which would be adapted to whichever view might ultimately be held by the accounting officers of the Treasury and the courts to be the correct one.

Senator Nelson dissents from so much of the foregoing report as relates to the matter of commissions granted during the recess prior to the convening of Congress in extraordinary session, November 9, 1903, as not called for by the resolution.

6688. The Executive has successfully opposed, as unconstitutional, an effort of the two Houses to fix by law the time of adjournment of Congress.—On June 11, 1836,[1] the following message was received in the Senate from President Jackson:

> The act of Congress "to appoint a day for the annual meeting of Congress," which originated in the Senate, has not received my signature. The power of Congress to fix, by law, a day for the regular annual meeting of Congress is undoubted; but the concluding part of this act, which is intended to fix the adjournment of every succeeding Congress to the second Monday in May, after the commencement of the first session, does not appear to me in accordance with the provisions of the Constitution of the United States.

The Constitution provides:

> First article, fifth section: "That neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."
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> First article, sixth section: "That every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him," etc.
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> Second article, second section: "That he (the President) may, on extraordinary occasions, convene both Houses of Congress, or either of them; and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he thinks proper," etc.
>
> According to these provisions the day of adjournment of Congress is not the subject of legislative enactment. Except in the event of disagreement between the Senate and House of Representatives, the President has no right to meddle with the question, and, in that event, his power is exclusive, but confined to fixing the adjournment of the Congress whose branches have disagreed. The question of adjournment is obviously to be decided by each Congress for itself by the separate action of each House for the time being, and is one of those subjects upon which the framers of that instrument did not intend one Congress should act, with or without the Executive aid, for its successors. As a substitute for the present rule, which requires the two Houses by consent to fix the day of adjournment, and, in the event of disagreement, the President to decide, it is proposed to fix the day by law, to be binding in all future time, unless changed by consent of both Houses of Congress, and to take away the contingent power of the Executive, which, in anticipated cases of disagreement, is vested in him. This substitute is to apply, not to the present Congress and Executive, but to our successors. Considering, therefore, that this subject exclusively belongs to the two Houses of Congress, whose day of adjournment is to be fixed, and that each has at that time the right to maintain and insist upon its own opinion, and to require the President to decide in the event of disagreement with the other, I am constrained to deny my sanction to the act herewith respectfully returned to the Senate. I do so with greater reluctance, as, apart from this constitutional difficulty, the other provisions of it do not appear to me objectionable.

This message was debated in the Senate on June 22 and 27, Messrs. Webster, Clay, and Calhoun opposing the reasoning of the President. On June 27 the question being taken on the passage of the bill, the President's objections notwithstanding, there were yeas 16, nays 23; so the bill was rejected.

6689. The Senate election case of Charles G. Atherton, of New Hampshire, in the Thirty-third Congress.

As to what constitutes a sine die adjournment of a legislative body.

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[1] First session Twenty-fourth Congress, Debates, pp. 1757, 1859, 1878–1880.

A Senator appointed by the State executive to fill a vacancy ceases to serve after the final adjournment of the legislature which should elect his successor.

On August 2, 1854,[1] Mr. Andrew P. Butler, of South Carolina, from the Senate Committee on the Judiciary, made a report on the following preamble and resolution of the Senate:

"Whereas the Hon. Jared W. Williams was appointed by his excellency the governor of New Hampshire, in the recess of the legislature of that State, to fill a vacancy in the Senate of the United States which had happened by the death of the Hon. Charles G. Atherton, a Senator, whose term of service would have continued till the 4th of March, 1859; and

"Whereas it is understood that since that temporary appointment was made the legislature of New Hampshire has been convened at their regular session, and has adjourned to the last Wednesday of May next, without filling such vacancy, and that said State still claims a right of representation under said appointment, which the appointee is not at liberty to surrender by his act without the action of the Senate: At his request, therefore,

"Resolved, That the subject be referred to the Committee on the Judiciary, to inquire into the facts connected with it, and to make such report as they deem proper to enable the Senate to determine whether the right of representation under said appointment has expired."

Under this resolution the committee are required to inquire into the facts connected with the case, and to make such report as they deem proper, to enable the Senate to determine whether the right of representation under said appointment had expired.

As the question to be determined must depend in a great measure on the proceedings of the legislature and constitution of New Hampshire, the committee submit the following as a part of their report having a bearing on the case:

communication from the governor to the legislature.

To the senate and house of representatives:

I have signed all the bills and resolutions which you have passed the present session and presented for my approval (except the bills and resolutions which I have returned to the house of representatives with my objection thereto), and having been informed by a joint committee of both branches of the legislature that you have finished the business before you and are ready to adjourn, by the authority vested in me I do hereby adjourn the legislature to the last Wednesday of May next.

N. B. BAKER.

COUNCIL CHAMBER, *July 15, 1854.*

"The senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve and be dissolved seven days next preceding the said first Wednesday of June, and shall be styled the general court of New Hampshire."—*Constitution of New Hampshire,* page 23.

From the language of the governor's communication to the legislature it seems to have been his judgment that the session had closed; and from the language of the constitution it would appear that it will have terminated on the day mentioned, as by another provision of the constitution the governor on the same day is required to dissolve the legislature. In this view of the subject, in proprio vigore, the legislature had no power of assembling from the time of its adjournment, as announced by the governor, until the last Wednesday of May next, when its existence terminated.

There was a power in the governor, should the general welfare require it, to call the legislature together as an existing body. But when so called together what would have been the character of such a meeting? Would it not have been a distinct session, carrying with its acts and doings all the incidents of a separate session? Such would seem to be a fair inference. This being conceded, then it would follow that the late legislature did adjourn sine die in the legal import of the term. If this is a legitimate conclusion this case can not in any particular be distinguished from that decided by the Senate in the case of the Hon. Samuel S. Phelps, a Senator from Vermont, and the committee refer to that case as the authority for their conclusion in the case under consideration.

In response to the resolution the committee are of opinion that "the right of representation under the appointment" has expired.

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[1] First session Thirty-third Congress, Senate Report No. 385; Globe, pp. 2208–2211.

On August 3 the Senate concurred in the report. On August 4 this action was reconsidered for debate, and then the question being again taken the report was concurred in.

6690. In the later Congresses it has been established, both by declaration and practice, that a special session, whether convened by law or proclamation, ends with the constitutional day for annual meeting.[1]

Instances wherein one session of Congress has followed another without appreciable interval.

Instance wherein the President of the United States was not notified of the expiration of a session of Congress.

Reference to questions arising in the Senate as to recess appointments in a case wherein one session followed its predecessor immediately.

The Fortieth Congress was convened by law[2] on March 4, 1867,[3] and was still in session November 26, 1867,[4] when the following resolution was presented in the Senate by Mr. James W. Grimes, of Iowa:

Resolved by the Senate (the House of Representatives concurring), That the President of the Senate and the Speaker of the House do adjourn their respective Houses without day on Monday, the 2d of December next, at half past 11 o'clock a. m.

Mr. Charles Sumner, of Massachusetts, moved to amend the resolution by making the hour "at twelve o'clock," giving as a reason that Congress might not safely adjourn for even a small time lest the President—whom many thought to be unpatriotic—should improve the brief time to issue commissions. Therefore he thought that one session should come close up to the other.

The amendment was agreed to, and then the resolution as amended was agreed to.

On the same day the House agreed to the resolution without debate.[5]

Accordingly, on Monday, December 2,[6] the presiding officers of the two Houses, in accordance with the concurrent resolution, declared the Houses adjourned sine die.

And immediately thereafter the Houses were called to order in the second session, and the roll was called by States.[7]

6691. On October 15, 1877,[8] Congress met in extraordinary session on the call of the President, and remained in session until the first Monday in December, the day appointed by the Constitution for the regular assembling of Congress.

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[1] Such was not the earlier practice, however. See chapter I of Vol. I.

[2] 14 Stat. L., p. 378. The law provided: "That in addition to the present regular times of meeting of Congress, there shall be a meeting of the Fortieth Congress of the United States, and of each succeeding Congress thereafter at 12 o'clock meridian, on the 4th day of March, the day on which the term begins for which the Congress is elected, except that when the 4th of March occurs on Sunday, then the meeting shall take place at the same hour on the next succeeding day."

[3] First session Fortieth Congress, Journal, p. 3.

[4] Globe, pp. 794, 795.

[5] Journal, p. 276; Globe, p. 798.

[6] Journal, p. 284; Globe, pp. 816, 817.

[7] Second session Fortieth Congress, Journal, p. 3.

[8] First session Forty-fifth Congress, Journal, p. 3; Record, p. 50.

On Saturday, December 1, 1877,[1] Mr. Fernando Wood, of New York, offered the following resolution, which was agreed to by the House:

Resolved (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, directed to adjourn their respective Houses, without day, at 3 o'clock p. m. this day.

Later on the day of December 1[2] the House took a recess until 10 a. m. of the calendar day of Monday, December 3 [the day prescribed by the Constitution for the meeting of the regular session of Congress].

On the same day, December 1,[3] the Senate adjourned until Monday, December 3, at 10 a. m.

As soon as the Senate had approved its Journal on Monday, December 3,[4] Mr. George F. Edmunds, of Vermont, offered this resolution, which was agreed to without debate:

Resolved by the Senate (the House of Representatives concurring), That it is the judgment of the two Houses that the present session of Congress expires by operation of law at 12 o'clock meridian, this day.

On the same day this resolution was agreed to by the House without debate.[5]

After the above resolution had been agreed to, the Senate took up the resolution of the House of December 1, and agreed to it with an amendment striking out the words "three o'clock p. m. this day," and inserting "eleven o'clock and fifty minutes a. m. Monday, the 3d of December, instant." The House concurred in that amendment.[6]

Then the two Houses agreed to the usual resolution authorizing the appointment of a joint committee to wait on the President and inform him of the adjournment.

And at 11.50 a. m. the Speaker declared the House adjourned sine die in accordance with the resolution of the two Houses. And ten minutes later the Speaker, at 12 m., called the House together in the new session, the roll being called by States.[7]

6692. On November 9, 1903, in pursuance to the call of the President, the Fifty-eighth Congress met in extraordinary session, and was in session on Saturday, December 5, 1903,[8] the last secular day before the first Monday in December, the day appointed by the Constitution for the regular yearly meeting of Congress.

In the House of Representatives business proceeded as usual, and at its close the simple motion to adjourn was agreed to, and the Speaker[9] announced, "the House stands adjourned," without adding as usual the day to which it stands adjourned.[10] No resolution for announcing to the President the termination of the session was proposed.

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[1] Journal, p. 285; Record, p. 806.

[2] Journal, p. 293; Record, p. 814.

[3] Record, p. 805.

[4] Record, p. 816.

[5] Record, p. 814.

[6] Record, pp. 814, 816.

[7] Second session Forty-fifth Congress, Journal, p. 3.

[8] First session Fifty-eighth Congress, Journal, p. 110; Record, p. 540.

[9] Joseph G. Cannon, of Illinois, Speaker.

[10] The Journal never records the Speaker's announcement of the day to which the House stands adjourned.

In the Senate on the same day[1] it was voted to adjourn until 11.30 a.m. on Monday, December 7. On that day[2] and hour the Senate met, and after the transaction of business and the adoption of the usual vote of thanks to the presiding officer, the hour of 12 o'clock having arrived, the President pro tempore[3] said:

Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day.

And immediately thereafter the President pro tempore called the Senate to order for the second session of the Congress.[4]

In the House at the same hour[5] the Speaker called to order, and, after prayer by the Chaplain, directed that the roll be called by States to ascertain the presence of a quorum. And then business proceeded as at the beginning of a session, the usual resolutions of notification being agreed to.

6693. On December 11, 1903,[6] in the Senate, Mr. Benjamin R. Tillman, of South Carolina, proposed the following:

Whereas Article II, section 2, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;

And further:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March 4 last to November 9, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

First. What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases.

Second. What legislation is necessary to prevent the holding of an office by any person or persons whose commissions issue or are held by Executive exercise of unlawful authority, if any there be.

On January 22, 1904,[7] the resolutions were debated in the Senate, Mr. Benjamin R. Tillman, of South Carolina, raising a question especially as to William D. Crum, appointed collector of the port of Charleston, S. C. The position taken by certain Senators, notably by Messrs. Eugene Hale, of Maine, and John C. Spooner, of Wisconsin, was that there was no constructive recess between the first and second sessions, and that the appointment of Mr. Crum was not a recess appointment.

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[1] Record, pp. 529, 531.

[2] Record, P. 542.

[3] William P. Frye, of Maine, President pro tempore.

[4] Second session Fifty-eighth Congress, Record, p. 1.

[5] Journal, p. 3; Record, p. 15.

[6] Record, p. 113.

[7] Record, pp. 1017–1023.

On January 25 [1] the resolutions were again before the Senate, when Mr. Tillman said:

My inquiry was as follows:

"UNITED STATES SENATE,
Washington, D. C., January 8,1904.

"HON. LESLIE M. SHAW,
"Secretary of the Treasury, Washington, D. C.
"SIR: Will you please give me an answer to the following questions:
"First. When was Dr. W. D. Crum appointed collector of customs at the port of Charleston, S. C.? The date and character of his commission.
"Second. Is he now in office? If so, under what authority of law?
"Third. Did a new commission issue under the last appointment? If so, give date.
"Fourth. Has he been required to give a bond under his last appointment?
"Fifth. Has he ever received any compensation for his services; and if not, why not?
"An early reply will be appreciated by,
"Yours, respectfully,

B. R. TILLMAN."

THE SECRETARY ANSWERED ON THE SAME DATE, AS FOLLOWS:

"OFFICE OF THE SECRETARY, TREASURY DEPARTMENT,
"Washington, January 8, 1904.

"MY DEAR SENATOR: Replying to your note of January 8, relative to Dr. W. D. Crum, collector of customs at the port of Charleston, S. C., I beg to advise:
"The vacancy occurred in the fall of 1902, possibly in September, during a recess of the United States Senate."
I will note here that the duties of the office were performed in the interim by the deputy collector.
"Congress regularly convened in December of that year, and on December 31 Mr. Crum's nomination was sent to the Senate. The Senate adjourned on the 4th of March without confirming the nomination. On the 5th of March, the Senate being in special session, the nomination was again sent in. The Senate adjourned without confirming, and on March 20, 1903, the President issued a temporary commission, under which Mr. Crum entered upon the discharge of his duties. He was allowed no compensation, however, in view of the statute prohibiting it under similar circumstances. I doubt not you are familiar with the statute. The Senate again convened in special session in November, 1903, and the nomination was again sent in, but was not acted upon. At the adjournment of that special session and at precisely 12 o'clock noon of the first Monday in December, 1903, Mr. Crum was reappointed, and his nomination is now pending before the United States Senate. Under this last appointment Mr. Crum has again given bond and is in discharge of the duties of the office, but without compensation, for reasons heretofore referred to.

L. M. SHAW.

"Very truly, yours,
"HON. B. R. TILLMAN,
"United States Senate."

Mr. Hale said:

The Secretary says, when he comes to deal with the conditions at the end of the extra session, that an appointment was made at precisely 12 o'clock, and that the Senate now has that before it. That is this appointment which I have read:
"William D. Crum, South Carolina, to be collector of customs for the district of Charleston, in the State of South Carolina, in place of Robert M. Wallace, deceased.

"THEODORE ROOSEVELT.

"DECEMBER 7."
There is nothing said to the effect that a commission was issued.

On February 4 [2] the resolutions were indefinitely postponed.

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[1] Record, pp. 1104–1109.
[2] Record, p. 1609.

On February 2 [1] Mr. Tillman offered in the Senate the following:

Whereas Article II, section 2, of the Constitution of the United States provides:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint * * * all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law;"

And further:

"The President shall have power to fill up all vacancies which may happen during the recess of the Senate by granting commissions which shall expire at the end of the session;"

And

Whereas it is known that certain officers appointed during the recess of Congress from March 4 last to November 9, and whose appointments were not confirmed by the Senate, are now in possession of and exercising the powers and functions of said offices: Be it

Resolved, That the Judiciary Committee of the Senate be, and it is hereby, authorized and instructed to report to the Senate—

First. What constitutes a "recess of the Senate," and what are the powers and limitations of the Executive in making appointments in such cases.

Second. What legislation is necessary to prevent the holding of an office by any person or persons whose commissions issue or are held by Executive exercise of unlawful authority, if any there be.

On February 4,[2] the resolution was discussed at length and after Mr. Tillman had withdrawn the last clause (which was objected to as implying a reflection on the Executive) the Senate agreed to the resolution.[3]

6694. The legislative day of March 3 of the final session of a Congress is held to terminate at 12 m. on March 4 unless a motion is made and carried for an adjournment previous to that hour.—On March 3, 1851,[4] Mr. Alexander H. Stephens, of Georgia, said that he rose to a privileged question. It was then 5 minutes before 12 o'clock, on the 3d of March, and he submitted to the Chair that, constitutionally, this Congress expired at 12 o'clock. He inquired whether the House had the right to sit after 12 o'clock.

The Chair declined to decide the question until the hour arrived.

At 12 o'clock p.m. Mr. Stephens moved that the House adjourn sine die, and called for the yeas and nays on that motion. The yeas and nays were taken, and the motion was negatived, 30 yeas to 153 nays.

6695. On March 3, 1835,[5] in the closing hours of the Congress, Mr. Leonard Jarvis, of Maine, made the point of order that the functions of the House had ceased, since it was then after midnight of March 3.

The Speaker [6] said that the Chair could not decide such a question, and that the proper procedure would be to obtain the opinion of the House by making a motion to adjourn.

Thereupon, for the purpose of testing the question Mr. Seaborn Jones, of Georgia, moved that the House adjourn.

Mr. Charles F. Mercer, of Virginia, said that in the course of a membership of eighteen years he had frequently known the House to act one, two, or even four

[1] Record, p. 1522.

[2] Record, pp. 1603–1609.

[3] See see. 6687 of this chapter for the report of the Judiciary Committee.

[4] Second session Thirty-first Congress, Globe, pp. 784, 918–920.

[5] Second session Twenty-third Congress, Journal, p. 523; Debates, pp. 1659–1662.

[6] John Bell, of Tennessee, Speaker.

hours after 12 o'clock. It was also urged that it would not be respectful to the Senate and the President for the House to adjourn without giving them notification.

The motion to adjourn was decided in the negative, and the House continued in session until 3.38 a. m., when it adjourned without day.

6696. At midnight on March 3, 1851,[1] a question was raised in the Senate as to the expiration of the term of the Congress. Mr. Jefferson Davis, of Mississippi, said that he was inclined to believe that as Washington on his first full term was inaugurated at 12 o'clock on the 4th of March, and as every Presidential term had been for four years from that period, and as every Senatorial term runs for six years, the session might continue until 12 o'clock of the 4th of March. But as the weight of very high authority was against his opinion, he desired to test the question. Therefore he would present himself at the Chair and ask to be sworn in as a Member of the new Congress.

The Chair did not feel at liberty to administer the oath, as the Thirty-first Congress had not adjourned

Mr. Lewis Cass, of Michigan, said that two years before that night, on March 3, 1849, the question was raised. He then stated his opinion that Congress terminated on the night of the 3d of March at 12 o'clock. The bills that would be passed this night would be signed on "the 3d of March." It would be so stated, but it was not true. It was necessary to resort to a fiction to justify holding over. Being of the opinion just given, he should so vote, and after voting should do no more business.

Mr. Samuel Houston, of Texas, said he thought that if they adjourned on the 4th of March it was all the Constitution required. In his opinion the Senate would have power to sit until to-morrow at sunset.

Mr. Thomas Ewing, of Ohio, said he found no difficulty on the point. The Senate meets at 12 o'clock on the 4th day of March. Then the term commences, and at 12 o'clock on the 4th of March it ends, because it must consist of six years.

In the course of the debate Mr. James M. Mason, of Virginia, expressed a doubt whether the term for which he had been chosen had not expired, and desired, if he continued to act, to be qualified as a Senator for the ensuing term.

Thereupon Mr. Stephen A. Douglas, of Illinois, offered this resolution, which was agreed to, yeas 27, nays 11:

Resolved, That inasmuch as the second session of the Thirty-first Congress does not expire under the Constitution until 12 o'clock on the 4th of March instant, the Hon. James M. Mason, a Senator-elect from the State of Virginia, is not entitled to take the oath of office at this time, to wit, on the 4th of March at 1 o'clock a.m.

On March 3, 1849,[2] after 12 o'clock midnight, the point was made that the Senate had no constitutional right to sit longer, but a motion to adjourn was disagreed to, yeas 7, nays 33.

6697. On March 3, 1881,[3] at midnight, Mr. James W. Singleton, of Illinois, rising to a question of order, said that the hour of 12 o'clock had arrived, and made the point of order that the Forty-sixth Congress had expired.

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[1] Second session Thirty-first Congress, Senate Journal, p. 251; Globe, pp. 818–820.

[2] Second session Thirtieth Congress, Globe, pp. 686, 689.

[3] Third session Forty-sixth Congress, Record, p. 2456.

After debate the Speaker [1] held:

This point of order has from time to time been made in the history of this country, and was the subject of enlarged discussion by some of the ablest men the country has ever produced; such men as Mr. Benton, Mr. Cass, and others. The Chair supposes the practice of Congress in this connection is based on the fact that it does not recognize the calendar day, but recognizes the legislative day. The legislative day of the 3d of March does not expire until 12 o'clock noon on the 4th of March. Practice construes the law. In 1851 this question came up in the House of Representatives, as the Chair is advised, on a resolution offered by the gentleman from Georgia, who is now a Member of this House [Mr. Stephens]. On the 3d of March, 1851, Mr. Stephens offered a resolution to test this question, and on the ruling of Speaker Cobb it was decided that the Congress expired at noon [2] on the 4th of March; which ruling has been in effect ever since.

6698. A concurrent resolution fixing the day for final adjournment may be offered from the floor as privileged, even though a similar resolution may have been offered and considered.

The motion to commit has been admitted pending a demand for the previous question on agreeing to a concurrent resolution.

On October 17, 1888,[3] Mr. C. B. Kilgore, as a privileged question, presented this resolution:

Resolved by the Senate and House of Representatives, That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on Saturday, October 20, 1888, at 1 o'clock p. m.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that this was not a privileged matter, as there was already pending a motion to refer a similar resolution offered the day before.

The Speaker [4] held that any proposition to adjourn was privileged.

The previous question having been demanded, Mr. James D. Richardson, of Tennessee, moved to refer the resolution to the Committee on Ways and Means.

Mr. Kilgore made a point of order against the motion.

The Speaker held the motion to be in order under section 1 of Rule XVII.[5]

6699. The privilege of a resolution fixing the time for final adjournment has been held to extend to a proposition to recall such a resolution from the Senate.—On March 22, 1869,[6] Mr. William Lawrence, of Ohio, moved to suspend the rules and agree to the resolution:

Resolved, That the concurrent resolution for the action of the two Houses of Congress by which the time of adjournment of this Congress is fixed for Friday next, and now pending before the Senate, be recalled for further consideration, and that a message be sent to the Senate requesting the return of the same.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] Sometimes, when the business is not likely to be finished at exactly the hour, the hands of the clock are set back. This is a very old custom. Mr. John Randolph, of Virginia, speaking in 1816, referred to it as a custom of the House. (First session Fourteenth Congress, Annals, p. 944.)

[3] First session Fiftieth Congress, Record, pp. 9546, 9547; Journal, p. 2941.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] See section 5443 of this volume.

[6] First session Forty-first Congress, Globe, p. 200.

The Speaker [1] said:

The Chair will rule that this is a question of privilege and a suspension of the rules will not be needed. The resolution is now before the House.

6700. Instance wherein a concurrent resolution fixing the time of final adjournment was rescinded by action of the two Houses.—On March 26, 1804,[2] the Senate agreed to this resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the resolution of the 13th instant, authorizing the adjournment of Congress on the 26th instant, be rescinded, and that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on Tuesday, the 27th instant.

On the same day the House agreed to the resolution, yeas 49, nays 44.[3]

6701. A concurrent resolution providing for an adjournment of the two Houses for more than three days is privileged.

An instance wherein the Speaker submitted the decision of a question of order to the House.

On May 20, 1862,[4] Mr. Sydenham. E. Ancona, of Pennsylvania, having proposed to submit the following resolution:

Resolved (the Senate concurring), That the House of Representatives adjourn from Wednesday, 28th instant, to Monday, June 2—

The Speaker [5] stated that inasmuch as he entertained doubts as to the propriety of holding such propositions to be privileged, notwithstanding the practice in the last Congress, he would submit the question, Will the House entertain the said resolution?

Pending this question, on motion of Mr. Clement L. Vallandigham, of Ohio, at 4 o'clock and 35 minutes p. m., the House adjourned.

On May 21, 1862, the Speaker having announced as the business first in order the question of entertaining the resolution which was pending when the House adjourned yesterday, the question was put, Will the House entertain the said resolution? And it was decided in the affirmative, yeas 58, nays 55.

So the House decided to entertain the resolution. Pending the question on agreeing thereto, Mr. Edward H. Rollins, of New Hampshire, moved that it be laid on the table. And the question being put, it was decided in the affirmative, yeas 78, nays 46.[6]

6702. A simple resolution providing for an adjournment of the House for more than three days, and for asking the consent of the Senate thereto, has been ruled to be privileged.—On April 18, 1860,[7] Mr. Milledge L. Bonham, of South Carolina, submitted the following resolution:

Resolved, That when this House adjourns on Friday next, it shall stand adjourned until Monday, the 30th of April instant, and that a message be sent to the Senate asking its consent thereto.

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

[2] First session Eighth Congress, Senate Journal, p. 399; Annals, p. 303.

[3] House Journal, p. 691; Annals, p. 1240.

[4] Second session Thirty-seventh Congress, Journal, pp. 718, 720; Globe, pp. 2246, 2262.

[5] Galusha, A. Grow, of Pennsylvania, Speaker.

[6] On December 19, 1882 (second session Forty-seventh Congress, Record, pp. 438, 439), Mr. Speaker Keifer, following this precedent, held a similar resolution to be privileged.

[7] First session Thirty-sixth Congress, Journal, pp. 753, 759; Globe, pp. 1735, 1789, 1814.

Objection having been made thereto, the Speaker pro tempore [1] decided, in conformity with former decisions of the Chair, which had been acquiesced in by the House, that the said resolution, being a privileged question, was in order.[2]

Mr. Israel Washburn, jr., of Maine, having appealed, the decision on the appeal was not made until the succeeding day. Then, in putting the question, the Speaker [3] declared the ruling of the Speaker pro tempore had been in accordance with his own ruling.

The appeal was then laid on the table.

The resolution was then laid on the table.[4]

6703. On March 23, 1871,[5] Mr. John F. Farnsworth, of Illinois, claiming the floor for a question of privilege, presented the following:

Whereas the Senate has adopted a resolution declaring that the Senate will consider at the present session no other legislative business than the deficiency appropriation bill, etc. (naming several other measures), thereby refusing to consider any business which may originate in the House of Representatives: Therefore,

Resolved (the Senate concurring), That this House will adjourn, when it adjourns to-morrow, until the first Monday in December next, at 11 o'clock a. m.

Points of order being raised, the Speaker [6] held that the resolution was not debatable, and that it was privileged.

Mr. Horace Maynard, of Tennessee, made the point of order that it would not be in order for the House to adjourn in this way without an adjournment of the Senate also.

The Speaker overruled this point of order, saying:

The provision of the Constitution is that neither House shall adjourn for more than three days without the consent of the other; but this resolution proposes an adjournment of the House for a longer time, with the consent of the Senate.

The question being taken, the resolution was agreed to, yeas 113, nays 68.

In the Senate, on March 24, the resolution was laid on the table, without debate or division, on motion of Mr. George F. Edmunds, of Vermont.

6704. The privilege of a resolution providing for an adjournment of more than three days is limited in its exercise.—On March 22, 1871,[7] Mr. John F. Farnsworth, of Illinois, as a question of privilege, proposed the following:

Resolved by the House of Representatives (the Senate concurring), That this House will, when it adjourns on Friday next, adjourn to meet again on the first Monday in December next, at 11 o'clock a. m.

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[1] John S. Phelps, of Missouri, Speaker pro tempore.

[2] Such a decision was made by the Speaker on April 16. (Globe, p. 1735.)

[3] William Pennington, of New Jersey, Speaker.

[4] The House has never taken a recess of more than three days without consent of the Senate. In 1862 the Congress took a holiday recess from December 23 to the first Monday in January. The House at first sent to the Senate a resolution intended to give to the House the authority to adjourn over without the Senate participating in the recess. But the Senate amended the resolution so as to provide for adjournment by both Houses. The form of the House resolution was criticized in the Senate as unprecedented. (Third session Thirty-seventh Congress, Journal, pp. 117, 124; Globe, p. 170.)

[5] First session Forty-second Congress, Journal, pp. 104, 105; Globe, pp. 241, 242, 249.

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

[7] First session Forty-second Congress, Globe, pp. 229, 230.

The Speaker [1] said:

The Chair doubts this being a question of privilege until the time expires covered by the resolution of the House which has been already sent to the Senate. * * * The Chair would not hold it to be a question of privilege until the time had passed. The House has sent a resolution to the Senate proposing to adjourn to-morrow at 12 o'clock noon. Until that time has expired, and the House is advised of the action or nonaction of the Senate, the Chair would hold that another resolution of that kind was not a question of privilege, because the House has adopted and sent to the Senate, and has reconsidered and laid on the table the vote by which it was adopted, a proposition to adjourn to-morrow at 12 o'clock noon. It is not a matter of courtesy to the Senate until the time has expired within which it may act on that resolution to introduce another resolution on the same question, and the Chair would not hold it to be a question of privilege until that time has expired.

6705. A concurrent resolution extending the time of a recess of Congress already determined on is privileged.—On December 21, 1869,[2] Mr. William E. Niblack, of Indiana, submitted as privileged the following:

Resolved by the House (the Senate concurring), That the recess provided for by the concurrent votes of the two Houses, and to commence on the 22d instant, be, and is hereby, extended from Wednesday, the 5th, to Monday the 10th day of January next.

Mr. William H. Kelsey, of New York, raised a question of order as to the privilege of the resolution:

The Speaker [1] said:

It is a privileged motion. It is a question of the highest privilege.

6706. Privilege has been given to a resolution providing for a recess of Congress, the length of which might be fixed by the President or the presiding officers of the two Houses.—On July 20, 1866,[3] Mr. Thaddeus Stevens, of Pennsylvania, proposed, as a question of privilege, to submit the following resolution:

Resolved (the Senate concurring), That when Congress adjourns on the —— day of ——— it will adjourn to meet again on Saturday, the first day of December next, unless sooner convened by the President, or by the joint call of the presiding officers of both Houses, who are hereby authorized to exercise that power in case of emergency.

The question being submitted to the House, it was decided, after debate, that the resolution should be entertained as a question of privilege.

The question being taken on the resolution, it was disagreed to.

6707. When the House adjourns sine die in pursuance of a concurrent resolution of the two Houses, the adjournment is pronounced by the Speaker without motion from the floor.—On Monday, August 7, 1854,[4] the hour of 8 o'clock a. m. having arrived, the Speaker [5] announced that, in pursuance of the resolution of the two Houses fixing the time for the adjournment of the present session of Congress, the House stood adjourned until the first Monday in December next.

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

[2] Second session Forty-first Congress, Globe, p. 293.

[3] First session Thirty-ninth Congress, Journal, p. 1070; Globe, pp. 3981–3985.

[4] First session Thirty-third Congress, Journal, p. 1345.

[5] Linn Boyd, of Kentucky, Speaker.

6708. On June 14, 1858,[1] Mr. Henry Bennett, of New York, called up the motion to reconsider the vote by which the report of the geological survey, by Doctor Evans, of Washington and Oregon Territories was ordered to be printed.

Pending this, the hour of 6 o'clock p. m. having arrived, the Speaker' announced that, in pursuance of the concurrent resolution of the two Houses, the House of Representatives stood adjourned for the present session of Congress.[3]

6709. When the House adjourns sine die at an hour before the expiration of the constitutional term of the Congress it does so by a simple motion made and carried, without concurrent action of the Senate.

When the House has sat to the limit of the constitutional term of the Congress, the Speaker pronounces an adjournment sine die, without a motion being put and carried. (Footnote.)

On March 3, 1845,[4] the House was considering a bill relating to the building of revenue cutters and steamers, which the President had returned to the Senate with his veto and which the Senate had passed over the veto.

The previous question was ordered, and then the question on the passage of the bill was taken, as the Constitution requires, by yeas and nays. When the roll had been called about half through, Mr. Thomas H. Bayly, of Virginia, rose to a question of order. Pointing to the clock, the hands of which were just at 12, he said that it had been stopped for five minutes, and that by the Constitution the House was adjourned. The Clerk proceeded to call the roll again, when Mr. Bayly again rose to raise a constitutional question.

The Speaker[5] said he could not entertain any motion when the House was dividing. The roll call concluded, and the Speaker announced that the bill was passed by the constitutional majority of two-thirds, the President's veto notwithstanding.

Business then continued until ten minutes after 2 before the House finally adjourned sine die[6] on motion put and carried.[7]

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[1] First session Thirty-fifth Congress, Journal, p. 1148; Globe, p. 3050.

[2] James L. Orr, of South Carolina, Speaker.

[3] There has been one decision out of harmony with this well-established practice. On August 31, 1842 (second session Twenty-seventh Congress, Journal, p. 1446; Globe, p. 979), on the last day of the session, Mr. Edward J. Black, of Georgia, rose to a question of order, and, pointing to the clock, which indicated that it was past 2 o'clock, called attention to the fact that by the resolution of the two Houses it had been determined to adjourn at 2 o'clock, the exact words of the resolution being "that the Speaker of the House and President of the Senate adjourn the two Houses of Congress sine die on Wednesday, the 31st instant, at 2 o'clock p.m."

The Speaker (John White, of Kentucky), while admitting that the resolution so provided, declared that the Speaker was not the timekeeper of the House, and if the House determined that it was not 2 o'clock it was the business of the House and not of the Chair.

The pending business was disposed of, the report of the committee to wait on the President was received, a resolution notifying the Senate that the House was ready to adjourn was agreed to, and then the House adjourned sine die.

[4] Second session Twenty-eighth Congress, Globe, p. 396; Journal, p. 580.

[5] John W. Jones, of Virginia, Speaker.

[6] It seems quite evident from the Globe that Mr. Bayly's point of order was made at midnight of March 3, and that the adjournment was at 10 minutes after 2 on the morning of March 4.

[7] In this and preceding Congresses the House was not accustomed to continue in session until the expiration of the full term of the Congress at noon March 4, and so the adjournment was on motion

6710. On the legislative day of March 2, 1905[1] (calendar day of March 4), at the hour of 11.55 a. m., five minutes before the expiration of the constitutional term of the Congress, Mr. Sereno E. Payne, of New York, moved that the House adjourn sine die.

The motion was agreed to and the House adjourned.

6711. When the House has sat to the limit of the constitutional term of the Congress, a motion to adjourn may be put and carried, or the Speaker may declare the adjournment sine die without motion.—On March 3, 1853,[2] Mr. George W. Jones, of Tennessee, from the joint committee appointed to wait on the President of the United States, reported that the committee had discharged the duties for which they were appointed, and had received for answer from the President that he had no further communication to make to the present Congress.

A motion was then made by Mr. George W. Jones, at 12 o'clock m.,[3] that the House do now adjourn sine die.

And the question being put, it was decided in the affirmative.

Thereupon, the Speaker[4] addressed the House, and at the conclusion of his address announced that the House stood adjourned sine die.

6712. On March 3, 1857[5] Mr. Lewis D. Campbell, of Ohio, from the joint committee appointed to wait upon the President of the United States and to ascertain whether he had any further communication to make to Congress, reported that the committee had discharged that duty, and that the President had informed them that he was not aware of any other communication that it was necessary to make.

A motion was then made by Mr. Lewis D. Campbell, at 12 o'clock m.,[6] that the House adjourn.

And the question being put, it was decided in the affirmative.

Thereupon the Speaker,[7] having addressed the House, declared it adjourned sine die.

6713. On the legislative day of March 1, 1901[8] (but the calendar day of March 4), at the hour of the expiration of the constitutional term of the Congress,

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made and carried. (See third session Twenty-seventh Congress, Journal, pp. 579, 581.) In the later Congresses, since the House has sat until the moment of the expiration of the term, no motion is made to adjourn, but the Speaker declares the House adjourned sine die in accordance with the existing fact. (See second session Fiftieth Congress, Journal, p. 776.) Of course the two Houses by concurrent action always inform the President that they are about to adjourn sine die.

[1] Second session Fifty-eighth Congress, Journal, p. 454.

[2] Second session Thirty-second Congress, Journal, p. 431.

[3] It is evident from the Globe (p. 1167) that this was 12 m. of the calendar day of March 4, the hour of the expiration of the constitutional term of the Congress. The legislative day was journalized as March 3.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Third session Thirty-fourth Congress, Journal, p. 691; Globe, p. 1000.

[6] It is evident (Globe, pp. 984, 1000) that this was 12 m. of the calendar day of March 4.

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

[8] Second session Fifty-seventh Congress, Journal, p. 333.

the Speaker,[1] without motion or vote of the House, declared the House adjourned sine die.[2]

6714. The two Houses having fixed. the time for adjournment sine die, the House may not adjourn finally before the arrival of the hour.—On August 14, 1848[3] on the last day of the session, Mr. Thomas H. Bayly, of Virginia, moved that the House adjourn.

The Speaker[4] decided that the motion to adjourn was not in order. The two Houses, by a joint resolution, had fixed 12 o'clock to-day as the time for the adjournment sine die. By the Constitution of the United States neither House, without the consent of the other, could adjourn for more than three days. If the motion to adjourn were received and agreed to, the House would stand adjourned until the first Monday in December.[5] The motion, therefore, was not in order.

6716. The Speaker interrupts a roll call and declares the House adjourned sine die, without motion or vote of the House, when the hour of expiration of the term of the Congress arrives.—On June 17, 1842,[6] the House proceeded to the consideration of the concurrent resolution of the Senate to extend this session of Congress until 2 o'clock p. m. this day.

A motion was made by Mr. Edmund Burke, of New Hampshire, that the resolution be laid upon the table. On this question the yeas and nays were ordered. When the roll had been partially called the hour of 12 o'clock meridian arrived, when the Speaker[7] directed the Clerk to suspend the call, and then rose and said:

> The hour fixed for the adjournment of the present session of Congress having arrived, I now declare that this House stands adjourned sine die.

And so the House, at precisely 12 o'clock meridian, adjourned until the first Monday in December, A. D. 1844, the day fixed by the Constitution of the United States for the annual meeting of Congress.

6716. On March 3, 1859,[8] the House had passed a bill for the relief of Sheldon McKnight, when Mr. David S. Walbridge, of Michigan, moved to reconsider and then to lay the latter motion on the table. On the latter motion the yeas and nays were ordered, and at twenty minutes to 12 o'clock the call of the roll commenced.

Before the result of the vote was announced, the hour of 12 o'clock having arrived, the Speaker[9] arose, delivered his address of farewell, and declared the Thirty-fifth Congress at an end.

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[1] David B. Henderson, of Iowa, Speaker.

[2] This is in accordance with the custom for many years under similar circumstances. (See Journal, second session Forty-ninth Congress, p. 887; second session Forty-seventh Congress, p. 658; third session Forty-fifth Congress, p. 696, etc.)

[3] First session Thirtieth Congress, Globe, p. 1080.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

[5] This was not exactly the case of an adjournment before the hour of the expiration of the term of Congress.

[6] First session Twenty-eighth Congress, Journal, p. 1175; Globe, p. 696.

[7] John W. Jones, of Virginia, Speaker.

[8] Second session Thirty-fifth Congress, Journal, p. 625; Globe, p. 1684.

[9] James L. Orr, of South Carolina, Speaker.

6717. On March 3, 1877,[1] Mr. William R. Morrison, of Illinois, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. 4691 (army appropriations), reported that the committee were unable to agree.

Mr. Morrison having, by unanimous consent, submitted a statement as covering the position taken by the managers at the conference on the part of the House, moved that the House insist on its disagreement to the amendments of the Senate to the bill and demanded the previous question thereon.

The previous question was seconded and the main question ordered and put.

The Clerk thereupon proceeded to call the roll, and, at 11 o'clock and 57 minutes a. m. (Sunday, March 4), having called the name of Mr. Thomas L. Jones, the Speaker[2] stated that as it was a physical impossibility for the Clerk to complete the roll call before 12 o'clock m., he would direct him to suspend.

The Speaker thereupon announced the appointment of visitors to the Military Academy, under and in accordance with the requirements of section 1327 of the Revised Statutes of the United States.

Then, having addressed the House, he declared it adjourned without day.

6718. On March 3, 1871,[3] in the midst of a roll call that would, had the proportion of votes continued as they were, have completed final action on a bill, Mr. Speaker Blaine interrupted the call, and, after addressing the House, declared it adjourned sine die. This was the last session of the Congress.

6719. At the time fixed for adjournment sine die the Speaker has interrupted a roll call, even when its continuance might have passed a resolution extending the session.—On September 30, 1850,[4] the hour fixed for the adjournment of the session finally arrived, during the calling of the roll. Mr. Speaker Cobb directed the Clerk to suspend the call, and declared the House adjourned sine die.

6720. On August 18, 1856,[5] Mr. Speaker Banks interrupted a roll call to declare the session adjourned sine die, although the roll was being called on a motion to agree to a concurrent resolution, sent to the House by the Senate, providing for an extension of the session.

6721. The hour fixed for adjournment sine die having arrived the Speaker delivered his valedictory and declared the House adjourned, although no quorum was present.—On March 3, 1835,[6] in the closing hours of the session, the House was debating the fortifications bill. In the midst of the debate, Mr. Churchill C. Cambreleng, of New York, having apparently concluded his remarks, Mr. Dixon H. Lewis, of Alabama, asked if there was a quorum in the House.

A count being had, it appeared that only 114 Members were in attendance, which was not a quorum.

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[1] Second session Forty-fourth Congress, Journal, p. 698; Record, p. 2251.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Third session Forty-first Congress, Journal, p. 513; Globe, p. 1942.

[4] First session Thirty-first Congress, Journal, p. 1603.

[5] First session Thirty-fourth Congress, Journal, p. 1539; Globe, p. 2241.

[6] Second session Twenty-third Congress, Globe, p. 332.

No quorum again appeared, and, after some futile attempts at business, the Speaker [1] delivered his valedictory and declared the House adjourned sine die.

6722. Form of concurrent resolution of the two Houses terminating a session of Congress.—The form of concurrent resolution providing for the final adjournment of a session other than the final session, which terminates March 4, is as follows: [2]

Resolved by the House of Representatives (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on—, — —, at — o'clock ——.

6723. Form of resolution authorizing a joint committee to notify the President of the approaching adjournment of Congress.—The committee to notify the President of the adjournment of Congress is authorized by a resolution in this form: [3]

Resolved,[4] That a committee of three Members [5] be appointed by the Chair, to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed the business of the present session and axe ready to adjourn unless the President has some other communication to make to them.[6]

6724. At the adjournment of the last session of a Congress, even at the expiration of the constitutional term of the House, the two Houses send a joint committee to inform the President.

The last session of a Congress may be adjourned before the expiration of the constitutional period. (Footnote.)

Instance wherein the House held two legislative days within the limits of one calendar day. (Footnote.)

On March 2, 1907 [7] (calendar day of March 4), at the close of the last session of the Congress, in the Senate Mr. Eugene Hale, of Maine, offered the following resolution, which was agreed to:

Resolved, That a committee of two Senators be appointed by the Vice-President to join a similar committee appointed by the House of Representatives to wait upon the President of the United States and inform him that the two Houses, having completed the business of the present session, are ready to adjourn, unless the President has some other communication to make to them.

When this resolution was received by message in the House, Mr. Sereno E. Payne, of New York, offered the following, which was agreed to:

Resolved, That a committee of three Members be appointed by the Speaker to join a similar committee appointed by the Senate to wait upon the President of the United States and inform him that the two Houses have completed the business of the present session and are ready to adjourn unless the President has some other communication to make to them.

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[1] John Bell, of Tennessee, Speaker.

[2] First session Fifty-fifth Congress, Record, p. 2973.

[3] Second session Fifty-fifth Congress, Record, p. 6801.

[4] The practice from the earliest days of the House has sanctioned the creation of this joint committee by independent simple resolutions of the two Houses, although usually joint committees are created by a concurrent resolution agreed to by both Houses.

[5] The number of this committee is sometimes two. (See first session Fifty-fifth Congress, Record. p. 2972.)

[6] This resolution is adopted at the last session of a Congress, even on the year of an inauguration. (Second session Fifty-fourth Congress, Record, p. 2981.)

[7] Second session Fifty-ninth Congress, Record, pp. 4657, 4671.

Thereupon the Chair appointed the committee, Mr. Payne being made chairman.

After a time the committee appeared at the bar of the House, and Mr. Payne reported orally:

Mr. Speaker, the committee appointed by the Speaker to join a like committee on the part of the Senate to wait upon the President of the United States and inform him that the Houses have completed their business and are ready to adjourn and to ask him if he had any further communication to make, report that they have performed the duty and that the President commends Congress for the good legislation which it has accomplished during the session, and said that he had no further communications to make.[1]

6725. The resolution notifying the President that the House is ready to adjourn sine die is usual, but has sometimes been omitted.—On March 3, 1835,[2] by reason of the failure of a quorum in the closing hours of the session the House adjourned without adopting the usual resolutions notifying the President that the House had completed its business and was ready to adjourn.

6726. On August 14, 1848,[3] the House adopted the resolution that a committee wait on the President and inform him that the House would adjourn at 12 o'clock that day; but afterwards reconsidered this action on the ground that it was unnecessary.

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[1] This ceremony of informing the President that the two Houses are about to adjourn unless he have some other communication to make to them takes place at every session of Congress, although in fact under present practices of remaining in session until the last moment of the constitutional term of the Congress, it seems somewhat out of place at the adjourment of the last session. The practice dates from the early years of the Government.

When the last session of the First Congress adjourned a message was sent to the Senate informing it that the House had completed its business and was about to adjourn sine die, but not to the President. (Third session First Congress, Journal, p. 409.) At the end of the last session of the Second Congress the two Houses sent a joint committee to wait on the President and inform him that they were about to adjourn. (Second session Second Congress, Journal, p. 735.) In those days the House and Senate apparently did not prolong their sessions until noon of the calendar day of March 4, i. e., to the extreme constitutional limit, and it might well be that the President might desire them to remain longer in session. But under the practice for many years now, of holding the session until the very hour of 12 m. March 4, the Congress could not defer adjournment even should the President so request.

The early Congresses evidently did not remain in session until the last moment permitted by the Constitution. The last day's sitting of the Second Congress was March 2, 1793. This was Saturday, and the House met at the usual hour, held a session during the day, and at the close of the afternoon adjourned until 7 p. m. of the same day. At 7 p. m. it met in what was really another legislative day, but also a legislative day of March 2. While the Journal does not disclose the hour of adjournment sine die, it was probably before midnight of March 2. (Second session Second Congress, Journal, p. 735; Annals, p. 966.) The Fourth Congress also held two legislative days on Friday, Much 3, 1797, one during the day and the other during the evening, and the latter terminating in adjournment sine die, probably by midnight, although the Journal does not state the hour. (Second session, Fourth Congress, Journal, pp. 742, 746.) Indeed, it was many years later that the House and Senate confronted and settled the question whether or not sessions might be held after midnight Much 3 on the year of the expiration of a Congress. (See sees. 6694–6697 of this volume.) In the early morning hours of March 4, 1835, Mr. Samuel Beardsley, of New York, declined to vote on the ground that the term of the Twenty-third Congress had expired, but the House went on with business. (Second session Twenty-third Congress, Journal, p. 527; Debates, p. 1660.)

[2] Second session Twenty-third Congress, Journal, pp. 531–533.

[3] First session Thirtieth Congress, Journal pp., 1284, 1286; Globe, p. 1081.

6727. All business pending and unfinished in the House or in committee, or awaiting concurrent action in the Senate, at the end of a session, is resumed at the next session of the same Congress.

Instance of a practice which survived after the rule creating it had been inadvertently dropped.

Instance wherein the House has abandoned a usage of Parliament as inapplicable to existing conditions.

Form and history of Rule XXVIL

Rule XXVII provides:

> All business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

In the second session of the First Congress [1] it was decided that business unfinished, whether before committees or between the two Houses, at the end of a session must be taken up as new business at the beginning of the next session. This decision was made in conformity with the practice of the British Parliament, which had been followed in Virginia, although not in Pennsylvania. But in 1816 [2] a joint committee of the House and Senate investigated this subject and reported in favor of a rule that business of all kinds pending at the close of the then existing session should be resumed at the same point the next session; but no action was taken on the report. On March 17, 1818,[3] Mr. John W. Taylor, of New York, in order to expedite public business by preventing the repetition of the labor of committees, secured the adoption of this rule:

> After six days from the commencement of a second or subsequent session of Congress all bills, resolutions, and reports which originated in the House, and at the close of the next preceding session remained undetermined, shall be resumed and acted on in the same manner as if an adjournment bad not taken place.

It does not appear, however, that this rule reached House bills sent to the Senate and not acted on there during the same session, and a question that arose in the House on May 14, 1828,[4] indicates that such bills were again acted on by the House at the next session and again sent to the Senate. This was remedied in 1848 [5] by making the rule already adopted in the House a joint rule of the House and Senate, and although the joint rules have ceased to exist the practice of the two Houses continues in accordance therewith.

These rules, however, did not reach business before committees. In 1818 [6] we find the House required to authorize an investigating committee to continue and report at the next session; and in 1858 [7] the Committee on Rules recommended an additional rule which was adopted in 1860,[8] and which, in order to obviate the

[1] See Annals of Congress, Proceedings of the House, January 11, 20, and 25, 1790.

[2] First session Fourteenth Congress, Journal, p. 614; Annals, p. 1353.

[3] First session Fifteenth Congress, Annals of Congress, Vol. II, p. 1402.

[4] First session Twentieth Congress, Journal, p. 734; Debates, p. 2674.

[5] First session Thirtieth Congress, Journal, pp. 1106, 1228; Globe, p. 994.

[6] First session Fifteenth Congress, Journal, p. 447.

[7] Second session Thirty-fifth Congress, House Report No. 1.

[8] First session Thirty-sixth Congress, Globe, pp. 1179, 1187.

necessity of referring business anew at the beginning of a subsequent session, provided that all business before committees of the House at the end of one session should be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

The rule as amended in 1860 was adopted in the revision of 1880[1] with no material change. In 1890[2] the portion of the rule adopted in 1818 was stricken out, with the result, in practice, not of returning to the practice prior to 1818, but of removing the restriction of six days, the fact apparently having been overlooked that the main original object of the rule was not the six days' limitation, but the continuation of pending business from one session to another. And in practice the House has continued to observe the rule of 1818 in everything except the six days' limitation, although, except for a brief period by the Fifty-second Congress, the rule has not been restored. All that remains of the rule now is the portion adopted in 1860 relating to committee business:

On August 24, 1852,[3] the House agreed to this resolution:

Resolved, That all bills, resolutions, and other matters referred to the standing and select committees of this House, upon which no report shall have been made at this session, shall be returned informally to the Clerk, and shall by virtue of this resolution, stand recommitted at the commencement of the next session to said committees, into whose possession the Clerk is directed to restore them.

On December 9, 1850,[4] at the beginning of the second session, the House, by resolution, referred anew memorials and petitions referred to committees at the preceding session and not acted on by the committees.

6728. An adjournment does not necessarily take place at 12 m. Saturday, the House having power to continue in session on Sunday if it be so pleased.

The propriety of continuing a session into Sunday does not constitute a question of order for the Speaker, who may not adjourn the House against its will.

For many years the House has continued its sessions of Saturday into Sunday when under stress of business.

On March 26, 1836,[5] the House had under consideration the North Carolina contested election case of Newland *v.* Graham, and there was a succession of roll calls, caused by an alternation of the motion to adjourn with motions to suspend the rules in order to make the case a special order at some future date.

Finally, at 12 o'clock at night, Mr. Joab Lawler, of Alabama, rose to a question of order, and inquired whether it was in order for the House to continue in session after 12 o'clock at night on Saturday night—that is, to continue its session on the Sabbath day.

The Speaker[6] decided that, as a question of order, he had no power over the subject; that he could not adjourn the House against the sense of the House; that

[1] Second session Forty-sixth Congress, Record, p. 207.

[2] House Report No. 23, first session Fifty-first Congress, Record, p. 1171 et seq.

[3] First session Thirty-second Congress, Journal, p. 1070 Globe, p. 2315.

[4] Second session Thirty-first Congress, Journal, p. 33.

[5] First session Twenty-fourth Congress, Journal, pp. 577–582; Globe, p. 265.

[6] James K. Polk, of Tennessee, Speaker.

the rules invested him with no power to do so. He stated the practice of the House at some preceding sessions, which, from the journals it appeared, had been occasionally for the House to continue in session on Saturday night until after 12 o'clock. It was a question which must be left to be decided by the judgment and discretion of the House itself, which alone could determine upon the necessity or propriety of continuing its session and to adjourn or not, as a majority should determine; that he had no power to declare it to be against order to continue in session, if the majority so determined.

Mr. Lawler, having made and withdrawn an appeal, made his question of order in writing, in the words following:

> The Member from Kentucky, being on the floor and engaged in addressing the House, was called to order, whereupon he took his seat and a Member from Alabama raised the following question: Whether, the hour of 12 having passed and the Sabbath arrived, the House, in the absence of any urgent necessity, would proceed in the business before it.

The Speaker decided as in the case of the first appeal by Mr. Lawler.[1] From this decision Mr. Lawler again took an appeal to the House and, after debate and roll calls on motions to adjourn, Mr. Lawler withdrew his appeal, and at 4.30 a. m., March 27, the House adjourned.

On Monday, March 28, Mr. Bellamy Storer, of Ohio, moved to suspend the rules to enable him to move a resolution of inquiry into the propriety of prohibiting sessions of the House on Saturday after 12 o'clock Saturday night and of prohibiting sessions during Sunday except in cases of urgent public necessity, to be previously determined by the House. The motion failed, 64 yeas to 87 nays.

6729. Upon the legislative day of Saturday, March 3, 1877,[2] the House was in session after midnight, and on motion of Mr. William S. Holman, of Indiana, at 2 o'clock and 35 minutes a.m. (March 4) the House took a recess until 8 o'clock a. m.

The recess having expired, the House reassembled at 8 o'clock a. m. (Sunday, March 4).

The House then continued the transaction of business until noon, when the Speaker declared the House adjourned without day.

6730. The House has declined to affirm that it may not transact business on Sunday.—During the legislative day of Saturday, May 20, 1826,[3] at the close of a session of Congress, Mr. Alfred H. Powell, of Virginia, offered this resolution:

> *Resolved,* That Sunday is not, in the contemplation of the laws and Constitution of the United States, a legislative day upon which business ought to be transacted by the House of Representatives.

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[1] The Globe (p. 265) shows that the Speaker quoted in support of his ruling a precedent at the first session of the Nineteenth Congress, when the question was raised at 12 o'clock Saturday night, the last night of the session, and it was within the memory of the Chair as well as of other Members present that the then Speaker (Speaker John W. Taylor, of New York) had decided that as a question of order there was no difficulty about it, since during the war Congress had sat all day Sunday at times and had passed important bills. The debates and Journal of the first session Nineteenth Congress are silent on this ruling, but the Journal gives (p. 635) a statement that the following resolution was offered by Mr. Powell and ordered to lie on the table by the House:

> *"Resolved,* That Sunday is not, in the contemplation of the laws and Constitution of the United States, a legislative day upon which business ought to be transacted by the House of Representatives."

[2] Second session Forty-fourth Congress, Record, p. 2242.

[3] First session Nineteenth Congress, Journal, p. 635; Debates, p. 2688.

The House laid the resolution on the table and continued its session until 4.30 a. m., Sunday.

6731. Sunday has been made a legislative day by concurrent action of the two Houses.—On Saturday, March 2, 1839,[1] Mr. John Quincy Adams, of Massachusetts, proposed a resolution, joint in form, that when the two Houses should adjourn on that day they should adjourn to meet on the succeeding day (Sunday) at 10 o'clock.

This resolution was disagreed to, but soon after a message from the Senate asked the concurrence of the House in the following:

Resolved by the Senate (the House of Representatives concurring),[2] That when the Senate and House of Representatives adjourn they will adjourn to meet at 10 o'clock a. m. on the 3d of March instant.

The House agreed to this resolution.

Accordingly, on Sunday, March 3, the two Houses met in a new legislative day.

6732. By vote of the House Sunday has been made a legislative day.—On Saturday, March 2, 1811,[3]

Ordered, That this House will meet again to-morrow.

Accordingly, on Sunday, March 3, a legislative day was held and is so journalized. It was the last day of the Congress.

On June 10, 1902,[4] on motion of Mr. Sereno E. Payne, of New York, and by unanimous consent, it was—

Ordered, That when the House adjourn on Saturday, June 28, it adjourn to meet on Sunday, June 29, at 11 o'clock, the session to be devoted to eulogies upon the life, character, and public services of the late Amos J. Cummings, of New York.

Accordingly, on Sunday, June 29, at 11 a. in., the Speaker called the House to order, the Journal was read and approved, and then the House proceeded with the special order.

6733. In computing the days of a session Sunday has not always been treated as a dies non.—On Friday, August 11, 1848[5] (when the House was to adjourn finally on Monday, August 14), the House passed the bill making appropriations for rivers and harbors.

The bill having been passed, the Speaker[6] said that he entertained doubts as to whether this bill (it being an original bill of this House) could be sent to the Senate this day without a suspension of the joint rule which provided that no bill originating in either House should be sent to the other on the three last days of the session, and asked the direction of the House.[7]

Thereupon it was—

Ordered, That the Clerk request the concurrence of the Senate in the said bill.

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[1] Third session Twenty-fifth Congress, Journal, pp. 689, 698, 700; Globe, p. 229.

[2] This is one of the first instances, if not the very first, when this form of resolving clause for the concurrent resolution appears in the journals of Congress.

[3] Third session Eleventh Congress, Journal, p. 610 (Gales & Seaton ed.); Annals p. 1106.

[4] First session Fifty-seventh Congress.

[5] First session Thirtieth Congress, Journal, p. 1249.

[6] Robert C. Winthrop, of Massachusetts, Speaker.

[7] This joint rule is no longer in force. It should be remembered that an adjournment of the House on Saturday always carries to Monday unless special order be made that it carry to Sunday.

6734. When, through an erroneous announcement of the vote, the House is declared adjourned and in fact disperses, when actually it had voted not to adjourn, the session when it next meets is nevertheless a new legislative day.—On Tuesday, December 21, 1886,[1] after prayer by the Chaplain and the reading of the Journal, the Speaker[2] made this announcement:

The Chair desires to call the attention of the House to an error in the announcement of the vote yesterday afternoon upon the question of adjournment. The vote as passed up to the Chair showed 124 in the affirmative and 121 in the negative. Thereupon the Chair so announced it, and the House adjourned. Upon reexamination of the roll call it appears that the vote was 121 in the affirmative and 127 in the negative, so that by the vote the House really refused to adjourn. The error, the Chair thinks, grew out of the fact that during the roll call there was considerable confusion, and after the call was completed quite a number of gentlemen rose and changed their votes, one after another, in rapid succession, so that the tally clerk failed to get them all recorded accurately. * * * But it is not the legislative day of Monday. * * * The Chair thinks the House did adjourn. The Chair announced the vote; the House acquiesced in the announcement and adjourned. The Chair has simply called attention to the matter this morning in order that the fact might be disclosed exactly as it occurred. * * * It is true that the House voted not to adjourn, as appears upon an inspection of the Record; but the Chair announced that the affirmative vote prevailed, and the House thereupon did in fact adjourn.

6735. When the hour previously fixed for an adjournment arrives, the Speaker declares the House adjourned.—On February 28, 1896,[3] at the close of a Friday evening session, in the midst of the consideration of the bill (H. R. 1185) granting a pension to Rachel Patton, the Speaker pro tempore[4] arose and announced:

The hour of 10.30 o'clock having arrived, under the rule[5] the Chair declares the House adjourned until to-morrow at 12 o'clock noon.

6736. The Committee of the Whole being in session at the hour fixed for the daily meeting of the House, it rests with the Committee and not the Chairman to determine whether or not it will rise.—On June 9, 1836,[6] the House was in Committee of the Whole House on the state of the Union considering the bills (S. No. 177, S. No. 178) for the admission of the States of Michigan and Arkansas.

The session continued all night, and when 10 a.m. of June 10 arrived, Mr. Henry A. Wise, of Virginia, having the floor, Mr. John Chambers, of Kentucky, raised the point of order whether the gentleman could longer proceed, the hour of the meeting of the House having arrived.

The Chairman[7] said there was no difficulty. If a motion was made that the Committee rise, the Chair would put the motion.

Messrs. Wise, and Thomas M. T. McKennan, of Pennsylvania, raised the point that under the rules of the House the, Speaker should take the chair at 10 a. m.[8] and that the Committee could not violate a rule of the House.

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[1] Second session Forty-ninth Congress, Record, p. 314.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Fifty-fourth Congress, Record, p. 2293.

[4] William P. Hepburn, of Iowa, Speaker pro tempore.

[5] Section 2 of Rule XXVI. (See see. 3281 of Vol. IV of this work.)

[6] First session Twenty-fourth Congress, Globe, p. 434.

[7] Jesse Speight, of North Carolina, Chairman.

[8] The House has for many years met at 12 m., but sometimes fixes an earlier hour of meeting when there is a pressure of business, as in the last days of a session.

Mr. McKennan moved that the Committee rise, but this motion was negatived. Mr. Wise continued his remarks, and the Committee at 11 a.m. rose and reported the bills to the House.

6737. On March 24, 1840,[1] the House had under consideration in Committee of the Whole the bill (H. R. 18) to provide for issuing Treasury notes. Dilatory proceedings having been entered upon, the session of the House and Committee continued all night and the next forenoon, the House no sooner getting into Committee of the Whole than business would be prevented by Members declining to vote and thus breaking the quorum.

When the hour of 12 m. arrived, the Committee of the Whole being in session, Mr. Joseph R. Underwood, of Kentucky, made the point of order that, it being now the usual hour for reading the Journal and proceeding to the regular business of the House, under its standing rules, the Committee must rise.

The Chairman[2] said that there was an analogous case in the year 1836, in the case of the admission of the States of Arkansas and Michigan, in which the same point had been raised. In that case the Committee did not rise, and the decision of the Chair would now be governed by that precedent.

This legislative day finally terminated at 5.15 p. m., March 25, having begun at 12 m. March 24.

6738. There must be an adjournment before the legislative day will terminate, and an adjournment does not take place by reason of the arrival of the time for the regular daily meeting of the House.

The legislative day continues until terminated by an adjournment, irrespective of the passage of calendar days.

Instance of prolonged dilatory proceedings in the House.

Form of the resolution by which general debate was closed in Committee of the Whole in former years.

On May 11, 1854[3] (Thursday), the House was considering the following resolution, submitted by Mr. William A. Richardson, of Illinois:

Resolved, That all debate in the Committee of the Whole House on the state of the Union on the bill of the House (No. 236) to organize the Territories of Nebraska, and Kansas shall cease at 12 o'clock m. to-morrow (if the Committee shall not sooner come to a conclusion upon the same); and the Committee shall then proceed to vote on such amendments as may be pending or offered to the same, and shall then report it to the House with such amendments as may have been agreed to by the Committee.[4]

By the alternation of dilatory motions[5] the proceedings on this resolution were greatly prolonged, and after there had been 65 roll calls, the hour of 12 o'clock m. (Friday) having arrived, Mr. Gilbert Dean, of New York, rose and inquired whether, under the first rule,[6] it was not now the duty of the Chair to cause the Journal of the preceding day to be read.

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[1] First session Twenty-sixth Congress, Globe, p. 285.

[2] William C. Dawson, of Georgia, Chairman.

[3] First session Thirty-third Congress, Journal, pp. 804, 811; Globe, p. 1177.

[4] This was the form then used for closing general debate in Committee of the Whole.

[5] See also section 6737 for another instance of dilatory proceedings.

[6] See section 1310 of Vol. II of this work.

The Speaker [1] stated that the rule referred to required the Speaker "to take the chair precisely at the hour to which the House shall have adjourned on the preceding day;" but as there had been no adjournment, he thought there could be no new meeting of the House, and that the legislative day, which commenced yesterday at 12 o'clock m., would not terminate until the adjournment did take place. He consequently decided that the Journal could not now be read.

Mr. Nathaniel P. Banks, of Massachusetts, then made the further point of order that the House had adjourned by force of the order of the 5th of December last, "that 12 o'clock m. be fixed as the hour to which the House shall each day adjourn until otherwise ordered."

The Speaker overruled this point of order also, and decided that the House could not be declared adjourned without an express vote of the House, or by the expiration of the limitation of the session under the Constitution, saying:

The gentleman from Massachusetts, Mr. Banks, raises the question that, by the order of this House, passed on the first day of the present session of Congress, the House stands adjourned to 12 o'clock to-day. The Chair overrules that question of order upon the ground that there can not be a meeting of this body without an adjournment; and upon the further ground that when this House does adjourn, even if it is a week hence, it will meet again as directed by its own order. The legislative day will continue until the House adjourns, and when the House, after such an adjournment, meets at 12 o'clock, or at such other time as the House shall fix, it will be the duty of the Speaker, under the rule which has been referred to by him, to take the chair, call the Members to order, and cause the Journal of the preceding day to be read, and a portion of that Journal must necessarily be a motion and a vote to adjourn; without that it is incomplete.

The Speaker could not take the chair at 12 o'clock to-day for the reason that he was continuing to occupy it, and the House was continuing to progress in its proceedings upon a legislative clay, and must continue to do so until it adjourns. One of the three hundred and sixty-five days of the year has passed over, the Chair admits; but one of the legislative days allowed to this Congrem is now being consumed.

Mr. Banks appealed, but subsequently withdraw the appeal.

6739. On the legislative day of Monday, March 23, 1868 [2] (but the calendar day of Tuesday, March 24), during proceedings relating to the impeachment of Andrew Johnson, President of the United States, the hour of 12 m., the time fixed for the daily meeting of the House, arrived.

Thereupon Mr. Fernando Wood, of New York, as a question of order, insisted that the House should begin the session of Tuesday.

The Speaker [3] overruled the point of order, saying:

The House of Representatives continues its session of Monday till the final adjournment, even if the session runs for several calendar days. In the great parliamentary struggle on the Missouri Compromise the session continued two days and two nights, and the House of Representatives received on Monday a message sent from the Senate on Tuesday.

6740. The hour at which the House adjourns each day is entered on the Journal.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] Second session Fortieth Congress, Globe, p. 2075.

[3] Schuyler Colfax, of Indiana, Speaker.

The rule making the motions to adjourn, to fix the day to which the House shall adjourn, and for a recess in order at any time was dropped to prevent the continued use of those motions for purposes of obstruction.

Present form and history of section 5 of Rule XVI.

Section 5 of Rule XV1 provides:

The hour at which the House adjourns shall be entered on the Journal.

This section is the last clause of a rule which was formerly of great importance, but all of which, except this remnant, was stricken out in the revision of 1890.[1]

When the first rules were adopted on April 7, 1789,[2] this was among them:

A motion to adjourn shall always be in order, and shall be decided without debate.

On March 13, 1822,[3] the rule was amended and became:

A motion to adjourn shall always be in order after 4 o'clock p. m., but before that hour it shall not be in order if there be at the time any question pending before the House; that and the motion to lie on the table shall be decided without debate.

Four years later all that portion forbidding the motion before 4 p. m. was dropped, and the rule as then changed continued until January 14, 1840,[4] when the motion to fix the day to which the House shall adjourn was added.

On October 9, 1837,[5] a rule was adopted providing that the hour at which every motion to adjourn was made should be entered on the Journal.

In the revision of 1880[6] the two rules were united in the following form:

A motion to fix the day to which the House shall adjourn, a motion to adjourn, and to take a recess shall always be in order, and the hour at which the House adjourns shall be entered on the Journal.

The committee changed the provision requiring that the hour of making the motion to adjourn be entered on the Journal, because the House sometimes did not actually adjourn until long after the motion was made.

Between 1880 and 1890 the high privilege given these motions was held to justify their indefinite alternation, thus producing a very effective system of obstruction. It was to do away with that that the change of 1890 was made. The old form was restored in the Fifty-second and Fifty-third Congresses, but dropped again in the Fifty-fourth and succeeding Congresses.

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[1] First session Fifty-first Congress, House Report No. 23.

[2] First session First Congress, Journal, p. 9.

[3] First session Seventeenth Congress, Journal, pp. 350, 352; Annals, Vol. II, p. 1301.

[4] First session Twenty-sixth Congress, Globe, p. 121.

[5] First session Twenty-fifth Congress, Journal, p. 106; Globe, p. 117.

[6] Second session Forty-sixth Congress, Record, pp. 199, 206.