Chapter LIII.

PUNISHMENT OF WITNESSES FOR CONTEMPT.[1]

1666. The case of Nathaniel Rounsavell, a recalcitrant witness, in 1812.

A witness having declined to answer a pertinent question before a select committee, he was arraigned before the House, and, persisting in contumacy, was committed.

In 1812 the opinion of the House seems to have been against permitting counsel to a contumacious witness arraigned at the bar of the House (footnote).

On April 6, 1812,[2] after the closing of the doors and a secret session, the doors were opened and the following preamble and resolution were agreed to:

Whereas on the 3d day of April, 1812, a committee was appointed to inquire whether there has been any, and, if any, what, violation of the secrecy imposed by this House during the present session as to certain of its proceedings, etc.; and it appearing to this House, by a report made by said committee, that, in pursuance of the powers vested in them, they had called before them Nathaniel Rounsavell for the purpose of obtaining his testimony relative to the subject of the inquiry, and that he has refused to answer on oath certain interrogatories pertinent to the subject about which the committee were empowered to inquire: Therefore,

Resolved, That the Sergeant-at-Arms be directed to bring the said Nathaniel Rounsavell immediately to the bar of this House, to answer such interrogatories as may be propounded to him by the Speaker, under the direction of the House.

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[1] Two important cases, that of Hallet Kilbourn in the House (see sections 1608–1611 of Volume II) and Elverton R. Chapman in the Senate (see sections 1612–1614 of Volume II), might also be included in this chapter, but are classified rather with reference to the prerogatives of the House.

[2] First session Twelfth Congress, Journal, pp. 276, 277, 280; Annals, p. 1266.

Then the House resolved that certain questions be put, the first being "From the conversation of what Member did you collect the information of which you spoke in your deposition before the committee, given on the 4th instant?"

Rounsavell then appeared at the bar of the House, in the custody of the Sergeant-at-Arms, and the Speaker administered him an oath of truthfulness.

Then Rounsavell refused to answer, and it was resolved that he be committed to the custody of the Sergeant-at-Arms until further order of the House. An attempt to interdict his communication with anyone except the Sergeant-at-Arms during confinement failed, 62 to 22.

April 7 the Speaker laid before the House a letter from Rounsavell in which the latter declared that he had no intention of treating the House with disrespect or indecorum, or of violating any of its privileges, or of appearing contumacious in the publication of any of its secret proceedings, etc.

Then it was voted that he should be brought to the bar and questioned. This was done and he professed his readiness to reply. But then a resolution was adopted purging him of contempt, and declaring that, by reason of the explanation of a Member, it was not necessary to inquire further. The Speaker then directed the Sergeant-at-Arms to discharge him.[1]

1667. In 1837, for refusing to obey the subpoena of a committee, Reuben M. Whitney was arrested and tried at the bar of the House.

Discussion of the right of the House to punish for contempt, with reference to English precedents.

In the resolution ordering the arrest and arraignment of Whitney the House at the same time gave him permission to have counsel.

The House ordered that Whitney, under arrest for contempt, should be furnished with a copy of the report as to his alleged contempt before arraignment.

On January 17, 1837,[2] the House agreed to this resolution:

Resolved, That so much of the President's message as relates to the "conduct of the various Executive Departments, the ability and integrity with which they have been conducted, the vigilant and faithful discharge of the public business in all of them, and the causes of complaint, from any quarter, at the manner in which they have fulfilled the objects of their creation," be referred to a select committee, to consist of nine members, with power to send for persons and papers, and with instructions to inquire into the condition of the various Executive Departments, the ability and integrity with which they have been conducted, into the manner in which the public business has been discharged in all of them, and into all causes of complaint from any quarter at the manner in which said departments, or their bureaus or offices, or any of their officers or agents of every description whatever, directly or indirectly connected with them in any manner, officially or unofficially, in duties pertaining to the public

[1] The Annals show that Rounsavell was an editor of the Alexandria Herald, who gave the information to be published in the Georgetown paper called the Spirit of Seventy-six. The information concerned proceedings on the embargo, which went on behind closed doors, and which was published before the injunction of secrecy was removed. The debate on the case of Rounsavell occupied two days in the House. There was doubt of the power of the House to compel the witness to answer, one Member saying that parliamentary history furnished them but one precedent, that of Wilkes. On the other hand, it was urged that as the House had the power to inquire it must have the power to make that inquiry effectual. The question of allowing the prisoner counsel came up, but it was replied that he was a witness, not a prisoner.

[2] Second session Twenty-fourth Congress, Journal, p. 232.

interest, have fulfilled or failed to accomplish the objects of their creation, or have violated their duties, or have injured and impaired the public service and interest; and that said committee, in its inquiries, may refer to such periods of time as to them may seem expedient and proper.

The following were appointed as the committee: Messrs. Henry A. Wise,[1] of Virginia; Dutee J. Pearce, of Rhode Island; Henry A. Muhlenberg, of Pennsylvania; Robert B. Campbell, of South Carolina; Edward A. Hannegan, of Indiana; Gorham Parks, of Maine; Levi Lincoln, of Massachusetts; Abijah Mann, jr., of New York, and John Chaney, of Ohio.

On February 9,[2] Mr. Wise made a report, in pursuance of the following proceeding of the select committee, which he handed in at the Clerk's table:

Reuben M. Whitney, who has been summoned as a witness before this committee, having, by letter,[3] informed the committee of his peremptory refusal to attend, it becomes the duty of the committee to make the House acquainted with the fact: Therefore,

Resolved, That the chairman be directed to report the letter of Reuben M. Whitney to the House, that such order may be taken as the dignity and character of the House require.

On the succeeding day this report was discussed and various propositions were made—to arrest Whitney for contempt, to summon him to appear and show cause why an attachment should not issue against him for contempt, and to cause the committee to report to the House certain circumstances occurring in the committee room during an examination of Whitney on a preceding day. The letter of Whitney was apparently read to the House, but does not appear in the Journal. There was a question as to the right of the House to punish for contempt in such a case, and elaborate arguments were made to show that the precedents of the English parliament could not be followed so far by a house of powers limited by a written constitution.

Finally, the House, by a vote of 99 yeas to 86 nays, agreed to the following:

Resolved, That whereas the select committee of this House, acting by authority of the House under a resolution of the 17th of January last, has reported that Reuben M. Whitney has peremptorily refused to give evidence in obedience to a summons duly issued by said committee, and has addressed to the committee the letter reported by said committee to the House: Therefore,

Resolved, That the Speaker of this House issue his warrant, directed to the Sergeant-at-Arms, to take into custody the person of Reuben M. Whitney, that he may be brought to the bar of the House to answer for an alleged contempt of this House; and that he be allowed counsel on that occasion should he desire it.

1668. The case of Reuben M. Whitney, continued.

In the Whitney case the validity of the subpoena, signed only by the chairman of a committee, was challenged, but sustained.

The respondent retired while the House deliberated on the mode of procedure in a case of contempt.

A person on trial at the bar of the House for contempt was given permission to examine witnesses.

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[1] Mr. Wise belonged to the minority party, and was made chairman according to the old usage, because he moved the resolution.

[2] Journal, pp. 367–372; Debates, pp. 1685–1707.

[3] For this letter see House Report No. 194, Second session Twenty-fourth Congress, journal of the committee, p. 83. Mr. Whitney declares that he had been insulted and menaced, and declined to appear until his wrongs should be redressed and his safety assured.

In a trial at the bar of the House both questions to witnesses and their answers were reduced to writing and appear in the Journal.

In a trial at the bar of the House for contempt a committee was appointed to examine witnesses for the House.

Rule adopted in the Whitney case for disposing of objections to questions proposed to witnesses.

When a case is on trial at the bar of the House, Members are examined in their places.

In the Whitney case a proposition to examine the respondent was ruled out of order while witnesses were being examined.

On February 11 [1] the Speaker announced to the House that the Sergeant-at-Arms had made return of the service of the warrant against Reuben M. Whitney, and that the said Whitney was in custody.

This announcement was made during proceedings on another matter, at the conclusion of which Mr. John Calhoon, of Kentucky, offered this resolution, which was agreed to:

Resolved, That Reuben M. Whitney, now in custody of the Sergeant-at-Arms, be brought to the bar of this House to answer for an alleged contempt of the House in peremptorily refusing to appear and give evidence as a witness, on a summons duly issued by a select committee acting by the authority of this House, under a resolution of the 17th of January last, and in the matter of a letter, expressing said refusal, addressed by the said Reuben M. Whitney to the committee, and by the committee referred to the House; and that he be forthwith furnished with a copy of the report of said committee, and of the letter aforesaid.

On the succeeding day the Speaker announced to the House that Reuben M. Whitney was in the custody of the Sergeant-at-Arms, without the bar, awaiting the further order of the House in the premises; and that he had been furnished by the Clerk with the copies of papers, as directed by the order of the 11th instant.

Whereupon, on motion of Mr. John M. Patton, of Virginia, it was

Ordered, That Reuben M. Whitney be brought to the bar of the House.

Reuben M. Whitney was then brought to the bar of the House by the Sergeant-at-Arms, when the Speaker addressed him as follows:

Reuben M. Whitney: You have been brought before this House, by its order, to answer the charge of an alleged contempt of this House, in having peremptorily refused to give evidence in obedience to a summons duly issued by a committee of this House; which committee had, by an order of the House, power to send for persons and papers.

Before you are called upon to answer, in any manner, to the subject-matter of this charge, it is my duty, as the presiding officer of this House, to inform you that, by an order of the House, you will be allowed counsel should you desire it. If you have any request to make in relation to this subject, your request will now be received and considered by the House. If, however, you are now ready to proceed in the investigation of the charge, you will state it; and the House will take order accordingly.

To which the said Reuben M. Whitney answered as follows:

The undersigned answers that his refusal to attend the committee, upon the summons of its chairman, was not intended, or believed by him, to be disrespectful to the honorable the House of Representatives; nor does he now believe that he thereby committed a contempt of the House.

His reasons for refusing to attend the committee are truly stated in his letter to that committee.

[1] Journal, pp. 378–382; Debates, pp. 1735–1754.

He did not consider himself bound to obey a summons issued by the chairman of the committee.

He had attended, in obedience to such a summons, before another committee, voluntarily and without objection to the validity of the process; and would have attended in the same way before the present committee but for the belief that he might thereby be exposed to insult and violence.

He denies, therefore, that he has committed a contempt of the House; because,

First. The process upon him was illegal, and he was not bound to obey it; and,

Secondly. Because he could not attend without exposing himself thereby to outrage and violence.

If the House shall decide in favor of the authority of the process, and that the respondent is bound to obey it, then he respectfully asks, in such case, that, in consideration of the peculiar circumstances in which he is placed, as known to the House, the committee may be instructed to receive testimony upon interrogatories to be answered, on oath, before a magistrate, as has been done in other instances in relation to other witnesses; or that the committee be instructed to prohibit the use or introduction of secret and deadly weapons in the committee room during the examination of the witnesses.

And, in case he shall think it necessary, he prays to be heard by counsel, and to be allowed to offer testimony on the matter herein submitted.

R. M. WHITNEY.

The House was proceeding to consider the method of procedure when Mr. John M. Patton, of Virginia, made the point of order that the respondent ought to retire during the deliberations.

The Speaker [1] said that such had been the uniform course in former cases, and, believing it to be the sense of the House, he would direct the Sergeant-at-Arms to take Reuben M. Whitney from the bar, which was done.

Propositions were then made for the appointment of a committee of privileges to report a mode of procedure, and also that the respondent be discharged. Finally, under the operation of the previous question, the House agreed to the following resolution proposed by Mr. Samuel J. Gholson, of Mississippi:

Resolved, That Reuben M. Whitney be now permitted to examine witnesses before this House in relation to his alleged contempt, and that a committee of five be appointed to examine such witnesses on the part of this House; that the questions put shall be reduced to writing before the same are proposed to the witness, and the answers shall also be reduced to writing. Every question put by a Member, not of the committee, shall be reduced to writing by such Member, and be propounded to the witness by the Speaker, if not objected to; but, if any question shall be objected to, or any testimony offered shall be objected to by any Member, the Member so objecting, and the accused or his counsel, shall be heard thereon; after which the question shall be decided without further debate. If parol evidence is offered, the witness shall be sworn by the Speaker and be examined at the bar, unless they are Members of the House, in which case they may be examined in their places.

The following committee was then appointed: Messrs. Gholson, of Mississippi; Levi Lincoln, of Massachusetts; Francis Thomas, of Maryland; Benjamin Hardin, of Kentucky, and George W. Owens, of Georgia.

Reuben M. Whitney was then again placed at the bar and the resolution adopted by the House was read to him; and, being asked by the Speaker if he was ready to proceed in the trial of the case, he answered:

I am not ready to proceed at this time, and ask to be indulged until Wednesday next to make preparation. I herewith hand in a list of names of sundry persons, and respectfully request that they be summoned to attend as witnesses in the trial of the case.

This list, which appears in the Journal, contains the names of four Members of the House and two citizens.

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

It was then

Ordered, That further proceedings in this trial be postponed until Wednesday next; and that Reuben M. Whitney be furnished with a copy of the resolution adopted by the House this day.

It was also

Ordered, That subpoenas issue for the witnesses named by Reuben M. Whitney, with directions to attend on Wednesday, the 15th of February instant.

On February 15, 1837,[1] the Sergeant-at-Arms was directed to place Reuben M. Whitney at the bar of the House; whereupon Reuben M. Whitney was placed at the bar of the House, accompanied by Walter Jones and Francis S. Key, as his counsel.

The Speaker addressed him as follows:

Reuben M. Whitney: You stand charged before this House with an alleged contempt of the House, in having peremptorily refused to give evidence in obedience to a summons duly issued by a committee of this House, which committee had, by an order of the House, power to send for persons and papers.

You will say whether you are now ready to proceed to trial, in the mode prescribed by the order of the House, of which you have been informed, or whether you have any request to make of the House before you are put upon your trial; if you have, it will now be received and considered by the House.

To which the said Reuben M. Whitney answered as follows: "I am ready to proceed to trial."

A motion was then made by Mr. George N. Briggs, of Massachusetts, in the words following:

Whereas, by the Eleventh rule of this House, all acts, addresses, and joint resolutions shall be signed by the Speaker; and all writs, warrants, and subpoenas, issued by order of the House, shall be under his hand and seal, attested by the Clerk;[2]

And whereas, the subpoena by virtue of which Reuben M. Whitney, now in the custody of the Sergeant-at-Arms of the House, by order of the House, for an alleged contempt, for refusing to appear and give testimony before one of the select committees of the House, was not under the hand and seal of the Speaker, attested by the Clerk, but signed by the chairman of the said select committee; therefore,

Resolved, That the refusal of Reuben M. Whitney to appear before said committee was not a contempt of this House.

Resolved, That said Whitney be forthwith discharged from the custody of this House.

In the course of debate on this resolution Mr. Abijah Mann, jr., of New York, said that this question had been raised in several other cases, notably in the committee sent to Philadelphia to investigate the affairs of the Bank of the United States. In the latter case the committee were called upon to issue the highest process in its power; and the question was then raised and mooted, with a former Speaker or with the present, he was not certain which, whether the process issued by that committee, under the powers given them to send for persons and papers, should be signed by the Speaker of the House and attested by the Clerk. The committee decided, and in that decision, if he was not mistaken, the incumbent of the chair coincided, that the summons the committee were authorized to issue, by the power to send for persons and papers, need only be signed by the chairman of that committee. When

[1] Second session Twenty-fourth Congress, Journal, pp. 407–417; Debates, pp. 1760–1773.

[2] For the forms of this rule at different periods, see sections 251 of Volume I and 1313 of Volume 11 of this work.

the House issued an order or warrant in a particular case, under this rule, the Speaker must issue the summons under his hand and seal, and it must be attested by the Clerk; but when the power was granted to a committee to send for persons and papers in a particular case, a summons signed by the chairman of the committee was sufficient.

The motion of Mr. Briggs was ordered to lie on the table by a vote of 157 yeas to 33 nays.

The House having voted to proceed, those witnesses who were Members of the House were called and sworn. Mr. John Fairfield, of Maine, was first examined. To the first question, addressed by the accused to the witness, Mr. John Calhoon, of Kentucky, objected, and was heard in support of his objection. The counsel of the accused was also heard in support of the interrogatory.

The Speaker was about to put the question, "Shall the interrogatory be propounded to the witness?" when Mr. John Bell, of Tennessee, asked the sense of the House to be taken whether, under the order of the House, the Member objecting to a question has not the right to reply to the counsel of the accused.

And the question being put to the House, "Shall a Member who objects to a question have the right to reply to the counsel of the accused?"

And it passed in the negative—yeas 94, nays 103.

Then the question was put, "Shall the interrogatory be put to the witness?" and it passed in the affirmative—yeas 131, nays 52.

While the witness was framing his answer Mr. John Chambers, of Kentucky, offered the following resolution:

Resolved, That the further examination of witnesses in the case of Reuben M. Whitney be suspended until he be examined on oath, touching the contempt of this House alleged against him; and that the committee appointed to examine witnesses in his case proceed to examine him accordingly.

The Speaker decided that, at this stage of the proceeding, the resolution was not in order.

Mr. Chambers having appealed, the appeal was laid on the table—yeas 104, nays, 66.

Mr. Fairfield then answered, and was questioned by the committee and by various Members.

Then, on motion of Mr. Thomas, it was

Ordered, That further proceedings in the case of R. M. Whitney be postponed until 12 o'clock to-morrow; and that the Clerk of the House furnish to the three other witnesses, Members of this House, who are sworn, copies of all the questions that have been propounded to the witness just examined, that they may be prepared to answer them in writing to-morrow.

The examination of witnesses was continued until February 20,[1] the record of questions and answers appearing in the Journal. From the examination it appeared that there had been personal difficulty between the respondent and Messrs. Peyton and Wise of the investigating committee, and that there had occurred in the committee room a difference which had seemed likely at one time to result in the use of weapons. The idea that the witness had been deterred by fear from

[1] Journal, p. 489; Debates, p. 1879.

responding to the subpoena of the committee was broached. Finally Mr. Amos Lane, of Indiana, offered this resolution:

Resolved, That it is inexpedient to prosecute further the inquiry into the alleged contempt of R. M. Whitney against the authority of this House; and that the said Whitney be now discharged from custody.

This resolution was agreed to, yeas 99, nays 72.

And the said Reuben M. Whitney was discharged accordingly.

1669. James W. Simonton, a witness before a House committee, was arrested and arraigned at the bar for declining to answer a material question.

In the absence of the Sergeant-at-Arms his deputy, by special resolution of the House, was empowered to serve a warrant.

Form of arraignment of a recalcitrant witness at the bar of the House.

A witness arraigned at the bar of the House for contempt was permitted to answer orally.

A recalcitrant witness, having remained obdurate when arraigned at the bar, was committed to custody.

Form of resolution authorizing investigation of published statements that Members had entered into corrupt combinations in relation to legislation.

Instance wherein a newspaper correspondent was expelled from the House for an offense connected with pending legislation.

On January 9, 1857,[1] the House agreed to the following:

Whereas certain statements have been published charging that Members of this House have entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures now pending before Congress; and whereas a Member of this House has stated that the article referred to "is not wanting in truth:" Therefore,

Resolved, That a committee, consisting of five Members, be appointed by the Speaker, with power to send for persons and papers, to investigate said charges; and that said committee report the evidence taken, and what action, in their judgment, is necessary on the part of the House, without any unnecessary delay.

On January 21,[2] Mr. James L. Orr, of South Carolina, from this committee, made the following report:

That during the progress of their investigation they have summoned as a witness J. W. Simonton, the correspondent of the New York Times; that among others, the following question was propounded to him: "You state that certain Members have approached you, and have desired to know if they could not, through you, procure money for their votes on certain bills; will you state who these Members were?"

And the said Simonton made thereto the following response: "I can not, without a violation of confidence, than which I would rather suffer anything."

In response to other questions of similar import, he said: "Two have made them direct; others have indicated to me a desire to talk with me upon these subjects, and I have warded it off, not giving them an opportunity to make an explicit proposition."

To the question, "What do I understand you to mean when you say these communications were made direct?"

Simonton replied. "I mean that, after having obtained my promise of secrecy in regard to them, they have said to me that certain measures pending before Congress ought to pay; that parties interested

[1] Third session Thirty-fourth Congress. Journal, p. 201; Globe, pp. 274–277.

[2] Journal, pp. 269–271; Globe, p. 403.

in them had the means to pay; that they individually needed money, and desired me specifically to arrange the matter in such way that if the measures passed they should receive pecuniary compensation."

The committee were impressed with the materiality of the testimony withheld by the witness, as it embraced the letter and spirit of the inquiry directed by the House to be made, but were anxious to avoid any controversy with the witness. They consequently waived the interrogatory that day to give the witness time for reflection on the consequences of his refusal, and to give him an opportunity to look into the law and practice of the House in such cases, notifying him that he would, on some subsequent day, be recalled. This was the 15th of January instant. On Tuesday, the 20th instant, the said J. W. Simonton was recalled, and the identical question first referred to was again propounded, after due notice to him that if he declined the committee would feel constrained to report his declination to the House and ask that body to enforce all its powers in the premises to compel a full and complete response. To that interrogatory he made the following reply, and we give it in full, that no injustice may be done to Simonton in this report. He said:

"Before stating the determination to which I have come on this subject I desire to say that I do not here dispute the power of the committee and I have not heretofore declined to answer the question upon any such ground. I have all respect for the committee and the House. I do not decline in order to screen the Members; my declination was based upon my convictions of duty. Since I was last before the committee, in deference to their judgment and wishes I have examined the case of Anderson *v.* Dunn, to which they referred me, and have considered very fully what I ought to do, in view of that decision as well as in view of other considerations. The result of my deliberations upon the subject has been to confirm me in the opinion that, whatever penalty I may suffer, I can not answer that question. I beg the committee to understand that I have no other motive whatever in declining but the simple one that I have stated before—that I do not see how I can answer it without a dishonorable breach of confidence. The answer to the question can by no possibility be supposed to reflect discredit upon myself, and I presume that my statement of that motive is corroborated by the facts as they appear before the committee. I must insist upon declining to answer that question."

The House will preceive that the foregoing statement shows the materiality of the testimony, and the duty of the committee to insist upon its disclosure. It shows the settled and deliberate purpose of the witness to withhold such testimony rightfully and properly demanded, and the absolute necessity for the House to interpose, with promptitude and firmness, its authority, if it intended to expose and punish corruption which may exist among its Members by ordering the investigation your committee have been pursuing, etc.

The committee consider it unnecessary to enter into an elaborate argument to establish the power of the House in this case. The summons issued under the hand of the Speaker, and was tested by the Clerk of the House; and the contumacy of the witness is a contempt of that authority. If there is doubt whether this authorizes the arrest of the party in contempt, and his confinement until the contempt is purged, besides the right to inflict other punishment afterwards, it seems to your committee that none will question the authority of the House when they recur to the statute book. By an act passed May 3, 1798 (1 U. S. Statutes, 554), authority is given to the President of the Senate, the Speaker of the House of Representatives, a Chairman of the Committee of the Whole, or a chairman of a select committee of either House, to administer oaths to witnesses in any case under their examination, and willful, absolute, and false swearing before either is declared perjury and is punishable as such. Here is express authority to swear witnesses; and false swearing is punishable as perjury. Is it, then, no contempt of the authority of this House (and the committee are acting as and for the House in this investigation) for a witness to refuse to testify to material facts within his knowledge?

The committee concur unanimously in the opinion that the House is clothed with ample power to order the party into custody, there to remain until released by the same authority or upon the expiration of the present Congress. The committee recommend the adoption of the following resolution:

"*Resolved,* That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him (the said Sergeant-at-Arms) to take into custody the body of the said James W. Simonton, wherever to be found, and the same forthwith to have before the said House," at the bar thereof, to answer as for a contempt of the authority of this House—accompanied by a bill (H. R. 757) more effectually to enforce the attendance of witnesses on the summons of either House of Congress and to compel them to discover testimony.[1]

[1] This bill became the act of January 24, 1857 (Stat. L., Vol. II p. 155).

The resolution ordering the arrest of Simonton was agreed to, yeas 164, nays 16.

A warrant pursuant to the said resolution was accordingly prepared, signed by the Speaker, under the seal of the House, attested by the clerk, and delivered to William G. Flood, clerk of the Sergeant-at-Arms, the latter being absent.

Subsequently, on motion of Mr. Orr, the House agreed to the following:

Resolved, That in the absence of A. J. Glosbrenner, Sergeant-at-Arms, on the business of the House, it is ordered that William G. Flood, clerk of the Sergeant-at-Arms, be authorized and directed to execute the orders of the House, directed to the Sergeant-at-Arms, during the absence of the said Sergeant-at-Arms.

Soon after William G. Flood appeared at the bar of the House and reported that he had executed the warrant of the Speaker, and that he had the body of J. W. Simonton at the bar of the House.

Thereupon a question arose as to the proper mode of procedure. Mr. Henry Winter Davis, of Maryland, proposed this resolution:

Resolved, That the Speaker do read to the person in custody the proceedings of the House touching the alleged contempt of the prisoner, and do call on him to show cause why he should not be committed for his refusal to answer the questions propounded to him by the select committee, and that he have leave to be heard now, or to-morrow at 1 o'clock, and that he have the aid of counsel if he desires it, and that in the mean time he remain in the custody of the Sergeant-at-Arms.

This resolution was criticised on the ground that it opened again the question of the witness's contempt, which was ascertained and was the justification of the arrest. Finally the House agreed to the following substitute resolution, presented by Mr. Robert P. Trippe, of Georgia, and, modified in accordance with suggestions from Mr. Orr:

Resolved, That the Speaker do forthwith inform J. W. Simonton of the charge upon which he has been arrested, and propound to him the question: Are you ready to show cause why you should not be further proceeded against for the said alleged contempt, and do you desire to be heard in person or by counsel, now or at what time?

The said J. W. Simonton was thereupon arraigned, when the Speaker addressed him as follows:

James W. Simonton: You have been arrested by the order of the House, and now stand at its bar charged with an alleged contempt of its authority in refusing to answer questions propounded to you by the select committee appointed to make investigations in relation to certain charges made against the honor and character of the House. The report of the committee, upon which the arrest has been made, will be read to you.

The said report having been read, the Speaker resumed:

The resolution which has been read to you has been adopted by the House, and in virtue thereof you have been arrested and now stand at the bar chax-ged with the offense named. In obedience to the instructions of the House, I now put to you the following interrogatories: "Are you ready to show cause why you should not be further proceeded against for the said alleged contempt, and do you desire to be heard in person or by counsel, now or at what time?"

In response to the address of the Speaker, the witness at the bar signified his desire to answer orally. The Speaker thereupon propounded the question: Shall he have leave to answer orally?

Thereupon a discussion arose, Mr. Hunphrey Marshall, of Kentucky, insisting that the witness should purge himself of contempt in writing and under oath; but the House decided the question in the affirmative.

Mr. Simonton thereupon addressed the House at some length, concluding with the request that he might be heard further hereafter by counsel.

The House then considered the disposition of the respondent, several propositions being made—to confine him in the common jail, to expel him from his reporters' seat on the floor, etc.; but finally the following was agreed to, yeas 136, nays 23:

J. W. Simonton having appeared at the bar of the House, according to its order, and the cause assigned for the said contempt being insufficient: Therefore,

Resolved, That the said J. W. Simonton be continued in close custody by the Sergeant-at-Arms, or, in his absence, by Mr. William G. Flood, during the balance of this session, or until discharged by the further order of the House, to be taken when he shall have purged the contempt upon which he was arrested, by testifying before said committee.

On February 2[1] Mr. Kelsey, claiming the floor on a question of privilege, offered this resolution, which was agreed to without debate:

Resolved, That the Sergeant-at-Arms of this House be, and he is hereby, instructed to bring James W. Simonton, now in his custody by order of the House, before the select committee appointed on the 9th ultimo, to answer, on the summons of the Speaker, such questions as may be propounded to him touching the subject-matter of said investigation by said committee.

On February 9[2] Mr. Kelsey, from the select committee, reported that J. W. Simonton had again been summoned before the committee, and his answers to the questions propounded to him were such as to render unnecessary any further examination. Under these circumstances they did not desire that he be detained longer in custody, and therefore recommended the adoption of the following:

Resolved, That James W. Simonton, now in custody of the Sergeant-at-Arms of this House, be discharged.

This resolution was agreed to.

On February 28, on report of the committee, Simonton was expelled from his seat as a reporter on the floor.

1670. In 1857 the House arrested and arraigned at its bar Joseph L. Chester, a contumacious witness.

A contumacious witness arraigned at the bar of the House was required to answer in writing and under oath.

A contumacious witness having given a respectful and sufficient answer at the bar of the House was ordered to be discharged.

On January 16, 1857,[3] Mr. William H. Kelsey, of New York, as a question of privilege, from the Select Committee on Certain Alleged Corrupt Combinations,[4] reported the following preamble and resolution:

Whereas Joseph L. Chester has been duly summoned to appear and testify before a committee of this House, appointed, in pursuance of a resolution passed on the 9th instant, to investigate certain charges of corrupt combinations of Members of this House for the purpose of passing and of preventing the passage of certain measures during the present Congress; and whereas the said Joseph L. Chester has neglected to appear before said committee pursuant to said summons; therefore,

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[1] Journal, p. 338; Globe, p. 538.

[2] Journal, p. 384; Globe, p. 630.

[3] Third session Thirty-fourth Congress, Journal, p. 241; Globe, p. 356.

[4] See preceding section for authorization of this committee.

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him, the said Sergeant-at-Arms, to take into custody the body of the said Joseph L, Chester, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, to answer as for a contempt of the authority of this House.

It being objected that the House had no power to arrest the man, it was replied by Mr. James L. Orr, of South Carolina, that the language of the resolution was exactly that used for the arrest of the man who offered a bribe to Mr. Lewis Williams in 1818,[2] a case in which the Supreme Court had sustained the right of the House.

The resolution was then agreed to and a warrant was issued accordingly.

On January 24[2] the Sergeant-at-Arms appeared at the bar of the House and reported that, in pursuance of the warrant of the Speaker of the 16th instant, he had arrested Joseph L. Chester, and had him then at the bar of the House.

Mr. Kelsey submitted the following resolution, which was agreed to under the operation of the previous question:

Resolved, That the Speaker propound to Joseph L. Chester the following questions, viz:

What excuse have you for not appearing before the select committee of this House pursuant to the summons served on you on the 14th instant?

Are you ready to appear before said committee and answer to such proper questions as shall be put to you by said committee?

Mr. John Letcher, of Virginia, moved that the respondent be required to answer in writing and under oath. After debate as to the practice in analogous cases in the States, the motion was agreed to. The said Chester was conducted from the bar by the Sergeant-at-Arms.

On January 26 the Sergeant-at-Arms appeared at the bar and announced that Joseph L. Chester, heretofore arrested under the warrant of the Speaker, was now ready to answer the questions which the House had directed should be propounded to him.

The said Chester was arraigned thereupon and the following questions put to him by the Speaker:

(Here follow the two questions as above.)

Thereupon the said Chester handed to the Clerk, as his answer to the said interrogatories, a paper which was read, and appears in the journal of the House. This answer appears with the fact that it was sworn to and subscribed, duly certified by a justice of the peace. It is as follows:

To the Honorable Speaker of the House of Representatives of the United States:

To the first interrogatory propounded to me under the resolution of the House of the 24th instant, I respectfully answer that in departing from this city the day after having been subpoenaed to appear before the committee, I neither entertained nor intended any disrespect whatever to the committee or to the House; but having made arrangements before the service of the subpoena to leave for my home in Philadelphia on private business of emergency, after having been absent for a period of six weeks, I could not, without great detriment to my own affairs postpone my visit. I had every reason to believe that the committee would yet be in session some days, and, not having read the subpoena carefully, nor observed the clause requiring me not to depart without leave; and presuming that my appearance before the committee on Monday morning at farthest would be in sufficient time for their purpose, I left, announcing to Russell Frisbie, jr., with whom I board, my intention to return the next night,

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[1] See section 1607 of volume II of this work.

[2] Third session Thirty-fourth Congress, Journal, pp. 291, 292, 302, 303; Globe, pp. 458, 475, 476.

if possible, so as to be before the committee even on Saturday. Indeed, I did not imagine, under the exigencies of my own private affairs, that it was absolutely necessary that I should appear before the committee on the exact day; and, had not the recent storm intervened, I should have been of my own accord before the committee on Wednesday last, without the services of the Sergeant-at-Arms. That officer I am sure will bear me witness that I evinced no disposition, either by habeas corpus or otherwise, to evade the arrest or a return to Washington. So occupied was I with my business at home that I did not even read or hear of the proceedings of the House in my case until late on Saturday, the 17th, when I went quietly to my home and there remained with my family awaiting the arrival of your officer. From all which I trust that your honorable body will attribute to me no disrespect nor disposition to avoid its mandate.

To the second interrogatory, I answer that I am entirely ready and willing so to appear and answer.

JOSEPH L. CHESTER.

And then it was

Ordered, That inasmuch as the answers of Joseph L. Chester are respectful and sufficient he be discharged from custody.

1671. In 1858 the House imprisoned John W. Wolcott for contempt in refusing as a witness to answer a question which he contended was inquisitorial, but which the House held to be pertinent.

A committee, in reporting the contumacy of a witness, included a transcript of the testimony, so as to show in what the contempt consisted.

A witness contumacious before a committee is not given a second opportunity in the committee before the House orders his arrest for contempt.

Form of warrant and return in case of arrest of a witness for contumacy.

Form of arraignment adopted in the Wolcott case.

In the Wolcott case the respondent, when arraigned, presented two answers, each in writing, sworn and subscribed, one of which appears in the Journal, while the other does not.

In the Wolcott case the House provided that the resolution ordering him to be taken into custody should be a sufficient warrant.

On January 15, 1858,[1] the House had agreed to the following resolution:

Resolved, That a committee of five Members be appointed to investigate the charges preferred against the Members and officers of the last Congress growing out of the disbursements of any sum of money by Lawrence, Stone & Co., of Boston, or other persons, and report the facts and evidence to the House, with such recommendations as they may deem proper, with authority to send for persons and papers.

The committee was, on January 18, constituted as follows: Messrs. Benjamin Stanton, of Ohio; Sydenham Moore, of Alabama; John C. Kunkel, of Pennsylvania; Augustus R. Wright, of Georgia, and William F. Russell, of New York.

On February 11[2] they made a report of the contumacy of John W. Wolcott, of Boston, Mass., bringing to the attention of the House the following testimony:

Q. Had you any funds placed in your hands, belonging to any of the manufacturers in Massachusetts, for the purpose of influencing Members of Congress upon the passage of the tariff act?—A. I had not.

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[1] First session Thirty-fifth Congress, Journal, pp. 178, 185.

[2] Journal, p. 371; Globe, pp. 684–692.

Q. Were you ever authorized by any of them to make any promises of future benefits, in the event of the passage of that act?—A. I was not.

Q. Did you, after the close of the last session of Congress, receive from the manufacturers, either in Boston or elsewhere, any funds, money, negotiable securities, or anything of that sort, to be used in that way?—A. No, sir.

Q. Did you, at any time during the months of March or April, 1857, receive from Mr. Stone any negotiable securities, or money, or credits of any kind?—A. Never. Never for any such purpose as that, either directly or indirectly.

Q. Did you receive at any time in the early part of March a considerable sum of securities for any purpose?—A. Never for any purpose connected with the tariff, either to be paid to Members of Congress, for the purpose of influencing their action, or to be paid to their agents.

Q. Nor for their benefit?—A. Nor for their benefit, either directly or indirectly.

Q. Nor in satisfaction of previous arrangements or promises?—A. Nor in satisfaction of previous arrangements or promises.

Q. Did you receive any securities at any time during the month of March last to the amount of $30,000 at one time?—A. Not for any purpose of that sort.

Q. Did you ever for any purpose?—A. Well, that would be a matter of strictly private business; I did not for the purpose of influencing Members of Congress or their agents.

The committee report that thereupon the witness asked and was granted time to consult counsel in regard to his obligation to answer the last question. On March 11 he again appeared and peremptorily refused to answer, as follows:

Q. Did you receive from the firm of Lawrence, Stone & Co. some time in March last a sum of securities or money of the amount of $30,000, more or less?—A. I did not, in March last nor at any other time, receive from Lawrence, Stone & Co. any money or securities of any amount for the purpose of influencing, or to be used in influencing, directly or indirectly, the action or vote of any Member or officer of the present or last Congress upon the tariff or any other act or measure considered by Congress, or before it, or contemplated to be before it; nor did I ever pay or promise to pay, directly or indirectly, any money or pecuniary consideration to any officer or Member of any Congress for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law; nor did I ever give any money or securities to any person for the purpose of being paid to any officer or Member of Congress for his vote or influence, directly or indirectly, upon any act under the consideration of Congress; nor have I any knowledge that any such act or thing was done by any other person.

I am advised by my counsel, Messrs. Reverdy Johnson and James M. Keith, whose opinion I have obtained since the present question was propounded to me, that the above answer is a full answer to everything which such a question may involve, falling under the jurisdiction of the House of Representatives, touching the inquiry which the committee axe constituted, and could only be constituted, to investigate. And, acting under the same legal advice, I most respectfully submit that the question in its present form is not of itself "pertinent" to the only inquiry which the House, in this instance, has a legal right to institute.

If, acting under such a power, a committee of the House can compel a witness to answer such a question as this except by saying that he did not use at all, directly or indirectly, any money, coming from any quarter, to influence, directly or indirectly, the action or vote of any Member of Congress, and that he has never paid any money to any one for such a purpose, and has no knowledge that any money was used for that purpose, or any other illegal purpose, regarding Congress or any of its officers, I respectfully submit that it gives to the committee or the House the right to inquire into my private business and social relations, which, except so far as they may tend to prove the alleged improper influencing of Members of Congress in some official duty, is as much beyond the jurisdiction of the House, and, of course, of the committee, as it would be beyond their power to investigate the private business and social relations of any other citizen, without such a charge or implication of corruption, or attempt to corrupt Congress or any of its Members, having been made.

The committee in the report then go on to say that as they have evidence that the firm of Lawrence, Stone & Co. paid to Wolcott, early in March, 1857, the sum of $58,000 in two payments, one of $33,000 and the other of $25,000, which

constituted a part of a charge of $87,000, which appeared on the books of the firm to have been expended in procuring the passage of the tariff of 1857, they believe it to be very material and important to the elucidation of the matter referred to them to know from Mr. Wolcott whether he admits the receipt of any such sum; and if so, how it was expended.

The committee thereupon recommend the adoption of this resolution:

Resolved, That the Speaker be, and he is hereby, authorized and required to issue his warrant to the Sergeant-at-Arms of this House, commanding him to arrest the said John W. Wolcott wheresoever he may be found, and have his body at the bar of the House forthwith to answer as for contempt in refusing to answer a proper and competent question propounded to him by a select committee of the House, in pursuance of the authority conferred by the House upon said committee.

This resolution was debated at length in respect to the sufficiency of the witness's answers; and also the House considered whether the fact of the contumacy should not be certified to the district attorney in accordance with the provisions of the statute recently enacted; also whether the witness was actually in contempt until the House had passed upon the questions propounded by the committee and given the witness a second opportunity to answer.

An amendment proposed by Mr. Daniel E. Sickles, of New York, proposed that the witness be again subpoenaed before the committee and that the interrogatory be again propounded to him, and then, if the answer should not be given freely and fully, the Speaker should issue his warrant for the arrest of the witness and that he should be brought before the bar of the House to show cause why he should not be punished for contempt. This amendment was disagreed to.

The original resolution as reported from the committee was agreed to, after a consideration of the answers of the witness and the powers of the House.

On February 12,[1] the Sergeant-at-Arms appeared at the bar of the House and reported that, in obedience to the warrant of the Speaker of the 11th instant, he had arrested John W. Wolcott, and now produced the said Wolcott in person to answer the same. This return seems to have been made in writing and to have been reported to the House by the Speaker:

In obedience to the written warrant, I arrested the within-named John W. Wolcott at his lodgings in this city (at Willard's Hotel) this 11th day of February, 1858.

And now, February 12, 1858, I produce the within-named John W. Wolcott in person at the bar of the House of Representatives to answer as within ordered.

A. J. GLOSSBRENNEN,
Sergeant-at-Arms, Howe of Representatives, United States.

The warrant of the Speaker was as follows:

To A. J. Glossbrenner, Sergeant-at-Arms of the House of Representatives:

You are hereby commanded to arrest John W. Wolcott, wheresoever he may be found, and have his body at the bar of the House forthwith to answer as for a contempt in refusing to answer a proper and competent question propounded to him by a select committee of the House of Representatives, in pursuance of the authority cord erred by the House upon said committee.

Witness my hand and the seal of the House of Representatives of the United States at the city of Washington this 11th day of February, 1858.

[L. S.]

JAMES L. ORR, *Speaker.*

Attest:

J. C. ALLEN, *Clerk.*

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[1] Journal, pp. 373, 374; Globe, p. 690.

Mr. Stanton submitted, as in accordance with the established practice of the House, the following resolution:

Resolved, That John W. Wolcott be now arraigned at the bar of the House and that the Speaker propound to him the following interrogatories:

"What excuse have you for refusing to answer the question propounded to you by the select committee of this House, before whom you were summoned to appear, as to whether you had received any sum of money from Lawrence, Stone & Co. some time in March, 1857?

"Are you now ready to answer that and all other questions that may be propounded to you by that committee?"

And that the said John W. Wolcott be required to answer the same in writing and under oath.

This resolution was agreed to without division, and thereupon the said Wolcott was arraigned and the interrogatories directed by the foregoing resolution were propounded to him by the Speaker.

The said Wolcott then submitted a paper in writing, subscribed and sworn to before the Speaker. This paper, which appears in full in the Journal, disclaims all intention of contempt of the House and asks until Monday, with the assistance of counsel, to purge himself of the alleged contempt.

After some debate, the following was agreed to:

Resolved, That J. W. Wolcott have until Monday next, at 1 o'clock p. m., to file his answers to the interrogatories propounded to him, and that in the meantime he remain in the custody of the Sergeant-at-Arms, with the privilege of seeing counsel.

On February 15,[1] the Sergeant-at-Arms appeared at the bar of the House with J. W. Wolcott, who submitted a paper in writing, under oath, in answer to the interrogatories heretofore propounded to him. This paper does not appear in the Journal of the House. It is a lengthy argument to show that the committee had no right to ask any question except such as related to the subject committed to them by the House by the resolution authorizing the committee. But the last question was not within the power of the House to authorize. It was not a pertinent question to the inquiry and it invaded the private affairs of a citizen. The decision of the Supreme Court in the case of Anderson *v.* Dunn was reviewed briefly, as well as the act of January 24, 1857, and the conclusion is reached that the committee had no authority to ask any but questions pertinent to the inquiry. And the refusal to answer an inquiry which was made without authority or was impertinent was not contempt. The respondent called attention to the fact that he had answered fully all the antecedent questions relating to the use of money to influence improperly the House. But the last inquiry, in his view, concerned his private business, which, he claimed, the House had no power to inquire into.

1672. The case of John W. Wolcott, continued.

A resolution relating to the discharge of a person in custody for contempt, is a matter of privilege.

Although the House imprisoned Wolcott for contempt, the Speaker also certified the case to the district attorney, in pursuance of law.

The Journal did not record the Speaker's act in certifying the Wolcott case to the district attorney.

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[1] Journal, p. 386; Globe, p. 711.

A witness imprisoned by the House for contempt was indicted under the law, whereupon the House ordered his delivery to the officers of the court.

The answer of the witness having been read, Mr. Stanton offered the following:

Whereas John W. Wolcott has failed satisfactorily to answer the questions propounded to him by order of this House and has not purged himself of the contempt with which he stands charged: Therefore be it

Resolved, That the said John W. Wolcott be committed by the Sergeant-at-Arms to the common jail of the District of Columbia, to be kept in close custody until he shall signify his willingness to answer the questions propounded to him by the select committee of this House, and all other legal and proper questions that may be propounded to him by said committee; and for the commitment and detention of the said John W. Wolcott this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having the said John W. Wolcott in custody shall be informed by said Wolcott that he is ready and willing to answer the questions heretofore propounded, and all proper and legal questions that may hereafter be propounded to him by said committee, it shall be the duty of such officer to deliver the said John W. Wolcott over to the Sergeant-at-arms of this House, whose duty it shall be to take the said Wolcott immediately before the committee before whom he was summoned to appear for examination and to hold him in custody, subject to the further order of the House.

After debate, and after the House had refused, yeas 34, nays 158, to lay the resolutions on the table, they were agreed to, yeas 133, nays 55.

On March 22,[1] Mr. Alexander H. Stephens, of Georgia, offered the following resolution, with a preamble, as a question of privilege:

Whereas on the 15th day of February last, this House, by its resolution, did commit John W. Wolcott to the common jail of the District of Columbia for an infringement of the privileges of the House in refusing satisfactorily to answer certain questions put to him by order of the House, and is still held in custody under said order; and whereas afterwards, in pursuance with the provisions of law, the Speaker of the House did certify to the district attorney of the District of Columbia the facts pertaining to said case,[2] and the same were laid before the grand jury of said District, and a presentment was thereupon found against said Wolcott for the same offense; and whereas the court in which said presentment is pending have determined that said Wolcott can not be tried on said presentment so long as this House hold him in custody under its rights of privilege: Therefore,

Resolved, That the Sergeant-at-Arms is hereby authorized and directed to cause said Wolcott to be released from jail and to deliver him over to the marshal of said District of Columbia, or other person authorized to receive him, to answer to the presentment pending in said court.

Mr. John Letcher, of Virginia, made the point of order that this resolution might not be presented as a question of privilege.

The Speaker[3] said:

The witness is under execution of the sentence of the House. The order of the House has not been executed. It is being executed. The witness is in prison because of his breach of the privilege of the House, inasmuch as he was adjudged to be guilty of a contempt of the House in refusing to answer a proper and pertinent question propounded to him by one of the committees of the House. The matter came before the House as a question of privilege. He was imprisoned by virtue of the order of the House arising out of that question of privilege; and the Chair is of opinion that the resolution presented, under the circumstances, involves a question of privilege.

Debate arose as to whether it would be advisable to release the prisoner unconditionally or merely to suspend the execution of the order of the House for the con-

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[1] Journal, p. 535; Globe, p. 1239.

[2] The Journal does not appear to have any reference to this certification.

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

venience of the court, but the latter proposition was disagreed to. Also the House, by a vote of 22 yeas to 161 nays, disagreed to a proposition to discharge the prisoner unconditionally.

The resolution of Mr. Stephens was then agreed to, yeas, 125; nays, 67. The preamble was also agreed to.[1]

1673. In 1858 the House arrested and arraigned J. D. Williamson for contempt in declining to respond to a subpoena.

Form of subpoena and return used in the case of Williamson.

The Sergeant-at-Arms indorses on a subpoena his authorization of his deputy to act in his stead.

The Sergeant-at-Arms, having arrested Williamson by order of the House, made his return verbally.

Form of arraignment adopted in the case of Williamson.

A witness arraigned for contempt, having in his answer questioned the power of the House, was permitted to file an amended answer, which was printed in full in the Journal.

On February 1, 1858,[2] Mr. Benjamin Stanton, of Ohio, from the select committee appointed to investigate certain alleged corruption in connection with recent tariff legislation, reported the following preamble and resolution:

Whereas J. D. Williamson, of the city of New York, was, on the 27th day of January, A. D., 1858, duly summoned to appear and testify before a committee of this House, appointed to investigate certain charges growing out of the alleged expenditure of money by Lawrence, Stone & Co., of Boston, in the State of Massachusetts, to influence the passage of the tariff of 1857, and has failed and refused to appear before said committee pursuant to said summons: Therefore

Resolved, That the Speaker issue his warrant directed to the Sergeant-at-Arms, commanding him to take into his custody the body of the said J. D. Williamson wherever to be found, and to have the same forthwith before the bar of this House to answer as for a contempt of the authority of this House.

Mr. Stanton also reported for the information of the House the subpoena and the returns thereon, and the answer of Mr. Williamson to the officer of the House. The subpoena was as follows:

By the authority of the House of Representatives of the Congress of the United States of America.

To A. J. Glossbrenner, Sergeant-at-Arms:

You are hereby commanded to summon Captain J. D. Williamson (of the firm of Williamson, O'Reilly & Co., Trinity buildings, New York,) to be and appear before the select committee of the House of Representatives of the United States, appointed to investigate the charges preferred against Members and officers of the last Congress growing out of the disbursement of any sum of money by Lawrence, Stone & Co,, of Boston, or other persons, to bring with him any papers in his possession connected with or referring to the expenditure of money to procure the passage of the law modifying the tariff, forthwith in their chamber at their Capitol in the city of Washington, then there to testify touching the matter of inquiry committed to said committee; and he is not to depart without the leave of said committee.

JAMES L. ORR, Speaker.

Attest:

J. C. ALLEN, *Clerk.*

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[1] Wolcott was admitted to bail in the court, and on March 17, 1859, a nolle prosequi was entered by the United States District Attorney on the payment of $1,000 and costs by the surety of Wolcott.—Senate Miscellaneous Document No. 278, second session Fifty-third Congress, p. 275.

[2] First session Thirty-fifth Congress, Journal, pp. 258, 285, 296, 305: Globe, pp. 505, 553, 581, 595.

Indorsed as follows:

WASHINGTON, *January 26, 1858.*

I hereby depute J. W. Jones for me and in my stead to execute the within order of the Speaker.

A. J. GLOSSBRENNER,

Sergeant-at-Arms, House of Representatives, United States.

I hereby certify that I served a copy of the within summons upon J. D. Williamson, at the city of New York, on the 27th day of January, 1858, by delivering said copy to him personally, and I know the person served to be the person named in said summons.

J. W. JONES.

The following letter was also read:

MY DEAR SIR: I most respectfully decline attending before the committee of the House of Representatives at Washington, in relation to the affairs of Lawrence, Stone & Co., according to a copy of a summons I received from you in our office on the 27th instant, for reasons which my attorney advises me are sufficient to prevent me from leaving the city of New York.

J. D. WILLIAMSON.

A. J. GLOSSBRENNER, *Sergeant-at-Arms, etc.*

These documents having been read, the House agreed to the preamble and resolution without debate.

On February 3, 1858, the Sergeant-at-Arms appeared at the bar of the House, and announced that he had executed the warrant of the Speaker, issued on the 1st instant, for the arrest of J. D. Williamson, and that, in pursuance thereof, he had the body of said Williamson now at the bar of the House.

Mr. John Letcher, of Virginia, having asked if the return of the Sergeant-at-Arms was in writing, the Speaker[1] said that the announcement that the witness was in custody was made verbally by the officer, in accordance with the order of the House.

Mr. Stanton thereupon stated that the members of the committee had approved a course similar to that pursued in the case of Chester in the preceding Congress, and offered the following:

Resolved, That J. D. Williamson, esq., of the city of New York, now in custody of the Sergeant-at-Arms on an attachment for contempt in refusing obedience to the summons requiring him to appear and testify before a committee of this House, be now arraigned at the bar of the House, and that the Speaker propound to him the following interrogatories:

"1. What excuse have you for not appearing before the select committee of this House, in pursuance of the summons served on you on the 27th ultimo?

"2. Are you now ready to appear before said committee and answer such proper questions as shall be put to you by said committee?"

and that the said J. D. Williamson be required to answer said questions in writing and under oath.

Then, on motion of Mr. Stanton,

Ordered, That J. D. Williamson be remanded to the custody of the Sergeant-at-Arms, and that he have until 1 o'clock p.m. tomorrow to make answer to the questions directed to be propounded to him by the foregoing resolution.

On February 4, in accordance with the order, the Sergeant-at-Arms appeared at the bar with the respondent and announced that the latter was ready to answer the questions propounded to him.

The said Williamson was thereupon arraigned, and the interrogatories were propounded to him as directed by the House.

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

Thereupon the said Williamson handed in the answers in writing and under oath. The answers do not appear in the Journal. To the first question he responded:

I was under the authority of the sheriff of the city and county of New York, not to leave the city without his consent, and was so advised by him and my counsel, with whom I consulted on the subject; also that it always was my opinion, and is still, that neither the House of Representatives nor the Senate has any legal right or authority to compel me to come before them or their committees to divulge the private transaction of my business which I see fit to transact in a perfectly lawful manner, and which if divulged would destroy all the business of my office, by which I am dependent on to support my family, as no person would intrust their confidential business to a firm who, to suit the different political parties that spring into power every year, would call the firm before them to expose their most confidential and private affairs, which concern only themselves, and which the Constitution of our common country gives to every man who does not violate any of the laws of the land, which I solemnly swear I have never done or violated up to this day.

The respondent further states that he had at one time the intention of testing the right of the House in this respect in the courts.

To the second interrogatory he responds that he will answer any proper questions that do not require him to violate his oath or promise or affect his integrity.

A discussion arose as to the proper course, in view of the question of privilege which the respondent had raised as to the authority of the House. The law prescribing method of procedure in the case of contumacious witnesses was examined and considered in relation to the powers which the House had formerly exercised.

Mr. Stanton proposed that the witness be remanded until the succeeding day, when the question could be further considered, but after discussion the House adopted the following substitute proposed by Mr. Alexander H. Stephens, of Georgia:

Resolved, That J. D. Williamson have leave, by his request, to withdraw his answers, and to submit amended answers, such amended answers to be submitted tomorrow at 1 o'clock p.m.; and, in the mean time, that said Williamson remain in the custody of the Sergeant-at-Arms.

On February 5 J. D. Williamson appeared at the bar of the House and submitted his amended answer, which appears in full in the Journal. The respondent explains that when the subpoena was served he was under heavy bonds, and that he was advised that they would be forfeited if he left New York voluntarily, but that the bail would not be forfeited if his attendance was compelled. He acted on this advice, not knowing that he was thereby in contempt of the House. He states that he is ready to go before the committee and answer "such proper questions" as should be put by the committee. This answer is in writing and signed and sworn to.

The answer having been read, on motion of Mr. Stanton it was

Ordered, That the said Williamson be discharged from the custody of the Sergeant-at-Arms.

1674. A person who had failed to respond to a summons was arrested and arraigned; and his excuse being satisfactory, the House ordered that he be discharged when he should have testified.

The written and sworn answer of a witness arraigned for neglecting a summons did not appear in the Journal.

On May 6, 1858, the House directed the Speaker to issue his warrant for the arrest of Robert W. Latham, who had failed to respond to a summons to appear and testify before the select committee appointed to investigate the sale of property at Willets Point, Long Island, N. Y. On May 15 the Sergeant-at-Arms appeared at the bar of the House with the said Latham, announcing that the latter had "appeared voluntarily, this morning, at his office, and avowed himself ready to answer." The Speaker thereupon asked the said Latham what excuse he had to offer, and the latter submitted a written answer. This answer, which does not appear in the Journal, shows that the witness had not intended to refuse to obey the summons, but had left town under a misapprehension. The House agreed to a resolution ordering his discharge when he should have appeared before the select committee and given his testimony. In this case the Sergeant-at-Arms appears, from the Globe account, to have made the return on the warrant in writing.[1]

1675. On February 15, 1859,[2] Mr. George Taylor, of New York, as a question of privilege, from the select committee on the accounts of the late Superintendent of Public Printing, presented a preamble and resolution in the form usual at this time, for the arrest of John Cassin, who had refused to appear before the committee as a witness. The resolution was agreed to, and on February 17th the Sergeant-at-Arms presented the said Cassin at the bar of the House. The House thereupon adopted a resolution similar to that adopted in the case of Wolcott, requiring the respondent to answer in writing and under oath, giving his excuse for not appearing, and stating whether or not he would now appear and answer. The respondent presented his answers, which do not appear in the Journal, and they being satisfactory, the House ordered his discharge.

1676. Persons in contempt for declining to testify or obey a subpoena have frequently given their testimony and been discharged without arraignment before the House.—On February 21, 1859,[3] the House, in the usual form, ordered the arrest of Harry Connelly, who had refused to testify before the committee appointed to examine the accounts of the late superintendent of public printing. On February 22 Mr. John Covode, of Pennsylvania, from the same committee, as a question of privilege, stated that Mr. Connelly, when he learned of the action of the House, had presented himself before the committee to testify. The committee, however, thought it proper that he should give himself up to the Sergeant-at-Arms, who was executing the order of the House. This had been done, and now Mr. Covode proposed an order that the said Harry Connelly be discharged from the custody of the Sergeant-at-Arms. This order was agreed to; so the said Connelly was discharged without being arraigned before the House.

1677. On January 20, 1862,[4] Mr. William S. Holman, of Indiana, from the select committee appointed to investigate Government contracts, presented the following resolution, which was agreed to:

Resolved, That the Sergeant-at-Arms be directed to bring before the bar of this House Benjamin Higdon, of Cincinnati, Ohio, to answer to an alleged contempt of its authority in refusing to obey a subpoena to appear before the special committee for the investigation of Government contracts.

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[1] First session Thirty-fifth Congress, Journal, pp. 750, 821; Globe, pp. 2002, 2164.

[2] Second session Thirty-fifth Congress, Journal, pp. 411, 430; Globe, pp. 1039, 1090.

[3] Second session Thirty-fifth Congress, Journal, pp. 451, 463; Globe, pp. 1193, 1238.

[4] Second session Thirty-seventh Congress, Journal, pp. 210, 336; Globe, pp. 400, 909.

On February 20 Mr. Holman presented in the House a report of the Sergeant-at-Arms in which he states that Mr. Higdon was arrested on February 4 at Cincinnati, but that before the arrest and after the issuing of the attachment he had gone before the committee and been permitted to testify on condition that he would pay the expenses of the Government growing out of the attachment. Mr. Higdon had paid this sum and was in Cincinnati in legal custody. Before going to the expense of bringing him to Washington it was desirable that the House should take action.

Thereupon it was

Ordered, That Benjamin Higdon be released from the service of the Speaker's warrant heretofore issued by the order of the House for his arrest.

1678. On January 14, 1863,[1] Mr. William S. Holman, of Indiana, from the select committee on Government contracts, offered the following:

Whereas Simon Stevens, a witness subpoenaed by the select committee of the House of Representatives on Government contracts, in their examination of the facts in connection with the "terms, considerations, and profits of the labor contract for the storing, hauling, and delivery, etc., of foreign goods in the city of New York," concerning which said committee were directed by the House to make inquiries, refused to answer the following inquiries propounded to him by said committee:

"How much money in the aggregate has been paid over, under the labor contract, to William Allen Butler, or to his account, or to Mr. George W. Parsons, his law partner, for account of Mr. Butler?"

"You say you held the contract from May 11, 1861, until its expiration, by its own terms, September 5, 1862. State the net profits of that contract during that time."

Now therefore

Resolved, That the Sergeant-at-Arms be directed to bring the said Simon Stevens before the bar of this House to answer said contempt.

On January 16 Mr. Holman announced to the House that Simon Stevens had been brought to the Capitol by the Sergeant-at-Arms and had appeared before the committee and answered the interrogatories satisfactorily. Therefore Mr. Holman offered the following, which was agreed to:

Ordered, That Simon Stevens, now in the custody of the Sergeant-at-Arms, be discharged upon the payment of costs.

1679. On January 24, 1867,[2] Mr. Robert S. Hale, of New York, as a question of privilege, submitted the following preamble and resolution:

Whereas J. F. Tracy was duly summoned to appear before the Joint Select Committee on Retrenchment to testify relative to an inquiry directed by a resolution of this House; and whereas the said Tracy has refused or neglected to obey the subpoena duly served upon him: Therefore

Resolved, That the Sergeant-at-Arms be directed to produce the body of said J. F. Tracy before the bar of the House to answer for his said contempt.

On the next day a proposition was made to reconsider the vote by which the preamble and resolution had been agreed to, a request having been made that Mr. Tracy might be allowed to attend an important meeting of the directors of the railroad of which he was president. The House, however, laid on the table the motion to reconsider, on the ground that private business should not be allowed to interfere with the mandate of the House. On January 28, 1867, Mr. Hale informed

[1] Third session Thirty-seventh Congress, Journal, pp. 192, 202; Globe, pp. 314, 370.

[2] Second session Thirty-ninth Congress, Journal, pp. 252, 260, 279; Globe, pp. 710, 753, 810.

the House that Mr. Tracy had appeared before the committee, testified, and satisfied them that he intended no contempt against the House. Therefore, on motion of Mr. Hale,

Ordered, That all further proceedings under the process against J. F. Tracy be suspended and that he be discharged from custody upon the payment of the fee.

1680. On July 20, 1867,[1] Mr. James F. Wilson, of Iowa, as a question of privilege, and by direction of the Judiciary Committee, offered the following preamble and resolution:

Whereas Lafayette C. Baker was, on the 2d day of July, 1867, duly summoned to appear and testify before a standing committee of this House on the Judiciary, changed with the investigation of certain allegations against the President of the United States, and has neglected to appear before said committee pursuant to said summons, therefore,

Resolved, That the Speaker issue his warrant directed to the Sergeant-at-Arms, commanding him to take into custody the body of said Lafayette C. Baker, wherever to be found, and to have the same forthwith brought before the bar of the House to answer for contempt of the authority of the House in thus failing and neglecting to appear before said committee.

On November 26 (a recess from July 20 to November 21 having intervened) Mr. Wilson announced to the House that Mr. Baker had appeared before the committee and testified, and the case did not seem to be of enough importance to ask further action of the House. Accordingly, on motion of Mr. Wilson:

Ordered, That L. C. Baker, heretofore arrested under order of the House, be discharged upon the payment of costs.

1681. On November 25, 1867, the Senate ordered the arrest of Edward E. Dunbar, a contumacious witness. On November 29 Mr. George F. Edmunds, of Vermont, on whose motion the arrest had been ordered, reported that the witness had appeared before the Committee on Retrenchment, answered the questions, and explained that he intended no contempt. Therefore, by direction of the committee, Mr. Edmunds reported a resolution for the discharge of the witness, which was agreed to.[2]

1682. On April 4, 1874,[3] the Committee on the Judiciary reported a preamble and resolution providing for the arrest of George H. Patrick, who had failed to appear before the committee and bring with him certain papers, as commanded by a subpoena issued by the committee in the course of its examination of the charges against Judge Richard Busteed.

The resolution and preamble were agreed to.

On April 20 the committee proposed the following, which was agreed to:

Resolved, That George H. Patrick, a witness in proceedings for the impeachment of Richard Busteed, United States district judge of the district of Alabama, and against whom the attachment of the House issued as for contempt, having appeared and testified before the subcommittee on the Judiciary, and his explanation of his previous nonattendance being satisfactory to the House, be, and he is hereby, discharged from arrest.

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[1] First session Fortieth Congress, Journal, pp. 244, 270; Globe, pp. 757, 796.

[2] First session Fortieth Congress, Globe, pp. 780, 810.

[3] First session Forty-third Congress, Journal, pp. 715, 716, 843; Record, pp. 2796, 3217.

1683. In 1860 a proposition to arrest a Government official for refusing to produce a paper which he declared to be entirely private in its nature, was abandoned after discussion.—On April 6,1860,[1] Mr. John Covode, of Pennsylvania, from the select committee on the subject of the alleged interference of the Executive with the legislation of Congress, submitted a report accompanied by the following resolution:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him (the said Sergeant-at-Arms) to take into custody the body of Augustus Schell, and the same forthwith to bring before the House, at the bar thereof, to answer as for a contempt of the authority of this House in refusing to produce a paper when thereunto required by committee of this House.

The select committee, of which Mr. Covode was chairman, was authorized by the resolution creating it to make an inquiry suggested by a letter of the President referring to "the employment of money to carry elections," and was directed by the resolution to—

inquire into and ascertain the amount so used in Pennsylvania, and any other State or States, in what districts it was expended, and by whom, and by whose authority it was done, and from what sources the money was derived, and report the names of the parties implicated. And for the purpose aforesaid said committee shall have power to send for persons and papers and to report at any time.[2]

Mr. Schell, who was collector of the port of New York at the time of this examination, was required by the committee to give a list of certain contributors to a fund which had been raised in New York for use in New York and Pennsylvania in the election of 1856. Mr. Schell declined to furnish the list on the ground that it would involve a breach of confidence, and expressed the opinion that—

the power was not given the committee to ask for the production of a paper entirely private in its character.[3]

The committee, in the report which they made to the House recommending the arrest of Mr. Schell for contempt, reported the questions propounded to him and his answers thereto, and expressed the opinion that the information required was "material to the proper investigation of the matters referred to them by the House." This report was signed by Mr. Covode, Mr. A. B. Olin, of New York, and Mr. Charles R. Train, of Massachusetts. Messrs. Warren Winslow, of North Carolina, and James C. Robinson, of Illinois, signed minority views, in which the ground was taken that inquiries by the House into the acts of individual citizens in the States, if made at all, must be made of objects within its jurisdiction. "It may," they say, "in the first place, act on individual persons, private citizens, or others, in the maintenance of its own parliamentary prerogatives; secondly, it may inquire into facts in order to legislate thereon, and, thirdly, it may investigate the conduct of public officers with a view to their impeachment before the Senate." The minority then go on to argue that the question propounded to Schell had no relation essential to either of the three named objects.

On April 9 this report was recommitted.

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[1] First session Thirty-sixth Congress, Journal, pp. 678, 695, 699; Globe, pp. 1577, 1623–1625.

[2] Reports H. of R., No. 648, Journal of the committee, p. 60, first session Thirty-sixth Congress.

[3] Report No. 648, p. 64, Report No. 331, first session Thirty-sixth Congress.

1684. In 1862 Henry Wikoff was imprisoned by the House for refusing to testify before a committee.

A witness having responded orally, when arraigned for contempt, it was required that the answer be in writing.

It is for the House and not the Speaker to determine whether or not a person arraigned for contempt shall be heard before being ordered into custody.

The House, having ordered a person into custody "until he shall purge himself of said contempt," he was, on purging himself, discharged without further order.

On February 12, 1862,[1] Mr. John Hickman, of Pennsylvania, from the Committee on the Judiciary, reported the following preamble and resolution, which were agreed to by the House:

Whereas Henry Wikoff, a witness subpoenaed by the Committee on the Judiciary in their examination of the facts in connection with the alleged censorship over the telegraph, concerning which said committee were directed by the House to make inquiry, has stated that a portion of the substance of the message of the President of the United States, communicated to Congress on the 3d day of December last, was transmitted by telegraph, through his agency, to the New York Herald prior to the receipt of the said message by Congress, and has refused to state from whom he received the matter thus revealed to the public: Therefore,

Resolved, That the Sergeant-at-Arms be directed to bring the said Henry Wikoff before the bar of this House to answer said contempt.

On the same day the Sergeant-at-Arms appeared at the bar of the House and reported that he had executed the warrant of the Speaker, issued this day, for the arrest of Henry Wikoff, and that he had the body of the said Wikoff then at the bar of the House.

The said Wikoff having been arraigned, the Speaker addressed him as follows:

Henry Wikoff: You have been arrested by order of the House and now stand at its bar charged with an alleged contempt of its authority in refusing to answer a question propounded to you by the Committee on the Judiciary, which was directed to make inquiry as to an alleged censorship over the telegraph. What have you to say in answer to this charge of contempt?

The said Henry Wikoff having responded orally, Mr. Thaddeus Stevens, of Pennsylvania, raised a question that the response should be in writing, in order that the record might be complete. Thereupon, on motion of Mr. Hickman, the response was reduced to writing and submitted to said Wikoff and approved by him, as follows:

Nothing; but that while hoping not to be considered wanting in any respect to the Judiciary Committee or to the House, the information which the committee demanded of me was received, such as it was, under a pledge of strict secrecy, which I felt myself bound to respect.

Mr. Hickman thereupon presented the following:

Whereas Henry Wikoff, a witness subpoenaed to appear and testify before the Committee on the Judiciary in the matter of the investigation by said committee into the alleged telegraphic censorship of the press, and refusing to answer certain questions propounded to him on his examination, upon being brought before the bar of the House has failed to satisfy the House of the propriety of his refusal: Therefore,

[1] Second session Thirty-seventh Congress, Journal, pp. 298, 302, 310; Globe, pp. 775, 784, 785, 831.

Resolved, That the said Henry Wikoff, by reason of the premises, is in contempt of this House, and that the Sergeant-at-Arms be directed to hold said Henry Wikoff in close custody until he shall purge himself of said contempt or until discharged by order of the House.

The previous question having been demanded, Mr. Charles A. Wickliffe, of Kentucky, raised a question of order that the prisoner should not be deprived of his opportunity to be heard by the previous question.

The Speaker[1] held that this was a matter for the House to determine by its vote on the motion for the previous question.

The resolution was then agreed to.

On February 14, Mr. Hickman, from the Committee on the Judiciary, reported that the witness had answered the question propounded to him by the said committee and had thereby purged himself of the contempt of the House for which he was held in custody.

The Journal then has this entry:

The said Wikoff is therefore, under the terms of the resolution directing his arrest, released from custody.

1685. The case of Charles W. Woolley, in contempt of the House in 1868.

An instance wherein the managers of an impeachment were endowed by the House with the functions of an investigating committee.

With the adjournment of a court of impeachment the functions of the managers cease, but the House may continue them to complete an investigation already begun.

Pending consideration of a question of contempt the Speaker admitted as privileged a resolution relating to the existence of the committee which suggested the proceedings.

A contumacious witness should not be proceeded against for contempt, either before the House or under the law, until he has been arraigned and answered at the bar of the House.

A person under arrest for contempt is arraigned before being required to answer.

The answers at the arraignment in the Woolley case were in writing and one was sworn to, but neither appears in the Journal.

In the Woolley case the House did not furnish to the respondent a copy of the report of the committee at whose suggestion he was arraigned.

On May 16, 1868,[1] the House agreed to the following:

Whereas information has come to the managers which seems to them to furnish provable cause to believe that improper and corrupt means have been used to influence the determination of the Senate upon the articles of impeachment exhibited to the Senate by the House of Representatives against the President of the United States: Therefore,

Be it resolved, That for the further and more efficient prosecution of the impeachment of the President the managers be directed and instructed to summon and examine witnesses under oath, to send for persons and papers, to employ a stenographer, and to appoint subcommittees to take testimony, the expenses thereof to be paid from the contingent fund of the House.

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

[2] Second session Fortieth Congress, Journal, p. 698; Globe, p. 2503.

On May 25,[1] under instruction by the managers, Mr. Benjamin F. Butler, of Massachusetts, submitted a report, accompanied by a transcript of testimony, showing that a witness, Charles W. Woolley, of Cincinnati, had both evaded the committee and declined to answer certain questions as to the receipt and disbursement of a sum of money, alleging that they were not material. The committee therefore recommended the adoption of the following resolution:

Resolved, That Charles W. Woolley, a witness heretofore duly summoned before the Committee of Managers of this House, and who, as appears by the report of the managers, has refused to answer proper inquiries put to him in the course of the investigation ordered by the House, and who has not attended upon the sessions of the committee according to its orders, but has, in contempt thereof and the orders of this House, left the city of Washington and remained absent and has not yet reported himself to the committee, be forthwith arrested by the Sergeant-at-Arms and be brought before the House at its bar by the warrant of the House duly issued by the Speaker under his hand and the seal of the House, and that said Woolley be detained by virtue thereof by the Sergeant-at-Arms until he answer for his contempt of the order of the House and abide such further order as the House may make in the premises.

Mr. Charles A. Eldridge, of Wisconsin, raised the question that the witness should be dealt with under the statute rather than by the process proposed by the Managers.

The Speaker[2] said:

The Chair overrules the point of order on the ground that the uniform usage of the House from the Twelfth Congress down to the present time has been that where a witness is before a committee of the House that is authorized to send for persons and papers and refuses to testify he is first to have an opportunity to explain to the House of Representatives why he refuses to testify. He can not be held to answer until the committee shall present the question to the House and the House shall, at its bar, through the Speaker, present to him the question and ascertain why he has refused to answer it. The very statute at large quoted by the gentleman from Wisconsin was enacted subsequent to the refusal of a witness before a committee to testify after having been imprisoned by the order of the House for his persistent refusal. The committee who had the subject under consideration reported this law, which is to be found on page 155, volume 11 of the Statutes at Large. It reads as follows:

"Shall, in addition to the pains and penalties now existing, be liable to indictment as for a misdemeanor."

Previous to that time there had been no power of punishment except the power of the House of Representatives, and that power ended whenever the House adjourned. If therefore a witness, just at the close of a constitutional term of Congress, on the 3d of March, should refuse to testify, the House of Representatives could not imprison him for a longer time than until the 4th of March, when their term expired. The bill reported by that committee was passed with the general assent of all parties in Congress, was signed by the President, and become a law. And it goes on to provide that: "When a witness shall fail to testify as above, and the facts shall be reported to the House, it shall be the duty of the Speaker to certify the fact, under the seal of the House, to the district attorney of the District of Columbia."

This law was enacted in 1856 or 1857. The Chair was a Member of the House at the time, and remembers the enactment of the law, because a witness not only refused to testify before the committee, but when brought to the bar of the House still further refused to testify.

In debate on the resolution the point was made that the House had no right to make the proposed inquest into private affairs.

The resolution was agreed to.

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[1] Journal, p. 729; Globe, pp. 2575–2581.

[2] Schuyler Colfax, of Indiana, Speaker.

On May 26[1], the Sergeant-at-Arms appeared at the bar of the House having in custody the body of Charles W. Woolley. Thereupon a question arose as to the proper course of procedure, and the Speaker cited the precedent in the case of the witness John Cassin, in the Thirty-fifth Congress, saying that the witness could not be heard until the House had adopted some order on the subject.

Thereupon, Mr. Butler, following the precedent referred to by the Speaker, offered the following resolution, which was agreed to:

Resolved, That Charles W. Woolley, esq., of the city of Cincinnati, Ohio, now in custody of the Sergeant-at-Arms on an attachment for a contempt in refusing or neglecting obedience to the summons requiring him to appear and testify before the committee of managers of the House, be now arraigned at the bar of this House and that the Speaker propound to him the following interrogatories:

1. What excuse have you for refusing to answer before the managers of impeachment of this House in pursuance to the summons served on you for that purpose?

2. Are you now ready to appear before said managers and answer such proper questions as shall be put to you by said managers of impeachment?

The said Woolley was thereupon arraigned and the interrogatories, as directed in the foregoing resolution, were propounded to him by the Speaker.

The said Woolley thereupon handed in a paper, subscribed and sworn to by himself,[2] in which he protested that he had not been guilty of contempt of the House, stated that he had not been able to obtain a copy of the report of the managers on which the resolution of arrest was based, and so had not seen the specific inquiries proposed to him and referred to, and finally asking that he be allowed a reasonable time to examine the report and consult counsel.

Mr. Charles A. Eldridge, of Wisconsin, moved that he be furnished with a copy of the report, and that he have until 12 o'clock on the next day to make further answer, and that in the meantime he remain in the custody of the Sergeant-at-Arms. After debate the motion was laid on the table, yeas 93, nays 30.

The House then resolved itself into Committee of the Whole to attend the impeachment proceedings in the Senate, and after some time returned, and the House resumed its session, after the chairman of the Committee of the Whole had reported that the respondent (Andrew Johnson) had been declared acquitted on the second and third articles, and that the court of impeachment had adjourned sine die.

The question of the contumacious witness was then resumed, and the House, by a vote of 95 yeas and 28 nays, agreed to the following:

Resolved, That the Speaker of the House again propose to C. W. Woolley the questions contained in the resolution this day adopted, and that said Woolley be informed that the House requires definite and explicit answers to the questions propounded to be made forthwith.

Thereupon the Speaker again stated the questions, and the said Woolley, in answer thereto, handed in "a paper in writing." This paper was subscribed by the witness, but not sworn to. No question seems to have been made as to this point. The paper does not appear on the Journal.

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[1] Journal, pp. 733–738; Globe, pp. 2585–2592.

[2] This paper does not appear in the Journal, nor is it described except as "a paper in writing" (Journal, p. 733).

In answer to the first question the witness explained that he had been prevented by illness from attending sessions of the committee at certain times, but that otherwise he held himself ready in every particular to respond to the order of the House, except that he had protested to the managers that their course of examination had transcended his rights and privileges as a citizen under the Constitution. He was not bound by the law of the land to submit to a scrutiny into his private affairs. To the second question the witness responded that he was ready to appear and answer proper questions, protesting that he was in no way connected with an association or combination having as its object the use of corrupt influence in respect to the impeachment, and that no money drawn by him from any bank in the city or owned or held by him, or subject to his authority or control, was in any way used in connection with the said trial.

At this point in the proceedings, after the reading of the paper submitted by the witness, Mr. Butler, in order to meet an objection that had been urged, viz, that the power of the managers and their functions had ceased with the adjournment of the court of impeachment, offered the following resolution:

Resolved, That the managers, as a committee, be empowered and directed to continue the investigation ordered by the resolution of the House of the 16th instant, with all the powers and rights conferred thereby, and to make such full investigation as will determine the truth of the matters and things set forth in the preamble to said resolution.

Mr. Charles A. Eldridge, of Wisconsin, made the point of order that the resolution was out of order at this time and could be submitted only by unanimous consent.

The Speaker overruled the point of order on the ground that it was competent for any Member, pending the consideration of a question of contempt of the authority of the House, to make motions relative to it. It was a privileged resolution growing directly out of the investigation. The Chair also expressed the opinion that the managers had ceased to be in office.

Mr. Eldridge having appealed, the appeal was laid on the table.

The resolution was then agreed to, yeas 91, nays 30.

1686. The case of Charles W. Woolley, continued.

In 1868 a contumacious witness, Charles W. Woolley, who declined to answer, for the alleged reason that the examination was inquisitorial, was imprisoned for contempt.

A witness arraigned at the bar for contempt, and having already submitted his written answers, was allowed by unanimous consent to make a verbal statement.

A witness imprisoned for contempt before a committee purges himself by stating to the House his readiness to go before the committee, and not by testifying directly to the House.

An instance wherein the Speaker announced that he had certified to the district attorney the case of a contumacious witness.

Reference to the circumstances attending the enactment of the law for punishing contumacious witnesses.

Mr. George S. Boutwell, of Massachusetts, then offered the following:

Resolved, That the said Charles W. Woolley be committed to and detained in close custody by the Sergeant-at-arms in the Capitol during the remainder of the session or until discharged by the further order of the House, to be taken when he shall have purged the contempt upon which he was arrested, by testifying before the committee authorized to continue the investigation which the managers were conducting when the contempt was committed by said Woolley.

During the debate on this resolution the witness, at the bar of the House, asked permission to make a statement.

The Speaker said that the permission would require unanimous consent.

There being no objection, the witness stated that he expected to answer such questions as the House should think proper. In other words, whenever the committee and himself differed as to the propriety of a question he should be brought to the bar of the House and the House should pass on it.

It was objected by Mr. Boutwell that such a course would virtually defeat the powers of the committee.

The question was then taken and the resolution was agreed to, yeas 81, nays 28.

On May 28, 1868,[1] Mr. John A. Bingham, of Ohio, from the committee, reported the following resolution, which was agreed to, after a motion to lay it on the table had been decided in the negative, yeas 28, nays 95:

Resolved, That Rooms A and B, opposite the room of the solicitor of the Court of Claims, in the Capitol, be, and are hereby, assigned as guardroom and office of the Capitol police and are for that purpose placed under charge of the Sergeant-at-arms of the House with power to fit the same up for the purpose specified.

Mr. Bingham then presented a preamble reciting the circumstances of the refusal of the witness to testify on the ground that the question invaded a privileged communication between attorney and client and giving extracts from testimony of witness and another, and with this preamble presented further:

And whereas your committee believe the reasons given by the witness in declining to answer are wholly untrue and evasive and the refusal to answer is a deliberate contempt of the authority of the House and done for the purpose of concealing the fact and embarrassing public justice; therefore,

Resolved, That said Woolley, for his repeated contempt of the authority of the House, be kept until otherwise ordered by the House in close confinement in the guardroom of the Capitol police by the Sergeant-at-Arms until said Woolley shall fully answer the questions above recited, and all questions put to him by said committee in relation to the subject of the investigations with which the committee is charged, and that meanwhile no persons shall communicate with said Woolley, in writing or verbally, except upon the order of the Speaker.

These preambles and resolution were agreed to.

On May 30[2] the Speaker stated to the House that he had, in accordance with the requirements of the law of January 24, 1857, certified the facts in the case to the district attorney of the District of Columbia. The Journal has in regard to this merely this entry:

The Speaker having made a statement as to his action thus far in regard to the recusant witness, C. W. Woolley, asked the instruction of the House in regard to letters and telegrams to and from said Woolley.

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[1] Journal, pp. 747, 763–765; Globe, pp. 2643, 2669.

[2] Journal, pp. 775, 776; Globe, pp. 2702–2706.

After debate as to the mode of procedure in such cases and the inexpediency of making the Speaker in any sense the custodian of the prisoner of the House agreed to the following:

Resolved, That the resolution relating to Charles W. Woolley be so modified as to place the witness in the sole custody of the Sergeant-at-Arms, subject to the order of the House, and that his counsel, family, and physician have free access to the witness.

On June 8[1] Mr. Butler, as a question of privilege from the committee, presented the following resolution, which was agreed to:

Resolved, That any communication from C. W. Woolley or his counsel, placed in the hands of the Speaker, be sent to the committee of investigation of this House, before which Woolley has been called to testify, for examination and report.

On the same day Mr. Samuel Shellabarger, of Ohio, as a question of privilege submitted the following resolution, which was agreed to without objection, on the statement by Mr. Shellabarger that the witness had indicated that he would purge himself:

Resolved, That Charles W. Woolley, now under the arrest of this House for contempt of the authority of the House, be ordered to the bar of the House for the purpose of making such statement as will purge him of his contempt of such authority.

Accordingly the witness was brought before the House, and in response to the question of the Speaker announced that he was ready to make a statement, and proffered a paper.

At this point a question was raised as to the propriety of the prisoner purging himself by a statement before the House, and it was urged that the proper way was for him to go before the committee and answer the questions. The precedent of Thaddeus Hyatt in the Senate was referred to on this point. After debate, on motion of Mr. Shellabarger, the House, by a vote of 93 yeas to 32 nays, agreed to the following:

Resolved, That in purging himself of the contempt of which Charles W. Woolley is committed by this House said Woolley shall be required to state whether he is now willing to go before the Committee of Managers of the House before which he has been summoned to testify, and make answer to the questions for the refusal to answer which he has been ordered into custody, and if he answers that he is so ready to answer before the said committee then the witness shall have that privilege so to appear and answer as soon as said committee can be convened, and that in the meantime the witness remain in custody; and in the event that the said witness answer that he is not ready to so appear before said committee and make answer to the said questions so refused to be answered, then that the said witness be recommitted for continuance of such contempt, and that such custody shall continue until the said witness shall communicate to this House through said committee that he is ready to make such answer.

Thereupon the Speaker propounded the questions to the said Woolley, as required by the resolution, and the said Woolley answered as follows:

As my client has testified in regard to the dispatches named in the resolution, and as the resolution is an order of the House for me to answer the questions, I will do so.

So the said Woolley was remanded to the custody of the Sergeant-at-Arms with

[1] Journal, pp. 816, 819, 820; Globe, pp. 2938, 2942, 2944–2947.

the privilege to appear before the committee and answer as provided for in the resolution.

On June 11[1] Mr. Butler, from the committee, stated that the witness had answered satisfactorily the questions, and the committee proposed the following resolution, which was agreed to:

Resolved, That Charles W. Woolley, having appeared before the Committee of Investigation and answered all questions put to him by the committee or its order and thus purged himself of his contempt of the House in that regard, be discharged from arrest and held only to appear and make further answer if required, according to summons.

1687. A person whose arrest had been ordered for neglect to obey a subpoena, having appeared and testified, the House arraigned him and then discharged him.

Instance wherein the answer of a person arraigned for contempt was in writing, but not sworn to and not recorded in the Journal.

On April 2, 1862,[2] Mr. Henry L. Dawes, of Massachusetts, from the Select Committee on Government Contracts, reported the following, which was considered and agreed to under the operation of the previous question:

Whereas on the 14th day of March last a subpoena was issued by the Speaker of this House, summoning, among others, one Aaron Higgins—sometimes called Aaron A. Higgins—by the name of A. Higgins, to appear before the Committee on Government Contracts forthwith at the United States Hotel in Boston, Mass., but that the said Higgins has hitherto and still does refuse or neglect to obey said summons: Therefore,

Resolved, That the Speaker of this House be directed to issue his writ of attachment against Aaron Higgins of Boston, Mass., sometimes called Aaron A. Higgins, and cause him to be brought to the bar of this House to answer as for his contempt in not obeying the said subpoena of said Speaker issued March 14, 1862.

On April 9 the Sergeant-at-Arms, by S. J. Johnson, his deputy, appeared at the bar with Aaron Higgins in custody, as commanded by the Speaker's warrant of the 2d instant. The said Higgins having been arraigned, the Speaker[3] inquired of him what excuse he had to offer for his contempt of the authority of the House in failing to obey its subpoena to appear before the Select Committee on Government Contracts; and the response of the said Higgins having been submitted and read to the House,[4] Mr. Dawes submitted the following preamble and resolution:

Whereas Aaron Higgins, now at the bar of this House in contempt for disobeying the subpoena of its Speaker, issued at the instance of the Committee on Government Contracts, has appeared before said committee, and answered under oath all such interrogatories as have been put to him by their order: Therefore,

Resolved, That the Sergeant-at-Arms be directed to discharge said Higgins from custody.

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[1] Journal, p. 838; Globe, p. 3069.

[2] Second session Thirty-seventh Congress, Journal, pp. 498, 523; Globe, pp. 1508, 1588.

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

[4] This is the entry of the Journal. The record of debates shows that Higgins submitted a written answer explaining his failure to respond to the subpoena. This statement was over his signature, but not under oath. (Globe, p. 1588.)

1688. Instances wherein witnesses arraigned for contempt and agreeing to testify have not been discharged until the testimony has been given.

Witnesses arraigned for contempt have frequently answered orally and not under oath.

The order of arrest sometimes specifies that it shall be made either by the Sergeant-at-Arms or his special messenger.

On January 28, 1869,[1] the House ordered the arrest of Henry Johnson, for contempt in refusing to appear before the Select Committee on Election Frauds in New York, the resolution commanding the Sergeant-at-Arms, or his special messenger, to arrest said Johnson and bring him before the House. On February 3 the Sergeant-at-Arms appeared at the bar of the House having the said Johnson in custody, and the House agreed to the usual resolution providing for the arraignment of the prisoner and his interrogation by the Speaker.

The Speaker having propounded the interrogatories, the witness replied that he had never refused to answer the subpoena, and that he was ready to answer any questions that might be put to him. The witness was not sworn before making these answers, which were oral.

A motion was made to discharge the witness from custody, but after debate the motion was tabled and the subject was postponed until the following day, after the witness should have had the opportunity of appearing before the committee and testifying.

On February 4 the chairman of the committee reported that the witness had appeared and testified, and that it appeared that the failure to appear in the first instance seemed due to some misunderstanding. The House ordered the discharge of the witness.

On February 1,[2] the House also ordered the arrest of Florence Scannel, for contempt in declining to testify before the same committee. On February 3 Mr. Scannel was arraigned and the usual resolution was passed. Upon being interrogated he answered, orally and not under oath, that he was ready to answer the question which he had refused formerly to answer. Thereupon it was ordered that he should be remanded to the custody of the Sergeant-at-Arms to appear before the committee. On February 4, the witness having appeared before the committee and testified, the House ordered that he be discharged on the payment of costs. A motion to waive the payment of the costs was decided in the negative.

On February 19 the House, by a single resolution, ordered the arrest of John H. Bell, and David W. Reeve, recusant witnesses before the same committee. On February 23 the two witnesses were brought to the bar separately, and the usual resolution for the arraignment and interrogating of them was adopted in each case. Each of the witnesses answered orally, and not under oath, explaining why he had been contumacious, and expressing readiness to attend and answer before the committee.

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[1] Third session Fortieth Congress, Journal, pp. 226, 265, 271; Globe, pp. 687, 833, 876.

[2] Journal, pp. 250, 264, 271; Globe, pp. 771, 832, 877.

The House then laid on the table motions to discharge the witnesses, in the latter case by a vote of 124 yeas to 33 nays, and the witnesses were remanded to the custody of the Sergeant-at-Arms to appear before the committee. On February 24,[1] having answered, they were discharged by the House.

1689. In 1873 Joseph B. Stewart was imprisoned for contempt of the House in refusing as a witness to answer a question which, he claimed, related to the relations of attorney and client, and therefore was inquisitorial.

The House declined to commit to custody an alleged contumacious witness until he had been arraigned and answered at the bar of the House.

An instance wherein a person was arraigned at the bar without a previous order of the House fixing the form of procedure.

An instance wherein a witness arraigned for contempt was allowed to make an unsworn oral statement, which in fact was an argument as well as an answer.

An alleged contumacious witness having been arraigned, the House declared him in contempt and then proceeded to specify the manner in which he might purge himself.

In the Stewart case the questions and answers at the examination were recorded in the Journal, the answers being oral and not under oath.

On January 29, 1873,[2] Mr. Jeremiah M. Wilson, of Indiana, from the select committee who, by resolutions of the House of January 6 and January 9, 1873, were directed to inquire into certain matters connected with the Union Pacific Railroad Company and Credit Mobilier, with authority to send for persons and papers, reported that evidence had been produced before the committee tending to show that just before the passage of the act of 1864, entitled, "An act to amend an act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., sums of money and a quantity of bonds, property of the Union Pacific Railroad Company, were brought to Washington and placed in the hands of one Joseph B. Stewart, and by him in some way disposed of. Thereafter the said Joseph B. Stewart was called and duly sworn as a witness, and testified in substance as follows: That said bonds to the amount of $100,000 or $150,000 were received by him, and that $30,000 were for his own fees; that he did not pay over any of said bonds or their proceeds to any Member of Congress or person connected with the Executive Department of the Government, and that he acted in such transaction partly for the railroad, partly for clients of his own, and partly as arbitrator between the Union Pacific Railroad Company and such other persons, and gave over the bonds to such other persons. The report goes on to state that the committee asked the said Stewart for the names of the persons to whom he gave the bonds, and that he declined to respond, alleging that the transactions were between him as attorney and his clients, and that he would

[1] Third session Fortieth Congress, Journal, pp. 392, 425, 426, 442; Globe, p. 1385, 1467, 1468.

[2] Third session Forty-second Congress, Journal, pp. 269–272; Globe, pp. 952–956.

make no statement to the committee about the business of his clients. He persisted in this attitude, although he was informed by order of the committee that he was not in this protected by the legal privilege existing between counsel and client. The committee give in their report a transcript of the questions and answers, and conclude: "The committee are of opinion and report that it is necessary for the efficient prosecution of the inquiry ordered by the House that said questions should be answered, and that there is no sufficient reason why the witness should not answer the same, and that his refusal is in contempt of this House."

Therefore the committee recommended the following resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, or his deputy, commanding him to take into custody, wherever to be found, the body of Joseph B. Stewart, and the same in his custody to keep subject to the further order and direction of this House.[1]

Debate at first arose over the question of the alleged privilege of the transactions of the witness with his alleged clients, but Mr. John A. Bingham, of Ohio, chairman of the Committee on the Judiciary presently raised the point that the question presented was novel, and not like a case where the charge was that a person had violated the privileges of the House in the person of one of its Members. It was a question whether the House of Representatives could hold a private citizen to answer for any crime, unless he had acted to the hurt or prejudice of the Government in connection with its own officials. The witness denied that he had done that. This was not like the Burns case.

Mr. Bingham therefore offered the following substitute for the resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, or his deputy, commanding him to take into custody, wherever to be found, the body of Joseph B. Stewart, and bring him forthwith to the bar of this House to show cause why he should not be punished for a contempt.

This amendment was agreed to, yeas 126, nays 69. The resolution as amended was then agreed to.

On January 30[2] the Sergeant-at-Arms appeared at the bar of the House, having in custody the body of Joseph Stewart.

Thereupon the said Stewart was arraigned, and the following interrogatory propounded to him by the Speaker[3] without previous order of the House:

What excuse have you for refusing to answer before the select committee of this House in pursuance of the summons served on you for that purpose?

The witness thereupon, without being sworn, proceeded to make an oral response, which not only gave his reasons, but proceeded to argument, at times reflecting on the conduct of the committee, and at such length that a point of order was made by Mr. John Coburn, of Indiana, that the person at the bar should be confined to a statement of facts.

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[1] The members of the committee signing the report were Messrs. Wilson, Samuel Shellabarger, of Ohio; George F. Hoar, of Massachusetts; Thomas Swann, of Maryland; and H. W. Slocum, of New York.

[2] Journal, pp. 276–279; Globe, pp. 982–988.

[3] James G. Blaine, of Maine.

The Speaker, however, ruled that the respondent might make an argument.

Mr. Henry W. Slocum, of New York, having raised a question as to how long the respondent might speak, the Speaker ruled that he would be governed by the hour rule.

The witness having concluded, and having denied any disrespect of the House, having declared the testimony presented to the House by the committee was inaccurate, and having by assertion and argument advanced the claim that the transactions of which the committee had interrogated him were privileged between attorney and client, concluded with a peroration in regard to the rights of the citizen under the Constitution.

The reply does not appear in the Journal, either in full or in substance.

Mr. Henry L. Dawes, of Massachusetts, offered the following resolution, which was agreed to:

Resolved, That Joseph B. Stewart, having been heard by the House pursuant to the order heretofore made requiring him to show cause why he should not answer the questions propounded to him by the committee, has failed to show sufficient cause why he should not answer the same, and that said Joseph B. Stewart be considered in contempt of the House for failure to make answer thereto.

Mr. Wilson then offered the following:

Resolved, That in purging himself of the contempt for which Joseph B. Stewart is now in custody, the said Stewart shall be required to state forthwith, or as soon as the House shall be ready to hear him, whether he is now ready to appear before the committee of this House to whom he has hitherto declined to make answers and make answers to the questions for the refusal to answer which he has been ordered into custody, and if he answers that he is ready to appear before the said committee and make answer, then the witness shall have the privilege to so appear and answer forthwith, or so soon as the said committee can be convened; and that in the meantime the witness remain in custody; and in the event that said witness shall answer that he is not ready to so appear before said committee, and make answer to the said questions so refused to be answered, then that said witness be remanded to the said custody, for the continuance of such contempt, and that such custody shall continue until the said witness shall communicate to this House, through the Speaker, that he is ready to appear before the said committee and make such answers, or until the further order of the House in the premises.

This resolution was agreed to after the House had negatived two alternative propositions looking, one to confinement in the District jail, and the other to a purging by going before the committee while in custody.

The Speaker having propounded to said Stewart the following question, viz:

Are you now willing to appear before the committee of this House to whom you have hitherto declined to make answer and make answer to the questions for the refusal to answer which you have been ordered into custody?

The said Stewart replied as follows, viz:

I disclaim any contempt for the authority of this House or its committee, and repeat, as in my testimony and before this House I have stated, that I have fully answered all questions except the matter which came, and solely came, to my knowledge in my relation as counsel, and I respectfully protest against being requested to do so, and do decline to disclose any matters confided to me as counsel.

And thereupon he was again taken into the custody of the Sergeant-at-Arms.

The Journal gives the question and answer, the answer apparently being oral and not under oath.

On February 5 and 11,[1] the Speaker laid before the House petitions and papers from said Stewart, which were referred to the committee. The first petition was introduced by the Speaker as a Member, the others were presented by unanimous consent.

On February 28,[2] near the close of the session and the Congress, on motion of Mr. Horace Maynard, of Tennessee,

Ordered, That Joseph B. Stewart, now in the custody of the Sergeant-at-Arms of the House, be discharged.

1690. In 1874 the House imprisoned in the common jail a contumacious witness, Richard B. Irwin, who contended that the inquiry proposed by the House committee was unauthorized and exceeded the power of the House.

In the Irwin case the House asserted its authority as grand inquest of the nation to investigate, with the attendant right of punishment for contempt, in case of offenses in preceding Congress.

A proposed order to the Sergeant-at-Arms to hold a person in custody in jail until the latter should have purged himself of contempt was criticised and an unconditional order was agreed to.

A question as to the authorization required to enable a committee to compel testimony.

In the Irwin case the respondent, on being arraigned, made an oral, unsworn answer, which does not appear in the Journal.

In the Irwin case the questions which the respondent had declined to answer in committee were proposed to him again at the bar of the House.

In the Irwin case the Journal does not record the responses of the witness to the questions put by the Speaker.

On December 11, 1874,[3] Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, submitted as a question of privilege, the following:

Whereas Richard B. Irwin was, on the 10th day of September, 1874, duly summoned to appear and testify before a standing committee of this House, on the Ways and Means, charged with the investigation of certain allegations against the Pacific Mail Steamship Company, and has neglected to appear before said committee pursuant to said summons: Therefore,

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into custody the body of the said Richard B. Irwin, wherever to be found, and to have the same forthwith brought before the bar of the House, to answer for contempt of the authority of the House in thus failing and neglecting to appear before said committee.

On December 21[4] Mr. Dawes stated to the House that the witness had explained satisfactorily to the committee his delay, and therefore the committee recommended the following resolution, which was agreed to by the House:

Resolved, That Richard B. Irwin be discharged from the custody of the Sergeant-at-Arms on the warrant of the Speaker of this House, he having given satisfactory reasons for having neglected to appear before the Committee on Ways and Means in answer to the summons of this House.

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[1] Journal, pp. 319, 323, 362.

[2] Journal, p. 518; Globe, p. 1919.

[3] Second session Forty-third Congress, Journal, pp. 51, 52; Record, pp. 62–64.

[4] Journal, pp. 96, 97; Record, pp. 174–182.

Mr. Dawes then submitted a report from the committee, giving extracts from the testimony of the said Irwin, wherein he had declined to answer certain questions submitted to him by the committee as to the disposition which he had made of $750,000 intrusted to him by the officials of the Pacific Mail Steamship Company for the purposes of procuring the subsidy during the period included between the months of January and May, 1872, i.e., during the term of the preceding Congress. The witness stated that this money was used by him in procuring the passage of the subsidy bill, and paid to divers persons, but that he paid none of it, nor had any understanding for the payment of any of it, to any Member of the present or the preceding Congress, or any officer of the present Congress, who was a Member or officer of the preceding Congress, or to any person under the jurisdiction of the House. When asked for the names of those employed by him he declined to answer, alleging that the jurisdiction of the committee did not give it authority to demand an answer to the question; that the jurisdiction of the committee and the House was exhausted when it appeared that none of the money was paid by him to any person under the jurisdiction of the House; that the matter arose in a prior Congress, over which the present committee and House were without jurisdiction; that as an honorable man he had no right to disclose relations existing between himself and others on a matter not within the jurisdiction of the House; and finally that the committee was not empowered by any order or resolution of the House to ask the question.

The committee concluded their report as follows: "The committee are of opinion, and report, that it is necessary for the efficient prosecution of the inquiry ordered by the House that said questions should be answered, and that there is no sufficient reason why the witness should not answer the same, and that his refusal is in contempt of this House."

Therefore the committee recommended the adoption of the following:

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

As to the point made by the witness that the committee was not formally authorized by the House to make this investigation, Mr. Dawes showed that on January 12, 1874, the House referred to the committee the testimony taken in the preceding Congress on the subject of this subsidy; that on April 3, 1874, the House referred to the same committee a resolution introduced by a Member and relating to the same subject, and, finally, that on the 24th of March, 1874, the House agreed to the following resolution:

Resolved, That the Committee on Ways and Means are hereby authorized and empowered to send for persons and papers and administer oaths in all matters from time to time pending and under examination before said committee.

A general debate rose as to the power of the House to punish in this case, and Mr. Alexander H. Stephens, of Georgia, contended that the House could not punish, except according to law, and that the proper course was to certify to the district attorney the case of the witness, according to the act of 1857. The House had no

inherent, common-law right to punish. Mr. Benjamin F. Butler, of Massachusetts, also held that the House might not punish this witness. In investigations in relation to the impeaching power, the House could punish; so also in a case of violation of the constitutional provision that Members should be privileged while going and returning. There was also the right of investigation in so far as it was intended to instruct as to the duties before them. But the House had no right to investigate as to past offenses in another Congress.

On the other hand Mr. Dawes contended that the House was, under the Constitution, a grand inquest, with power to govern itself in all matters pertaining to the just and fair exercise of its powers. The House had never stripped itself of the power, but had repeatedly punished for contempts of this power. It was further contended that the statute did not take away the common-law right of the House to punish.

The resolution was agreed to.

On January 6 [1] the Sergeant-at-Arms appeared at the bar of the House having in custody the body of Richard B. Irwin. The said Irwin was thereupon arraigned, and the following interrogatory was propounded to him by the Speaker:

Are you now ready to answer the questions which have been addressed to you by the Committee on Ways and Means, and which you have heretofore refused to make answer to?

Thereupon the prisoner addressed the House orally, and not under oath. This, address does not appear in the Journal. The witness denied that he was in contempt of the House, since the House had never ordered the investigation and he had never refused to answer any question that the Committee on Ways and Means was authorized by the House to ask. He denied that the papers referred to the committee or the resolution of the House empowered the committee to make this investigation. He had already stated under oath that he did not employ any persons subject to the jurisdiction of this House, and that he did not pay or procure to be paid any money to such person. He disclaimed any intentional disrespect of the House, but denied the right of the House or the committee to inquire into matters existing in confidence between himself and other citizens beyond the jurisdiction of the committee. Finally he contended that the House had no right under the Constitution to deprive any citizen of liberty without due process of law.

Mr. Dawes thereupon submitted the following, which was agreed to:

Resolved, That the Speaker propose to the witness at the bar the following questions:

First. Give the names of the persons whom you employed to aid you in procuring the subsidy from Congress in 1872 for the Pacific Mail Steamship Company.

Second. What was the largest sum paid by you to any one person to aid you in procuring that subsidy?

The Speaker thereupon propounded the said questions to the said Irwin. The Journal does not give the replies, merely stating, "The said Irwin having replied." The record of debates shows that the prisoner declined to respond to the first question, but responded to the second with the statement, "Two hundred and seventy-five thousand dollars."

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[1] Journal, pp. 131, 132 , Record, pp. 291–296.

Thereupon Mr. Dawes submitted the following resolution, which was agreed to:

Resolved, That Richard B. Irwin, having been heard by the House, pursuant to the order heretofore made requiring him to show cause why he should not answer the questions propounded to him by the committee and by the Speaker of this House in pursuance of its order, has failed to show sufficient cause why he should not answer the same; and that said Richard B. Irwin be considered in contempt of the House for failure to make answer thereto.

Then Mr. Ellis H. Roberts, of New York, from the committee, offered a resolution like that adopted in the case of Stewart, providing for keeping the prisoner in custody until he should purge himself of contempt. But the resolution differed from the Stewart resolution in that it specified that the Sergeant-at-Arms should keep the prisoner in the common jail of the District. This resolution was criticised on the ground that it made the commitment contingent on a certain event—that is, on the answering of the witness. It was suggested that in habeas corpus proceedings such a provision might be a source of weakness. The resolution was also criticised because of the provision for confinement in jail. This point was debated at length. It was urged that the House had no control over the jail, that the jailer might refuse to receive the prisoner, etc. On the other hand it was shown that the House had in the case of Wolcott and others committed to the jail.

Finally Mr. Roberts withdrew the resolution proposed, and offered the following which was agreed to:

Resolved, That Richard B. Irwin be remanded to the custody of the Sergeant-at-Arms, to abide the further order of this House, and that while in such custody he be permitted to be taken by the said Sergeant-at-Arms before the Committee on Ways and Means, if he shall declare himself ready to answer such questions as may be lawfully put to him, including those asked of him by order of this House, and while he shall so remain in custody the Sergeant-at-Arms shall keep the witness in his custody in the common jail of the District of Columbia.

1691. The case of Richard B. Irwin, continued.

The Speaker, without order of the House and under the law, certifies the case of a contumacious witness to the district attorney; but the Journal may contain no record of his act.

A writ of habeas corpus being served on the Sergeant-at-Arms, who held the witness Irwin in custody for contempt, the House, after consideration, prescribed the form and manner of return.

The House having ordered the arrest of a person who had failed to obey a subpoena from a committee, and who later made explanation, an order was passed discharging him without arraignment.

After the adoption of the resolution the Speaker (Mr. Blaine) said that the law was mandatory on the Speaker to certify a case of contumacy to the district attorney. In the case of Stewart some criticism arose because that was not done. In this case, therefore, in the absence of an order from the House, he should certify the case. The Journal does not appear to have any record of such an act.

On January 7 [1] the Speaker laid before the House a petition from Irwin representing that his confinement in jail would result in serious injury to his health, and asking that the order be changed. The petition also questions the authority of the House to imprison, and states that no witness has been similarly imprisoned since the passage of the act of 1857. After debate this petition was laid on the table.

[1] Record, p. 314.

On January 8 [1] Mr. Dawes presented a letter from two physicians, representing that the confinement of the witness in the jail would be attended by results pernicious to his health. After debate this letter was presented to the Committee on Ways and Means.

Mr. Benjamin F. Butler, of Massachusetts, then offered the following, which was disagreed to, yeas 34, nays 160:

Resolved, That pending the examination and report of the Committee on Ways and Means upon the said subject, the Sergeant-at-Arms be, and is hereby, instructed to retain said Irwin in his own custody, and not in the common jail.

On January 14 [2] the Speaker laid before the House a letter from N. G. Ordway, Sergeant-at-Arms of the House, reporting as follows:

I respectfully report to you, and through you to the House of Representatives, that on the 9th day of January, 1975, a writ of habeas corpus was served upon me, directing me to produce the body of Richard B. Irwin, detained in my custody, before Arthur MacArthur, one of the judges of the supreme court of the District of Columbia, on the 12th day of said January; that thereafter, on the 12th day of January aforesaid, the time for producing the body of said Irwin was further extended to January 14, at 11 o'clock a. m., at which time I appeared before the said Judge MacArthur and presented, through my attorney, Hon. Samuel Shellabarger, the writ and resolutions of the House of Representatives upon which said Irwin was held in my custody. Whereupon Judge MacArthur decided that no return would be received by him until the body of the said Irwin was produced in court.

Inasmuch, therefore, as the production of the said Richard B. Irwin by me would release him from my custody as an officer of the House of Representatives and place him in the custody of the court, I asked for delay until to-morrow, January 15, at 11 o'clock a. m., to obtain further instructions from the House of Representatives.

Debate at once arose over the importance of the question presented. Mr. Dawes contended that the doctrine of the Nugent case (8th Philadelphia American Law Journal) applied:

Every court, including the Senate and House of Representatives, is the sole judge of its own contempts; and in case of commitment for contempt in such case, no other court can have a right to inquire directly into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus.

On the other hand, it was pointed out by Mr. John A. Kasson, of Iowa, that under sections 753, 755, 758 of the the Revised Statutes it was made the duty of the judge to issue the writ, and that the person making the return should at the same time bring the body of the prisoner. On the other hand it was urged that if the body was brought it would pass into the custody of the court, and so might escape. From these divergent considerations there resulted three propositions: The reference of the subject to the Committee on the Judiciary for examination; a direction to the Sergeant-at-Arms to make return that he held the prisoner in custody under the order of the House adjudging him guilty of contempt, and a further direction not to bring the body of the prisoner before the court; and a third proposition as follows:

Resolved, That the Sergeant-at-Arms be, and is hereby, directed to make careful return to the writ of habeas corpus in the case of Richard B. Irwin that the prisoner is duly held by authority of the House of Representatives to answer any proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Irwin before said court when making such return, and retain said Irwin, and continue to hold him subject to the further order of this House.

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[1] Journal, p. 145; Record, pp. 345–346.

[2] Journal, pp. 179, 180; Record, pp. 471–478.

The first two propositions were rejected, but the third was agreed to after being amended, on motion of Mr. George F. Hoar, of Massachusetts, by striking out all after the word "contempt." Thus the third proposition, as amended, accomplished substantially the object of the second.

On January 15[1] Mr. Dawes reported to the House that the Sergeant-at-Arms had obeyed the order of the House, making return as directed. Mr. Dawes submitted copies of both the writ of habeas corpus and of the return of the Sergeant-at-Arms. The latter contained copies of the warrants of the Speaker for the arrest and detention of Irwin.[2] Mr. Dawes further reported that the judge, after a hearing, had insisted on the production of the body of Irwin in court.

Thereupon a debate arose again on the respective authorities of the House and the court, and whether or not the House might disregard the writ of habeas corpus. Mr. John A. Kasson presented from the Ways and Means Committee a proposition, which, after modification, was as follows:

Ordered, That the Sergeant-at-Arms, with the aid of counsel, make known to the judge issuing the writ of habeas corpus requiring the body of Richard Irwin to be brought before said judge, that he, the said Sergeant-at-Arms, has said Irwin in his custody pursuant to an order of this House, upon its judgment that the said Irwin was in contempt of the House of Representatives in refusing to give testimony as a witness, and is detained pending such examination, and for no other reason; that the House of Representatives require of him to retain the body of said Irwin in his custody until the said Irwin shall offer to purge himself of said contempt, as provided by the order of this House, and that he respectfully inform the judge that, as an officer of this House, he can not disobey the orders thereof in this respect by releasing in any way or transferring said Irwin from his custody; and further,

Ordered, That he exhibit to the said judge a copy of the order of this House, duly certified by the Clerk, adjudging the said Irwin in contempt, and the warrant of the Speaker in execution thereof, together with a copy of this order.

To this Mr. James B. Beck, of Kentucky, proposed as an amendment in the nature of a substitute, the following:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Richard B. Irwin that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Irwin before said court when making such return as required by law.

An amendment to add to the amendment the following: "And that he be further directed to obey the order of said court in the premises," was disagreed to.

The question was then taken on the substitute proposed by Mr. Beck, and it was agreed to, yeas 107, nays 64.

The original proposition as amended by the substitute was then agreed to.

On January 19[3] Mr. Dawes presented documents to show that the health of the prisoner was satisfactory, and stated that the committee were not prepared to recommend any change in his place of confinement, which was the jail.

On January 20[4] Mr. Dawes laid before the House a letter addressed to the Speaker by Richard B. Irwin, in which the latter announced his readiness to answer the questions. The letter having been read, Mr. Dawes offered the following:

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[1] Journal, pp. 189, 190; Record, pp. 509–516.

[2] Record, pp. 510, 511.

[3] Record, p. 589.

[4] Journal, p. 210; Record, p. 609.

Whereas, on the 6th instant, Richard B. Irwin was adjudged to be in contempt of this House for refusing to answer a certain question or questions propounded to him at the bar of the House and by the Committee on Ways and Means; and whereas the House did thereupon order the commitment of said Irwin to the custody of the Sergeant-at-Arms in the common jail of the District of Columbia, to abide the further order of this House; and whereas the said Irwin has this day stated in writing to the Speaker that he is ready to answer the question or questions which he has heretofore refused to answer, and others that may be lawfully put to him: Therefore,

Resolved, That so much of the resolution of January 6 as required the Sergeant-at-Arms to keep the said Irwin in the District Jail be, and the game is hereby, rescinded and that upon answering the said question or questions the said Irwin shall be discharged from the custody of the Sergeant-at-Arms.

1692. A witness being arraigned for contempt in refusing to answer a pertinent question asked by a committee agreed, when arraigned, that he would answer if so ordered by the House.

A witness being ordered by the House to answer a pertinent question before a committee, was then removed from the bar, and later, on report of the committee that he had answered, was discharged.

On January 11, 1875,[1] Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, which had been charged with an investigation of disbursements of money by the Pacific Mail Steamship Company to procure the passage of the subsidy bill in the previous Congress, reported that Charles Abert had declined to answer a pertinent question, and was in the judgment of the committee in contempt. Thereupon it was

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

Subsequently the Sergeant-at-Arms appeared at the bar of the House having in custody Charles Abert, alleged to be in contempt of the House.

On motion of Mr. Dawes,

Ordered, That the Speaker propound to him the question: "Will you state to the Committee on Ways and Means the names of the persons to whom you distributed $106,500 belonging to the Pacific Mail Steamship Company, according to the directions of Mr. Irwin?" and also: "Will you state the names of the person or persons who introduced to you those individuals to whom you distributed any portion of said money?"

The Speaker having propounded the said questions the witness replied that he would as far as he could on being ordered by the House.

The House then directed, by vote, that the witness should answer the questions.

Then, without further order, the witness was removed from the bar by the Sergeant-at-Arms, the Speaker[2] holding that further order was not necessary.

On January 12, on report of Mr. Dawes that the questions had been answered, the House voted to discharge the witness.

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[1] Second session Forty-third Congress, Journal, pp. 159, 163; Record, pp. 378, 379, 399.

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

1693. A witness having, when arraigned for contempt, submitted an answer disrespectful to the House, he was ordered into custody for contempt.—On January 19, 1875,[1] Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, made a report that in the opinion of the committee Charles A. Wetmore was in contempt for refusing to answer a question arising in the investigation of the use of money to secure the passage of the subsidy bill in the preceding Congress. Thereupon the House adopted the usual resolution for the arrest of Wetmore, and on the same day he was arraigned at the bar of the House. The prisoner then asked until the succeeding day to prepare his answer.

On January 20 the prisoner was again arraigned, and read a prepared statement, after which the House

Resolved, That Charles A. Wetmore, having, under the guise and pretense of answering to a charge of contempt, been guilty of a series of gross and wanton insults to this House, in the presence of the House, be, and hereby is, adjudged in contempt thereof, and committed to the custody of the Sergeant-at-Arms, to be detained in the common jail of the District until the further order of the House.

On the succeeding day a letter of apology being presented to the House from Wetmore, the House ordered his discharge.

1694. A witness arrested for contempt in refusing to answer, promised to respond, and was thereupon discharged and ordered before the committee.

In reporting the contumacy of a witness the committee appended to their report extracts from the examination showing the circumstances.

Instance wherein a committee, in its discretion, kept testimony secret.

On March 7, 1876,[2] Mr. Washington C. Whitthorne, of Tennessee, from the Committee on Naval Affairs, made a partial report stating that they were charged under a resolution of the House of Representatives, adopted January 14, 1876, with the duty of making inquiry into any errors, abuses, or frauds that might exist in the naval service, and were authorized to make inquires for periods in the past, and to send for persons and papers. In pursuance of the power conferred upon them by the House the committee had caused Alcaeus B. Wolfe, of Washington City, to be summoned before them for the purpose of giving testimony, and he had appeared on March 7, and after being sworn had testified in a manner shown by extracts appended. These extracts show that witness refused to answer whether or not he had ever carried any money to anybody connected with the naval service; whether or not he knew of any commissions or payments being made by contractors or claim agents to any person connected with the naval service. The committee therefore recommended this resolution, which was agreed to:

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

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[1] Second session Forty-third Congress, Journal, pp. 205, 208, 217, 227; Record, pp. 586, 597, 618, 640.

[2] First session Forty-fourth Congress, Journal, pp. 530–534; Record, pp. 1539, 1540.

On May 8[1] the Sergeant-at-Arms appeared at the bar of the House, having in custody, as directed by the Speaker's warrant, the body of Alcaeus B. Wolfe.

Mr. Whitthorne thereupon offered the following preamble and resolution, which was agreed to:

Whereas it appears to the House that Mr. A. B. Wolfe has appeared before the House Naval Committee and answered all questions that were propounded to him by the committee: Therefore,

Resolved, That the witness, A. B. Wolfe, be discharged from the custody of the Sergeant-at-Arms and ordered before the committee for such other and further examination as they may chose to make touching the matters before them by order of this House.

It appears from the record of debate that the witness had been brought to the committee room by the Sergeant-at-Arms, and had promised to answer the questions propounded. While this statement was being made the witness, then at the bar of the House, fell in a fit. He was removed from the Hall, and Mr. Whitthorne explained further that the last clause of the resolution was inserted in order that the subpoena issued by order of the Speaker should continue binding on the witness, in case the committee should have further need of his testimony.

Mr. Whitthorne further stated that the committee deemed it proper that the testimony given by the witness should remain in possession of the committee alone and for the time be kept secret.

1695. The case of E. W. Barnes, in contempt of the House in 1877.

Form of subpoena duces tecum used for compelling production of telegrams in 1877, but criticized as too general and verbally defective.

A subpoena served by a deputy did not contain a certificate of the deputy's appointment.

The House held valid a report transmitted by telegraph from an investigating committee, and ordered the arrest of a person for contempt on the strength of it.

A person having been arrested for contempt, a communication from his counsel was laid before the House.

On December 21, 1876,[2] the Speaker laid before the House a telegram from Mr. William R. Morrison, of Illinois, chairman of the Select Committee to Investigate the Recent Election in Louisiana, communicating a record of the proceedings in the case of E. W. Barnes, manager of the Western Union Telegraph Company in New Orleans, a recusant witness. Under the authority given the committee to send for persons and papers the committee had caused a subpoena duces tecum to be issued in the following words and figures:

By Authority of the House of Representatives of the United States of America.

TO JOHN G. THOMPSON, Esq.,

Sergeant-at-Arms, or His Special Messenger:

You are hereby commanded to summon E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, La., to be and appear before the Louisiana Affairs Special Committee of the House of Representatives of the United States, of which Hon. William R. Morrison is chairman, and with you bring all telegrams sent or received by William Pitt Kellogg [here follow names of seven

[1] Journal, p. 537; Record, pp. 1563, 1564.

[2] Second session Forty-fourth Congress, Journal, pp. 127–134.

others], at the office of the Western Union Telegraph Company, New Orleans, from and after, the 15th day of August, 1876, in their chamber in the city of New Orleans, St. Charles Hotel, forthwith, then and there to testify touching matters of inquiry committed to said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 13th day of December, 1876.

[SEAL.]

SAMUEL J. RANDALL, *Speaker.*

Attest:

GEORGE M. ADAMS, *Clerk.*

On this subpoena was indorsed:

Served personally with a copy of the within at one and one-half o'clock p.m., December 13, 1876.

JOHN G. THOMPSON, *Sergeant-at-Arms.*

BY J. W. POLK, *Special Messenger.*

The witness, when he appeared before the committee, acting under instructions from officers of the company, refused to produce the telegrams, whereupon the committee voted to communicate the refusal to the House. This was done in the form of a transcript of the proceedings of the committee, signed by the chairman and attested by the clerk. Annexed to the communication was a letter from President Orton, of the telegraph company, in which he informed the committee that the company would not permit its employees to furnish the telegrams, or at least not until Congress should have approved the subpoenas of the committees and directed that their demands be enforced.

The communication from Chairman Morrison having been read to the House, Mr. J. Proctor Knott, of Kentucky, submitted this resolution:

Resolved, That the Speaker of this House issue a warrant, under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay E. W. Barnes, to answer for a contempt of the authority of this House and a breach of its privileges, in refusing to produce to the special committee, of which Hon. William R. Morrison is chairman, now sitting in the city of New Orleans, certain telegraphic dispatches, in obedience to a subpoena duces tecum, servied on him the 13th day of December, 1876, and to be dealt with as the law under the facts may require.

There was debate [1] as to the validity of a report transmitted by a committee in this way, but the Speaker sustained the proceeding. There was also debate at length on agreeing to the resolution of arrest. Mr. Garfield urged that a citizen should not be arrested on authority of a report transmitted by an agency so prone to inaccuracy as the telegraph; and Mr. George W. McCrary, of Iowa, urged that the subpoena had been drawn too general in its terms, authorizing too extensive inquiry into the private affairs of the citizen.

The resolution was agreed to by the House without debate.

On January 3, 1877,[2] the Speaker, having stated that the Sergeant-at-Arms, in pursuance of the order of the House, had taken into custody E. W. Barnes, a recusant witness before the Select Committee to Investigate the Recent Election in the State of Louisiana, the Sergeant-at-Arms appeared at the bar of the House with the said Barnes.

The Speaker then laid before the House a communication, addressed to the

[1] Record, pp. 352–358.

[2] Journal, pp. 149, 150; Record, p. 408.

Speaker by the counsel for the said Barnes, requesting delay in the appearance of Mr. Barnes until they should have had time to confer with him.

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

Resolved, That E. W. Barnes be allowed until Friday, the 5th day of January, 1877, at 2 o'clock p. m., to make his answer at the bar of this House to the charge of contempt of its authority and breach of its privileges pending against him; and that said Barnes be remanded to the custody of the Sergeant-at-Arms, and by him safely held until the judgment of the House be had on said charge.

1696. The case of E. W. Barnes, continued.

In 1877 the House, in the course of an investigation of the recent Presidential election, compelled the production of telegrams by an employee of the Company having actual custody of them.

A witness arraigned for contempt was accompanied by his counsel; but his request that he be heard by counsel was granted only to the extent of being permitted to respond in writing.

In an arraignment in 1877 the answer of the respondent, prepared by his counsel, was attested.

Discussion of the effect of a State law as a limitation on the right of the House to investigate.

A person arraigned at the bar for contempt was permitted to amend his answer.

On January 5, 1876,[1] the hour of 2 o'clock having arrived, in compliance with the previous order of the House, the Sergeant-at-Arms appeared at the bar of the House, having in custody E. W. Barnes, a recusant witness. Mr. Barnes was accompanied by his counsel.

Whereupon the following interrogatory was propounded to him by the Speaker:

Mr. Barnes, it is the duty of the Chair to ask you what excuse you have to offer for your failure to produce before the committee of this House, sitting at New Orleans, on the 18th day of December, 1876, or thereabouts, certain telegrams called for by subpoena duly served upon you?

The said Barnes desiring to be heard by counsel,

Ordered, That leave be granted the witness to make his statement in writing, to be read from the Clerk's desk.

The same having been read, Mr. Knott submitted the following resolution, which was agreed to:

Resolved, That the report of the committee, the answer just read to the House, and all other papers relating to the breach of the privilege of this House and contempt of its authority, alleged to have been committed by E. W. Barnes, now in custody and at the bar of the House, be referred to the Committee on the Judiciary, with instructions to report as early as practicable what action, in their judgment, should be taken by the House in relation thereto.

The record of debates shows that the witness, in reply to the question put by the Speaker, stated that, as the precedent in the case of Kilbourn would prevent his being heard by counsel, he asked that his written statement, prepared by his counsel, be read.

The Speaker expressed the opinion that this statement should be under oath, but stated that he would be governed by the opinion of the House. Some diversity

[1] Journal, p. 164; Record, pp. 452–455.

of opinion was expressed; but the question did not come to issue, as it appeared that the statement was duly attested.

On January 12, 1877,[1] Mr. Knott, from the Committee on the Judiciary, reported[2] the following resolutions:

Resolved, That E. W. Barnes be required to produce to the select committee of which Hon. William R. Morrison is chairman, the telegrams mentioned in the subpoena which had not been sent to Mobile by order of the superintendent before the service of the subpoena upon him on the 13th of December, 1876.

Resolved, That said Barnes be again brought to the bar of the House and the Speaker then demand of him if he is now willing to produce to said committee the telegrams mentioned in the subpoena which had not been sent by him to Mobile before the 13th day of December, 1876, when the subpoena was served on him, and whether he will do so.

Resolved, That if said Barnes shall answer that he is now willing to produce said telegrams to said committee, and promises to do so, he will be allowed to do so without unnecessary delay, and upon so doing he shall be discharged from custody.

In reporting these resolutions the committee took the ground that the messages were not privileged, on account of their transmittal by telegraph. A telegraphic communication was not different from one transmitted orally or on a piece of paper through the hands of a third person. (Judge Cooley, and Henisler *v.* Freedman, 2 Parsons' Select Cases, 274, and State *v.* Litchfield, 58 Maine, 267, are referred to on foregoing branch of question.)

As to the contention of the witness that the legal possession and control of the messages did not reside in him as a subordinate employee, and that he could not produce them without a breach of duty, the committee find, after discussing incidentally the law of the case, and referring especially to Lord Ellenborough's opinion (Amy *v.* Long, 9 East., 473), that Barnes actually did have the authority, given him by a general order of the telegraph company, to produce the telegrams at the time the subpoena was served on him.

The plea of the witness that the subpoena was verbally defective in the use of the word "you" for "him," was dismissed as not made in good faith.

The contention that the subpoena was in effect a "general warrant," and within the prohibition of the Fourth amendment to the Constitution, the committee dismisses on the authority of the case of The United States *v.* Orville E. Babcock (3 Dillon's C. C. R., 567).

The contention that the law of Louisiana in relation to telegraph messages, making them confidential, prevented the witness from disclosing the messages, is thus treated by the report:

It has never been questioned that the House of Representatives has the inherent power under the Constitution, from the very nature and purposes of its organization, to institute any investigation which in its judgment may be necessary to the proper discharge of any of its functions, that in such investigations it has the power to examine witnesses, and to require the production of any paper that may be necessary to render the same effectual, and that its jurisdiction in that regard is coextensive with the limits of the United States, including Louisiana. It is, furthermore, certain that it may, in the exercise of those powers, act through a committee regularly appointed and authorized for that purpose. These principles are so universally understood and admitted that it requires neither argument nor authority

[1] Journal, pp. 212–214; Record, pp. 602–608.

[2] House Report No. 99, Second session Forty-fourth Congress.

for their illustration. It follows, therefore, that the law of any State which might, either directly or by implication, undertake to abridge the exercise of any of these powers by the House would be in derogation of its constitutional functions, and to that extent absolutely void.

When the resolutions were offered on behalf of the committee, Mr. Garfield noted the fact that they were so worded as to establish the foundation of the contempt, if there should be any, in the present and not past refusal to produce the messages.

The resolutions were then agreed to without debate.

The Sergeant-at-Arms thereupon appeared at the bar of the House having in custody the witness, to whom the Speaker propounded the following question:

Mr. Barnes, are you now willing to produce before the committee sitting in New Orleans, of which William R. Morrison is chairman, the telegrams mentioned in the subpoena which had not been sent by you to Mobile before the 13th day of December, 1876, when the subpoena was served upon you?

At the suggestion of Mr. George F. Hoar, of Massachusetts, approved by the Speaker, the resolutions were read to the witness before he was required to answer.

The question then being again put by the Speaker the witness answered:

Mr. Speaker, when I left New Orleans I was necessarily superseded, being under heavy bonds and being unwilling to be responsible for the money and business of the office when not personally present; I am therefore not at present in control of anything or any messages in the New Orleans office. Should I come in possession of the messages again, and should there prove to be any such messages there as are described in the subpoena, I will willingly produce them.

The Speaker expressed the opinion that this was not the categorical answer required by the practice of the House; but, on objection being raised, did not insist that he might determine what was properly a function of the House to determine.

Mr. Knott thereupon offered this resolution:

Resolved, That the answer made by the witness, E. W. Barnes, to the questions propounded to him by the Speaker under the resolution of the House is not deemed sufficient, and that he be remanded to the custody of the Sergeant-at-Arms, and by him closely kept until he shall produce to the committee all telegrams demanded from him and be discharged from the custody by order of the House.

This resolution having been read, the witness asked leave to modify his answer; and, by unanimous consent, on motion of Mr. Bernard G. Caulfield, of Illinois, this request was allowed by the House. A request of the witness that in returning his amended answer he might be heard in verbal explanation through counsel, the Speaker held that this request could only be granted by the House; and objection arising, the request was not put to the House.

The witness thereupon answered:

I intended my answer to be such as the resolution seemed to me to require. I thought it proper in candor to inform the House as to my present circumstances. I am entirely willing to produce the messages, and will do so if I can.

Mr. Knott withdrew the resolution previously offered by him and offered the following:

Resolved, That the answer of E. W. Barnes, the witness, to the questions propounded to him by the Speaker in obedience to the resolution of the House is not deemed sufficient, and that said Barnes is hereby adjudged to be in contempt of the authority of this House, and to have committed a breach of its privileges in refusing to produce telegrams to the special committee, of which William R. Morrison

is chairman, in obedience to the subpoena served upon him on the 13th of December, 1876, and that he be remanded to the custody of the Sergeant-at-Arms, to be held in such confinement by him until said witness shall purge himself of his contempt by producing the telegrams specified in the subpoena, which he had not sent to Mobile before the subpoena was served upon him, to said select committee, or until he be discharged from custody by the order of the House.

After brief debate, this resolution was agreed to, yeas 131, nays 72.

On January 16, 1877,[1] the Speaker laid before the House the following letter:

HOUSE OF REPRESENTATIVES, *January 16, 1877.*

To the Honorable Speaker of the House of Representatives:

The undersigned would respectfully represent that he intended the answer he made to the demand made by the Speaker of him when he was last at the bar to be understood that he was entirely willing to produce all the messages demanded by the committee to the utmost extent of his power; and if allowed an opportunity he would honestly and in good faith use every effort in his power to regain possession of said messages for that purpose. He wishes to repeat that he is now willing so to do if he shall be afforded an opportunity, and that if he should fail he will still be amenable to the action of the House upon a view of all the facts which have occurred or may transpire. And he now respectfully asks the opportunity to make the effort to produce the messages to the committee, which he can not do while he remains in custody.

Yours, very respectfully,

E. W. BARNES.

On motion of Mr. Eppa Hunton, of Virginia, this letter was referred to the Committee on the Judiciary.

On January 16[2] the following resolution was reported from the Judiciary Committee (the Journal entry says "by unanimous consent"), and agreed to by the House:

Resolved, That E. W. Barnes be permitted to repair at once to New Orleans, in the custody of a deputy sergeant-at-arms, for the purpose of procuring the telegraphic dispatches heretofore mentioned in the report of the Judiciary Committee of this House, and within ten days bring them before the committee of investigation, at Washington, of which Hon. William R. Morrison is chairman, and abide the further action of this House.

On January 31, 1877,[3] Mr. Knott, by unanimous consent,[4] from the Committee on the Judiciary, offered the following resolution, which was agreed to:

Whereas E. W. Barnes has delivered to the select committee, of which Hon. W. R. Morrison is chairman, the telegrams in his possession, in pursuance of the order of this House:

Resolved, That said Barnes be, and he is hereby, discharged from custody:

1697. An official of a telegraph company not being in actual possession of dispatches demanded by the House, proceedings for contempt were discontinued.

Verbal return of the Sergeant-at-Arms on presenting a witness under arrest for contempt.

A report of an investigating committee, in the form of a letter to the Speaker, relating to contempt of a witness, was presented as a question of privilege.

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[1] Journal, p. 242; Record, p. 678.

[2] Journal, p. 244; Record, p. 694.

[3] Journal, pp. 346, 347; Record, p. 1154.

[4] The Journal has the entry "by unanimous consent." The Record indicates that "unanimous consent" was not asked.

On January 9, 1877,[1] the Speaker, as a question of privilege, laid before the House a letter from Hon. William R. Morrison, dated at New Orleans, La., December 29, 1876, in relation to the failure of William Orton to respond to a subpoena duces tecum, in the following terms:

By authority of the House of Representatives of the Congress of the United States of America.
To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon William Orton, president of the Western Union Telegraph Company, to be and appear before the select committee of the House of Representatives of the United States, of which Hon. William R. Morrison is chairman, to investigate the recent election in Louisiana, and to bring with you all telegrams in your possession or under your control received or sent by William E. Chandler, etc. [names of 12 others given], from and at New Orleans, La., Washington City, D. C., New York City, N. Y., since the 1st day of September last, at their chamber, in the city of New Orleans, La., on 26th day of December, 1876, at the hour of 12 o'clock m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 18th day of December, 1876.

[SEAL.] SAM. J. RANDALL, *Speaker.*
Attest:
GEO. M. ADAMS. *Clerk.*

As a part of the communication of the chairman, were included letters from Mr. Orton to Mr. Morrison and to Mr. Speaker Randall. In these letters the writer called attention to the wording of the subpoena which, by using the word "you" instead of "him," seemed to assume the possession of the telegrams by the Sergeant-at-Arms, and then went on to say that he (Mr. Orton) "had neither personally nor officially any possession of them; that I have never had any control over them except as an agent of the Western Union Telegraph Company, through and by the cooperation of subordinate agents; that the Western Union Telegraph Company has, without any knowledge or anticipation on my part, taken from me all power and control over all messages now in the possession of the company." He therefore asked to be excused. In his letter to Mr. Morrison Mr. Orton alleged ill health also as an excuse for not going to New Orleans.

The communication also gave minutes of the proceedings of the committee, and is signed by the chairman and attested by the clerk of the committee.

The same having been read, Mr. Eppa Hunton, of Virginia, offered a resolution, which was agreed to, yeas 160, nays 31, providing for the arrest of Mr. Orton. This resolution was substantially the same as that agreed to in the case of Mr. Barnes.

On January 15, 1877,[2] the Sergeant-at-Arms appeared at the bar of the House having in custody William Orton, and said: "In obedience to the order of the House, I have arrested and now have at its bar the witness, William Orton."

The Speaker then said:

Mr. Orton, it is the duty of the Chair to ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting at New Orleans, to testify and, further, to produce before said committee, in compliance with the subpoena duces tecum, duly served on you, and dated the 18th of December, 1876?

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[1] Second session Forty-fourth Congress, Journal, pp. 190–194; Record, pp. 514–518.

[2] Journal, pp. 219–226; Record, pp. 629–631.

Mr. Orton thereupon presented an attested statement in writing in which were included copies of letters, dispatches, and other communications which had passed between him and officers and Members of the House, as well as transcripts of the records of his company showing that he had no authority to produce telegrams. He disclaimed an intention of contempt, and asked to be discharged from custody.

Thereupon the communication of Chairman Morrison, the answer of Mr. Orton, and other papers relating to the case were referred to the Judiciary Committee.

On January 17,[1] by unanimous consent, Mr. Hunton submitted this resolution, which was agreed to:

Resolved, That the Sergeant-at-Arms be, and he hereby is, authorized and allowed to permit William Orton, a witness now in custody, to return home to New York for consultation with and treatment by his attending physicians, in the company of the Sergeant-at-Arms or his deputy, to return on Friday, the 19th instant, to Washington.

On January 19[2] Mr. Hunton, from the Committee on the Judiciary, submitted the following report, which was agreed to:

That they find from the proof before them that at the time and since the service of the subpoena upon him the condition of Mr. Orton's health has been such that it would have probably imperiled his life, or at least postponed his recovery, to have made the journey to the city of New Orleans when he was requested to appear, and that for that reason he should not be held in contempt for failing to make his personal appearance at the time and place designated.

It further appears that at the time of the service of the subpoena upon him, and since, Mr. Orton has not had actual possession of the dispatches demanded with the present capacity to produce them so as to bring him within the rule laid down by Lord Ellenborough in Amey *v.* Long, 9 East, 473, indorsed by the House in the recent matter of E. W. Barnes. They therefore recommend that said Orton be discharged from custody.

1698. In 1877 the House imprisoned members of a State canvassing board for contempt in refusing to obey a subpoena duces tecum for the production of certain papers relating to the election of Presidental electors.

A subject being within the power of the House to investigate, it was held that State officers might not decline to produce records on the plea that they possessed them in their official capacities.

Several persons arraigned at the bar together for contempt made an answer in writing and signed, but not sworn to.

A resolution relating to the place of imprisonment of persons in custody for contempt was admitted as a matter of privilege.

At the end of a Congress the House, by a general order, directed the discharge of all persons in custody for contempt.

On January 16, 1877,[3] Mr. William P. Lynde, of Wisconsin, from the Committee on the Judiciary, to which was referred the report of the select committee to investigate the recent election in Louisiana in relation to the contempt and breach of the privileges of the House by J. Madison Wells, Thomas C. Anderson,

[1] Journal, p. 243.

[2] Journal, p. 258; Record, p. 753.

[3] Second session Forty-fourth Congress, Journal, pp. 242, 246, 247; Record, pp. 668–678, 695–704.

G. Casanave, and Louis M. Kenner, in refusing to produce to said committee certain papers mentioned in a subpoena duces tecum duly served upon them, and each of them, submitted a report in writing, accompanied by the following resolution:

Resolved, That the Speaker of this House issue a warrant, under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay J. Madison Wells, etc. [giving names of the others], to answer for a contempt of the authority of this House and a breach of privilege, in refusing to produce to the special committee of which Hon. William R. Morrison is chairman, now sitting in New Orleans, certain papers in obedience to a subpoena duces tecum which was duly served upon them, and to be dealt with as the law under the facts may require.

After debate, and on the succeeding day, the resolution was agreed to, yeas 158, nays 81.

The report, giving reasons for the resolutions, was read from the Clerk's desk by Mr. Lynde.[1] The report began by stating that the gentlemen named in the resolution—

claiming to be the returning board of canvassers for said State, have refused to obey a subpoena duces tecum, duly issued and served upon them, commanding them to appear before the committee now sitting in New Orleans and bring with them "all returns of elections, all consolidated statements of supervisors of elections, all statements of votes, and tally sheets for each polling place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proofs in their possession or under their control, touching the said election in certain parishes," naming them.

The witnesses refusing to obey the subpoena have sent a written communication to the investigating committee, claiming that these papers are "a part of the records of the returning officers of elections for the State of Louisiana and are in the possession of the returning officers in their official capacity;" and submit that "the board of returning officers of elections for Louisiana is a body created by the laws of Louisiana, with specific and well-defined duties, partly ministerial and partly quasi-judicial; that their action under the law of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal."

Your committee do not feel called upon at this time to express an opinion upon the question as to whether "the action of the returning officers is subject to review by any State or national tribunal,"

The Constitution of the United States, Article II, section 1, provides that "each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

The committee claimed for Congress the right to inquire whether the persons claiming to be electors had been properly chosen, and that the power to legislate on this subject rested in Congress alone. Charges of fraud had been made against this returning board, and the witnesses were subpoenaed to appear and testify in regard to the charges.

Your committee [continues the report] are of the opinion that these charges are within the power and duty of the House to investigate, and that the returning officers, either in their individual or official capacity, can not conceal fraudulent acts or violations of law in the appointment of electors * * * under the claim that in perpetrating the fraud or violating the law they were acting in an official capacity as State officers. Courts sometimes excuse public officers from producing papers in their possession and custody upon the ground of public convenience, and substitute secondary evidence or copies of such papers for the original. But it is a rule adopted for public convenience and is never applied when the original is necessary, as in a case of forgery or perjury, or when the original alone can answer the purpose and object of the investigation. * * * It is true that courts do not require public officers to disclose secrets of state, but here are no state secrets; these papers * * * are public in their

[1] Record, p. 668.

character, and every American citizen is interested in them. Your committee do not recognize the rights of any citizen or officer, whether Federal or State, to defeat an investigation of either House which may involve the existence of the Government by refusing to appear and testify. If a State officer can be compelled to appear before a committee of this House appointed to investigate a question involving the existence of the Government, then it is for the House to determine when the power shall be exercised.

Therefore the committee reported the resolution. This was debated at length, it being urged in opposition that the appointment of electors was a State function, and that to inquire into it was an invasion of State sovereignty. The records of a State might not be thus taken by authority of Congress. The positions of Presidents Jefferson and Jackson as to production of papers were cited [1] in this connection. At the close of the debate the resolution was adopted, as stated above.

On January 27, 1877,[2] the Sergeant-at-Arms appeared at the bar of the House having in custody the bodies of those specified in the resolution of arrest.

Thereupon the following interrogatory was propounded to the said Wells, Anderson, Casanave, and Kenner:

It is the duty of the Chair to ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting in the city of New Orleans, La., on the 12th day of December, 1876, and to produce before the said committee certain books and papers called for in the subpoena duces tecum duly served upon you.

To which the said Wells, Anderson, Casanave, and Kenner being severally interrogated severally replied that they desired time for consultation, and requested that they be allowed until Monday or Tuesday next at 1 o'clock to make reply to said interrogatory.

Thereupon Mr. Lynde, from the Committee on the Judiciary, reported the following resolutions:

Resolved, That J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner be, and are hereby, adjudged to be in contempt for a violation of the privileges of this House.

Resolved, That J. Madison Wells, etc., [names given] be, and are hereby, ordered to appear before the special committee appointed to investigate the recent election in Louisiana, of which Hon. William R. Morrison is chairman, and produce all consolidated returns of supervisors of election, all statements of votes and tally sheets for each polling place in the late election for electors of President and Vice-President, together with all affidavits, depositions, protests, and other written proofs in their possession or under their control on the 11th day of December, 1876, touching the said election in the parishes of East Baton Rouge, etc. [here follows enumeration of parishes], and that said witnesses be remanded to the custody of the Sergeant-at-Arms, and be by him closely kept until the further order of this House.

Pending action on these resolutions, by unanimous consent on motion of Mr. John Hancock, of Texas, the respondents were allowed thirty minutes for consultation, before replying to the said interrogatory.

The House thereupon proceeded to other business, and after a time the Sergeant-at-Arms again appeared at the bar of the House having in custody the bodies of the said Wells, Anderson, Casanave, and Kenner.

By unanimous consent leave was granted them to make reply to the said interrogatory in writing, to be read from the Clerk's desk. This reply [3] cited the laws of Louisiana relating to the functions of the returning board; claimed that public

[1] By Mr. William P. Frye, of Maine, Record, p. 670.

[2] Journal, pp. 313–317; Record, pp. 1065, 1072.

[3] Record, p. 1069, 1070.

records and documents of the government were not to be wrested by subpoena from sworn custody; claimed also that they should be proven by examination and exemplified copies; asserted that the investigating committee were tendered full, ample, and complete inspection of the papers in question; asserted that to have surrendered the documents on December 12, 1876, would have involved a violation of the sworn duties of the respondents; and finally declared that on January 5, 1877, under the terms of law, the papers demanded by the subpoena had been deposited with the secretary of state of Louisiana.

This reply was signed by the respondents; but Mr. Lynde raised the point that it was not sworn to. The Speaker[1] said that the practice of the House had varied, but of late it had tended in the direction of requiring the oath.

Mr. Lynde, however, waived this point.

The reply having been read, the House then agreed to the two resolutions under the operation of the previous question, the first being agreed to yeas 145, nays 87, and the second, yeas 137, nays 77.

On February 8[2] Mr. Eugene Hale, of Maine, proposed as a question of privilege a resolution directing the Sergeant-At-Arms to remove Messrs. Wells and Anderson, "now confined in this Capitol, to a place more suitable" and where the health of the witnesses might not be endangered. The Chair decided the matter to be privileged.[3] The resolution was, on motion of Mr. S. S. Cox, of New York, referred to the select committee on the late election in Louisiana with instructions to investigate and report.

On March 2,[4] three attempts were made to suspend the rules so as to consider and pass a resolution discharging Messrs. Wells, Anderson, Casanave, and Kenner from custody; but each time there was failure to get a two-thirds vote in favor of the resolutions.

On March 2,[5] (calendar day of March 3) Mr. J. Randolph Tucker, of Virginia, by unanimous consent submitted the following preamble and resolution, which were considered and agreed to:

Whereas all the investigations which have been directed by this House have been virtually closed, and no more testimony can be taken by reason of the near adjournment of the House, and the further imprisonment of witnesses in contempt of the authority of this House can not conduce to the truth sought by said investigations: Therefore,

Resolved, That the Sergeant-at-Arms be directed to discharge this day all persons held by him under order of this House for contempt of its authority.

1699. For declining to testify or to obey a subpoena duces tecum commanding him to produce certain papers to be used in impeachment proceedings against himself George F. Seward was arraigned for contempt.

After consideration a committee concluded that an official threatened with impeachment was not in contempt for declining to be sworn as a witness or to produce documentary evidence.

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

[2] Journal, p. 401; Record, pp. 1359–1365.

[3] Record, p. 1360.

[4] Journal, pp. 616, 622, 631; Record, pp. 2109, 2131.

[5] Journal, p. 640: Record, p. 2143.

A person before a committee declining to give evidence, the committee tendered him oaths as a witness, which he refused.

Being arraigned for contempt, George F. Seward presented a written statement signed by himself and counsel, but not attested, and this answer appears in full in the Journal.

Form of a subpoena duces tecum issued by order of the House.

On February 22, 1879,[1] Mr. William M. Springer, of Illinois, from the Committee on Expenditures in the State Department, submitted a report in regard to the alleged contumacy of George F. Seward. The report set forth that the committee had been empowered by resolution of the House to investigate the business of the State Department, past and present, with power to send for persons and papers; that there had been referred to the committee a memorial preferring charges of misconduct in office against George F. Seward, late consul-general at Shanghai, China, and at this time minister to China. The committee having failed to obtain certain books and papers, the following subpoena duces tecum was issued on February 19:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,

Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon George F. Seward to be and appear before the Expenditures of State Department Committee of the House of Representatives of the United States, of which Hon. William M. Springer is chairman, and the said George F. Seward is hereby commanded and required to diligently search for and bring with him and produce before said committee all blotters, rough books, cashbooks, journals, and ledgers kept and used in the office of the consul-general at Shanghai, China, during his (said Seward's) incumbency of the office of consul-general at Shanghai, including any that may have been taken by him (said Seward) to Peking, China, in their chamber, in the city of Washington, on the 20th day of February, 1879, at the hour of 10 o'clock in the forenoon, then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 19th day of February, 1879.

[L. S.] SAM. J. RANDALL, *Speaker.*

Attest:

GEORGE M. ADAMS, *Clerk.*

The report goes on to state that Mr. Seward appeared before the committee on February 20 and answered the inquiry of the committee as to his readiness to produce the books, by an argument of his counsel as to the authority of the House to compel their production. The committee thereupon adopted a series of resolutions reciting that the books in question were public and not private; that they were necessary to the inquiry; that said Seward had possession of the books and illegally deprived the committee of their use, etc., and, finally, that, should he fail to produce them, the chairman of the committee should tender to him the following qualified oath:

You do swear that you will true answer make to such questions as may be put to you touching the possession, custody, and whereabouts of the books called for by the subpoena duces tecum served upon you?

[1] Third session Forty-fifth Congress, Journal, pp. 496, 547, 555; Record, pp. 1770–1777, 2005–2016.

And, further, it was resolved that the chairman should tender to him the general oath, as follows:

You do solemnly swear that the evidence you will give touching the matters of inquiry committed to this committee and the answers you will give to the questions propounded to you by or on behalf of this committee touching such matters shall be the truth, the whole truth, and nothing but the truth, so help you God?

These oaths being successively tendered to the witness, he stood mute in each case. Then his counsel presented an argument that the said George F. Seward was protected by the constitutional guaranty that "no person shall be compelled in any criminal case to be a witness against himself." The answer, therefore, denied the efficacy of the subpoena, and also protested that the said Seward had not been heard by counsel or otherwise on the matters of fact set forth by the committee in regard to the books and papers in question, and denied that any books, public in the light of the law, had been wrongfully withheld.

The committee, after referring to the law in regard to witnesses summoned before committees, proceeded with an argument to show that an investigation before a Congressional committee is not a criminal case within the meaning of the Constitution. Mr. Seward was not a "party," instead of a witness, simply because counsel and testimony had been heard for and against him. The committee were investigating, but not trying him.

Therefore the committee recommended the following:

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

This report was signed by Messrs. Springer; Benjamin Dean, of Massachusetts; Stephen L. Mayham, of New York, and Thomas Turner, of Kentucky.

The minority of the committee, Messrs. Solomon Bundy, of New York, Thomas M. Bayne, of Pennsylvania, and Mark H. Dunnell, of Minnesota, submitted views, arguing at length to show that the inquiry was a criminal case within the meaning of the Constitution, and also arguing that the books required were not, as the committee report held, public archives such as a consul was required by law or regulation to keep, but were private books such as he should not be required to produce. The minority therefore proposed the following resolutions:

Resolved, That the reasons given by Hon. George F. Seward, through his counsel, to the committee are legally sufficient to excuse his failure to produce the books described in the subpoena duces tecum, and his standing mute when tendered the oaths required by the resolutions of the committee, adopted by a majority of this committee, and his conduct in the premises are not contumacious, but are excusable by the Constitution and laws of the United States and the acts of Congress pertaining thereto.

Resolved, That the Speaker should not issue his warrant directing the Sergeant-at-Arms to take into custody the body of George F. Seward, to the end that he be brought to the bar of the House to show cause why he should not be punished for contempt.

The question being taken first on the resolutions of the minority, they were disagreed to—yeas 119, nays 142.

The order proposed by the committee was then agreed to—ayes 105, noes 47.

In the course of the debate on the above report reference was made to the refusal of President Jackson, in 1837, to give to a committee information on which impeachment proceedings might be founded.

On February 28[1] the Sergeant-at-Arms appeared at the bar of the House having in custody the body of George F. Seward; whereupon the said Seward was arraigned and the following interrogatory propounded to him by the Speaker:

Mr. Seward, you are presented at the bar of the House, upon the order of the House, under arrest on an alleged breach of the privileges of the House, in refusing to answer certain questions propounded to you by a committee of the House, which questions that committee was authorized by the House to ask, and for standing mute when tendered an oath as a witness, and for failing to produce certain books as required by a subpoena duces tecum duly served on you. It is my duty now, by authority of the House, to ask whether you are ready to take the oath tendered to you by the chairman of the committee, to answer the questions propounded to you by the committee, and to produce the books as required by the subpoena duces tecum served on you.

The said George F. Seward, in response, presented a written statement, signed by himself and counsel, but not attested under oath. This statement appears in full in the Journal.

The statement contends that the committee were making the investigation with a view to his impeachment, and that the subpoena was void and inoperative because of the constitutional guaranty. This guaranty applied to legislative bodies, as was shown by the case Ex parte Emery (107 Mass.), wherein it was shown that an inquiry before a legislative body should not be inquisitorial, and that in this country the parliamentary usage was subordinated to constitutional provision, although in England Parliament may have been above the common law. The statement then presents the argument made by the minority of the committee as to the nature of the books demanded.

The answer having been read, Mr. Springer submitted the following resolution:

Resolved, That George F. Seward, having been heard by the House, pursuant to the order heretofore made requiring him to show cause why he should not respond to the subpoena duces tecum by obeying the same so far as the same requires the production of the books described in the subpoena duces tecum be, and is therefore, considered in contempt of the House because of his failure to produce said books.

Mr. Bundy, in behalf of the minority of the committee, submitted the following as an amendment in the nature of a substitute:

Resolved, That the answer of George F. Seward in response to the order voted by the House and issued by the Speaker, requiring him to show cause why he should not be declared in contempt, and all evidence and papers pertaining thereto, together with the reports of the committee, be referred to the Committee on the Judiciary, with instructions to report as early as practicable what action in their judgment should be taken by the House in relation thereto.

On agreeing to the substitute there were yeas 112, nays 108.

The resolution as amended was then agreed to.

It was then,

Ordered, That Mr. Seward be discharged on his own personal recognizance to appear again upon notice.

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[1] Journal, pp. 567–577; Record, pp. 2138–2144.

Subsequently, on March 1,[1] the Committee on Expenditures in the State Department reported articles of impeachment against Seward. On March 3, the last day of the session and of the Congress, an attempt to bring this report to a vote brought on a discussion as to the propriety of proceeding by impeachment against a man under arrest for contempt. The articles were not voted on.

1700. The case of George F. Seward, continued.

Discussion distinguishing a case of impeachment from the ordinary investigation for legislative purposes.

Discussion of the right of the House to demand papers of a public officer.

Discussion of the use of the subpoena duces tecum in procuring papers from public officers.

On March 3[2] Mr. Benjamin F. Butler, of Massachusetts, reported from the Committee on the Judiciary, the report in the last hours of the session being ordered to be printed and laid on the table. This report[3] I held:

The facts necessary to raise the question succinctly state themselves in this way: By resolution of the House the Committee on Expenditures in the State Department were in charge of the investigation of the official conduct of George F. Seward, late consul-general of the United States in China, and now minister resident there. Mr. Seward came before the committee—appeared by counsel; charges were filed against him for sundry malfeasances in office, looking to his impeachment if proven, and evidence was taken to sustain such charges. The committee deem it important that they should have before them certain books kept by him while such consul-general, and which, it was claimed, showed entries tending to substantiate the accusations. There was evidence before the committee tending to show that those books were the public records of the consulate and the property of the United States. Mr. Seward claimed that they were books in which he kept his governmental and his private transactions for his personal use, and that he had returned to the State Department or left in the consulate all the books of the United States. The committee procured a subpoena duces tecum directed to him, which was served on Mr. Seward, commanding him to produce these books for the purpose of being used in evidence against him. Mr. Seward appeared in obedience to the subpoena, but declined to be sworn as a witness in a case where crime was alleged against him and where articles of impeachment might be found against him, claiming through his counsel his constitutional privilege of not being obliged to produce evidence in a criminal case tending to criminate himself.

Upon this refusal the Committee on Expenditures in the State Department brought Mr. Seward before the House to show cause at its bar why he should not be sworn as a witness, and why he should not obey the order of the Home, through its subpoena, to produce the documentary evidence called for.

Mr. Seward, when before the House, in answer to the question of the Speaker, set up practically the same claim that he did before the committee. Upon a resolution proposed by the minority of such committee, the question was referred by a vote of the House to its Judiciary Committee as to whether the cause shown by Mr. Seward for not obeying the subpoena of the House and declining to be sworn as a witness was a sufficient answer.

Investigations looking to the impeachment of public officers have always been finally examined before the Judiciary Committee of the House, so far as we are instructed, and it is believed that the cue can not be found as a precedent where the party charged has ever been called upon and compelled to give evidence in such case. We distinguish this case from the case of an ordinary investigation for legislative purposes, where all parties are called upon to give such evidence (oral or written) as may tend to throw light upon the subject of investigation, but even in those cues it was early held that a person called as a witness, and not a party charged before the committee, was not bound to criminate himself, and a statute familiar to the House for the protection of witnesses under such circumstances, from having the evidence given used against them, was passed.

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[1] Journal, p. 601; Record, pp. 2350, 2362–2364.

[2] Journal, p. 670.

[3] House Report 141, third session Forty-fifth Congress.

In making an investigation of the facts charged against an officer of the United States looking to impeachment, the House acts as the grand inquest of the nation to present that officer for trial before the highest court known to our Constitution, the Senate of the United States, for such punishment as may be constitutionally imposed upon him, which is very severe in its penalties, and even then does not exonerate the party from further prosecution before the proper courts for offenses against the laws.

If these books of Mr. Seward's are his private books, kept for his personal use, or whether they contain records of his action as a public officer intermixed or otherwise with his private transactions, it is believed he can not be compelled to produce them. A public officer may well keep a duplicate set of records of his transactions as such for his own use and protection, and he may, at his will, mingle therewith his own private transactions, and as a party to a contestation between the United States and himself, looking to his trial and punishment for alleged criminal transactions, he can not be compelled to produce such books nor answer concerning them, but he is protected by the constitutional provision (which is, after all, only a translation of a clause of Magna Charta), and which is a distinguishing characteristic of criminal procedure at common law in England, as opposed to criminal procedure by the civil law in other European States. Even if he had possessed himself of public records which contained evidence to accuse him of crime in such a contestation (which makes a criminal case), it seems to your committee the question would be more than doubtful whether he could be called upon to produce such books.

A subpoena duces tecum is not the remedy of the Government. If he has embezzled or stolen the books, he may be proceeded against criminally therefor. If he refuses to produce them to his superior officer, who has a right to call for them if public books, then they may be got out of his hands by a writ of replevin or other proper process.

If the question in whom is the title to these books would be the test as to the question whether the accused himself were obliged to produce them as evidence against himself, then a question would at the outset arise, How is title to be tried? If the books are private, they are not to be produced. Can a man's title to his private property be tried and decided against him collaterally so as to deprive the accused of his rights? Your committee believe that it can not.

If, as the Committee on Expenditures in the State Department believe, these are public books, then it seems very queer to your committee that that committee have mistaken the proper procedure in a court of justice. Their subpoena duces tecum should be issued to the highest executive officer having charge, custody, and control of such public records. Since the case of Burr where a subpoena duces tecum was demanded of the court by the defendant against Thomas Jefferson, then President of the United States, and the right to have such writ issued was determined by the Chief Justice—to have a certain letter, known as "the Wilkinson letter," then on the files of the State Department produced, the usual course has been for a committee of Congress to direct a letter to the head of the proper Department, or the House, by resolution, to call upon the proper executive officer to produce the same, leaving that officer to get possession of the books from his subordinate by any lawful means. But it may be asked, Can not the House direct a subpoena to any executive officer of the Department to produce any books actually in his possession in the course of official duty, and bring them before the House for the purpose of information or to aid an inquiry? Certainly that can be done, and, in proper cases, ought to be done; but, in contemplation of law, under our theory of government, all records of the Executive Departments are under the control of the President of the United States; and although the House sometimes sends resolutions to a head of a Department to produce such books or papers, yet it is conceived that in any doubtful case no head of Department would bring before a committee of the House any of the records of the Department without permission of, or consultation with, his superior, the President of the United States; and all resolutions directed to the President of the United States to produce papers within the control of the Executive, if properly drawn, contain a clause, "if in his judgment not inconsistent with the public interest." And whenever the President has returned (as sometimes he has) that, in his judgment it was not consistent with the public interest to give the House such information, no further proceedings have ever been taken to compel the production of such information. Indeed, upon principle, it would seem that this must be so. The Executive is as independent of either House of Congress as either House of Congress is independent of him, and they can not call for the records of his action or the action of his officers against his consent, any more than he can call for any of the journals or records of the House or Senate.

The highest exercise of this power of calling for documents perhaps would be in the course of justice by the courts of the United States, and the House would not for a moment permit its journals to

be taken from its possession by one of its assistant clerks and carried into a court in obedience to a subpoena duly issued by the court.

The mischief of the House calling for documents might easily be a very great one. Suppose the President is engaged in a negotiation with a foreign government, one of the most delicate character upon which peace or war may depend, and which it is vitally necessary to keep secret; must he, at the call of the House, or of any committee of the House, spread upon its records such state secrets to the detriment of the country? Somebody must judge upon this point. lt clearly can not be the House or its committee, because they can not know the importance of having the doings of the Executive Department kept secret. The head of the Executive Department therefore must be the judge in such cases and decide upon his own responsibility to the people and to the House, upon a case of impeachment brought against him for so doing, if his acts are causeless, malicious, willfully wrong, or to the detriment of the public interest.

Your committee regret that it has been impossible for the House to furnish them sufficient time in which this grave question might be more satisfactorily and exhaustively examined; but viewing it with the best light in which we find it, we are constrained to the conclusion at which we have arrived.

Therefore, your committee report to the House that, in their opinion, George F. Seward has shown sufficient cause why he should not be sworn as a witness in the investigation of charges looking to his impeachment by the Committee on Expenditures in the State Department, and why he should not produce the books, whether they are private books solely, or, for the reason above stated, are public books, in which criminatory matter may be contained; and therefore recommend the adoption of the following resolution:

Resolved, That, under the facts and circumstances reported from the Committee on Expenditures in the State Department, George F. Seward was not in contempt of the authority of this House in refusing to be sworn as a witness or produce before said committee the books mentioned in the subpoena duces tecum.

1701. In 1891 a witness in contempt for refusing to testify before a committee was arrested and arraigned, and after purging himself of the contempt was discharged.

In the latest practice a committee in reporting the contempt of a witness shows that the testimony required is material and presents copies of the subpoena and return.

A subpoena having been served by a deputy Sergeant-at-Arms, a certificate of his appointment should accompany a report requesting arrest of the witness for contempt.

It was not thought necessary that mileage and fees should be tendered a witness before arresting him for contempt in declining to answer.

In ordering the arrest of a witness for contempt, the House embodied in a preamble the report of the committee showing the alleged contempt.

A witness arraigned for contempt answered orally and without being sworn.

A witness having promised when arraigned to testify before a committee, the House gave him permission to do so, but did not discharge him from custody until the committee reported that he had purged himself.

On January 29, 1891,[1] Mr. Nelson Dingley, of Maine, from the select committee appointed to investigate the alleged "silver pool," submitted a report, setting forth that J. A. Owenby had been duly subpoenaed to appear before the committee, that service was duly made on him, but that he had refused or neglected to obey the sub-

[1] Second session Fifty-first Congress, Journal, pp. 195, 196; Record, pp. 1973–1976.

poena.[1] The report goes on to show that the said Owenby was a material witness, inasmuch as the correspondent of the paper making the charges against Members of the House in connection with the alleged pool had in his testimony stated that Owenby was the authority for what he had stated, and claimed to have personal knowledge of the facts alleged. The report also was accompanied by copies of the subpoena, the return of the deputy sergeant-at-arms, and certificate of his appointment.

Having submitted the report, Mr. Dingley offered the following:

Ordered, That the Speaker issue his warrant directing the Sergeant-at-Arms attending this House or his deputy, commanding him to take into custody forthwith, wherever to be found, the body of J. A. Owenby, and bring him to the bar of the House, to show cause why he should not be punished for contempt; and in the meantime keep the said J. A. Owenby in his custody to await the further order of the House.

Mr. Dingley stated that this proceeding was proposed in accordance with the uniform precedents of the House. In the debate that followed it was asked whether the mileage and fees had been tendered to the witness; but Mr. Dingley replied that after consideration the committee had thought this unnecessary. The headnotes of the decision in the case of Kilbourn *v.* Thompson were read during the debate. After the debate Mr. Dingley modified his resolution by prefixing thereto the following:

Whereas the special committee appointed by the House to investigate alleged silver pools presented the following report, to wit: (Here followed the report in full).

The resolution as amended was agreed to.

On February 2,[2] the Sergeant-at-Arms appeared at the bar of the House having in custody the body of J. A. Owenby, and addressing the Speaker announced that fact.

The said Owenby was thereupon arraigned and the following interrogatory propounded to him by the Speaker:

Mr. Owenby, you have been arrested for contempt of the House in disobeying its summons. What have you to say in excuse therefor?

The said Owenby having made a statement to the House, orally and not under oath, the Speaker thereupon propounded the following interrogatory to the said Owenby:

Are you now ready to appear before the committee?

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[1] The resolution authorizing this investigation was agreed to on January 12, 1891 (second session Fifty-first Congress, Journal, p. 121), as follows:

Resolved, That the Speaker appoint a special committee of five Members of the House, and that such committee be instructed to inquire into all the facts and circumstances connected with silver pools in which Senators and Representatives were alleged to be interested; also with the said alleged purchase and sale of silver prior to and since the passage of the act of July 14, 1890, including the names of persons selling the same; and also who are the owners of the twelve millions of silver bullion which the United States is now asked to purchase. And for such purposes it shall have power to send for persons and papers and administer oaths, and shall also have the right to report at any time. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee, to be immediately available.

[2] Journal, pp. 204, 213; Record, pp. 2068, 2150.

To which interrogatory the said Owenby replied that he was now ready to appear before said committee.

Thereupon Mr. Dingley submitted the following preamble and resolution, which was agreed to:

Whereas J. A. Owenby has been heard by the House pursuant to the order made on the 29th day of January, 1891, requiring him to show cause why he should not be punished for contempt for refusing or neglecting to respond to the subpoena named in said order by obeying the same, and has stated to the House that, in purging himself of the contempt for which he is in custody, he is now willing to obey said subpoena: Therefore,

Resolved, That the said J. A. Owenby shall have the privilege to appear forthwith before the special committee of the House to investigate alleged silver pools, etc., and testify touching matters of inquiry before said committee; and that in the meantime the said J. A. Owenby remain in the custody of the Sergeant-at-Arms under said order until the further order of the House.

On February 4, Mr. Dingley, as a privileged question, reported the following resolution, which was agreed to:

Resolved, That J. A. Owenby, having been heard by the House pursuant to the order requiring him to show cause why he should not be punished for contempt for refusing or neglecting to respond to the subpoena commanding him to appear before the special committee to investigate alleged silver pools, and, in purging himself of the contempt for which he is in custody, has appeared and testified before said committee, is hereby discharged from the custody of the Sergeant-at-Arms.

1702. In 1880 three recusant witnesses were arraigned at the bar of the Senate, and having purged themselves of contempt were discharged.

A discussion distinguishing between the serving of a warrant by deputy and the serving of a subpoena in the same way.

Should the Sergeant-at-Arms make the return on a subpoena served by his deputy?

Form of subpoena and return thereon used for summoning witnesses by a Senate committee.

Form of warrant and return thereon used by the Senate in compelling the attendance of witnesses.

On June 20, 1879,[1] in the Senate, Mr. Eli Saulsbury, of Delaware, from the Committee on Privileges and Elections, reported the following resolution for consideration; which was ordered to be printed:

Resolved, That the Committee on Privileges and Elections, to which has been referred memorials in relation to the election of Hon. J. J. Ingalls a Senator by the legislature of the State of Kansas, be, and said committee is hereby, authorized and instructed to investigate the statements and charges contained in said memorials; and for that purpose said committee is empowered to send for persons and papers, administer oaths, employ a stenographer, clerk, and sergeant-at-arms, and to do all such acts as are necessary and proper in the premises. And said committee may appoint a subcommittee of its members to take testimony in Kansas or elsewhere in the case, which shall report the testimony taken to the committee in December next; and such subcommittee shall have the same authority to administer oaths and to do other necessary acts as are herein conferred upon the full committee; and the said committee, and the subcommittee which it may appoint, may sit during the recess of the Senate for the purpose of making the investigation hereby authorized.

This resolution was agreed to on June 21.

On December 18, 1879, Mr. Saulsbury, from the Committee on Privileges and

[1] Senate Document No. 11, special session Fifty-eighth Congress, pp. 692–694.

Elections, reported the following resolution; which was considered by unanimous consent and agreed to:

Whereas J. V. Admire, E. B. Purcell, George T. Anthony, Len. T. Smith, and Levi Wilson, citizens and residents of the State of Kansas, were duly served with subpoenas in the months of September and October, 1879, issued by the subcommittee of the Senate Committee on Privileges and Elections, then sitting in Topeka, in said State of Kansas, commanding each of them to appear before said subcommittee and then and there testify in reference to the subject-matters then under consideration by said subcommittee, to wit, charges relating to the election of John J. Ingalls a Senator from said State of Kansas; and

Whereas said Admire, Purcell, Anthony, Smith, and Wilson refused to appear and testify before said subcommittee as required by said subpoenas: Therefore,

Resolved, That an attachment issue forthwith directed to the Sergeant-at-Arms of the Senate commanding him to bring said J. V. Admire, E. B. Purcell, George T. Anthony, Len. T. Smith, and Levi Wilson forthwith to the bar of the Senate to answer for contempt of a process of this body.

On January 8, 1880,[1] the Sergeant-at-Arms appeared at the bar of the Senate having in custody Leonard T. Smith, Levi Wilson, and E. B. Purcell, arrested by order of the Senate and brought to its bar to answer for a contempt of a process of the Senate.

Whereupon the Vice-President laid before the Senate the return of the writ of attachment issued to the Sergeant-at-Arms commanding him to bring J. V. Admire, George T. Anthony, Leonard T. Smith, Levi Wilson, and E. B. Purcell to answer for a contempt of a process of the Senate.

The return having been made, Leonard T. Smith, one of the witnesses, advanced and made statement of his reasons for failure to answer to the summons of the Senate and stated that he was ready and willing to go before the committee and testify.

In treatment of the witness's case questions arose which caused the reading, both of the original subpoena and return, and the writ of attachment, with the return thereon.

The subpoena and return thereon were in form as follows:

UNITED STATES OF AMERICA,

CONGRESS OF THE UNITED STATES:

To George T. Anthony, Charles H. Miller, Levi Wilson, Len. T. Smith, greeting:

Pursuant to lawful authority you are hereby commanded to appear before the subcommittee of the Committee on Privileges and Elections forthwith at their committee room at the court room, Topeka, Kansas, then and there to testify what you may know relative to the subject-matters under consideration by said committee.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

Given under my hand, by order of the committee, this 4th day of October, in the year of our Lord 1879.

ELI SAULSBURY,
Chairman Committee.

TO RICHARD J. BRIGHT,
Sergeant-at-Arms of the Senate of the United States.

[Indorsement.]

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT-AT-ARMS.

I do appoint and hereby empower J. S. Collins to serve this subpoena, and to exercise all the authority in relation thereto with which I am vested by the within order.

R. J. BRIGHT,
Sergeant-at-Arms of the Senate of the United States.

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[1] Second session Forty-sixth Congress, Record, pp. 234–241.

WASHINGTON, D. C., *October 6, 1879.*

I made service of the within subpoena, through my deputy, J. S. Collins, by reading the same to the within-named Len. T. Smith, at his house at Leavenworth, Kans., at 6.05 o'clock, a. m., and on Charles H. Miller, at his residence in Leavenworth, Kans., at 6.20 o'clock on George T. Anthony, at his residence in Leavenworth, Kans., at 7 o'clock a. m., and on Levi Wilson, at 8.20 o'clock in Leavenworth, Kans., on this 6th day of October, 1879.

R. J. BRIGHT,
Sergeant-at-Arms, Senate of the United States.

The writ of attachment, with the return thereon, was read as follows:

UNITED STATES OF AMERICA, *ss:*

The Senate of the United States of America to Richard J. Bright, esq., Sergeant-at-Arms of the Senate of the United States, greeting:

By virtue of a resolution of the Senate of the United States, passed on the 18th day of December, 1879, in the following words, to wit:

Here follows the preamble and resolution in full.]

You are hereby commanded to arrest forthwith J. V. Admire, E. B. Purcell, George T. Anthony, Len. T. Smith, and Levi Wilson, wheresoever they may be found, and have their bodies at the bar of the Senate to answer for a contempt of the authority of the subcommittee of the Committee on Privileges and Elections, one of the standing committees of the Senate, and also for a contempt of the authority of the Senate of the United States in refusing to obey an order of the subcommittee of the Committee on Privileges and Elections to appear before the said subcommittee after being duly summoned thereto; and this shall be your warrant for so doing.

Hereof fail not, and make return of this warrant, with your proceedings thereon indorsed, on or before the 8th day of January, A. D. 1880.

In witness whereof I have hereunto set my hand and affixed the seal of the Senate of the United States the 19th day of December, in the year of our Lord 1879 and of the Independence of the United States of America the one hundred and fourth.

[SEAL.]

W. A. WHEELER,
Vice-President of the United States and President of the Senate.

WASHINGTON, D. C., *January 8, 1880.*

In obedience to the within warrant I have arrested and taken into custody Leonard T. Smith, Levi Wilson, and E. B. Purcell, and now produce them at the bar of the Senate.

Respectfully,

R. J. BRIGHT,
Sergeant-at-Arms United States Senate.

HON. WILLIAM A. WHEELER,
President of the Senate.

The statement of the witness as to his failure to comply with the commands of the committee being satisfactory, Mr. Samuel J. R. McMillan, of Minnesota, moved that the witness be discharged.

A question thereupon arose as to the legality of the arrest of the witness. Mr. George F. Hoar, of Massachusetts, took the ground that the Sergeant-at-Arms might not lawfully delegate the duty of serving the subpoena, and in support of this view cited the Massachusetts decision (15 Gray, 399) wherein it was held that a warrant issued by order of the Senate of the United States for the arrest of a witness in contempt could not be served by a deputy.

Mr. Benjamin H. Hill, of Georgia, called attention to the fact that the decision just cited referred to a warrant for arrest and not to a subpoena. The Committee on Privileges and Elections had drawn this distinction, and when the warrant was drawn they ordered it to be served by the Sergeant-at-Arms himself, giving him

orders not to serve it by deputy. But he conceived that it would be an absurd thing to hold that a subpoena might not be served by a deputy.

Mr. Hoar further objected that the officer who made the service should be the one to make the return.

Mr. Hill conceived this to be a technicality. Mr. David Davis, of Illinois, also held generally that, as the witness had acknowledged that he had been subpoenaed, too strict technical rules should not be insisted on.

On motion of Mr. Augustus H. Garland, of Arkansas, the pending motion was amended by the words:

That the witness, having purged himself of contempt, be discharged.

Mr. Saulsbury offered the following as a substitute:

Whereas Leonard T. Smith, now in custody of the Sergeant-at-Arms on an attachment for contempt for refusing obedience to a summons to appear before a committee of the Senate, has purged himself of contempt, and expressed his willingness to appear before the Committee on Privileges and Elections and answer such proper questions as may be put to him: Therefore,

Resolved, That said Leonard T. Smith be discharged from arrest and that he appear before said Committee on Privileges and Elections and testify under the subpoena served upon him.

Mr. Garland objected that the preamble was unnecessary, and that as the witness had purged himself it only remained to discharge him. He must be discharged absolutely and not on conditions. The Senate could not anticipate a further contempt.

The amendment of Mr. Saulsbury was disagreed to. Then the motion of Mr. McMillan as amended by Mr. Garland was agreed to.

The Vice-President [1] then said:

The witness at the bar is discharged from the rule of attachment.

Levi Wilson, another of the witnesses, having made statement of his reasons for failure to answer the summons of the Senate, on motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

E. B. Purcell, another of the witnesses, having made statement of his reasons for failure to answer to the summons of the Senate, on motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

On motion by Mr. Saulsbury—

Ordered, That the Sergeant-at-Arms have further time to make return concerning the failure of J. V. Admire and George T. Anthony, the other witnesses named in the writ of attachment of December 18, 1879, to answer for a contempt of a process of the Senate.

On January 20, 1880,[2] the Sergeant-at-Arms appeared at the bar of the Senate, having in custody J. V. Admire, to answer for contempt in refusing obedience to a summons of the Senate.

Whereupon the Vice-President laid before the Senate the return of the writ of attachment issued to the Sergeant-at-Arms December 18, 1879, commanding him to bring J. V. Admire, G. T. Anthony, L. T. Smith, Levi Wilson, and E. B. Purcell to answer for a contempt of a process of the Senate.

The return was read.

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[1] William A. Wheeler, of New York, Vice-President.

[2] Record, p. 415.

The witness having made statement of his reasons for failure to answer to the summons of the Senate, on motion by Mr. Saulsbury that the witness be discharged from the rule, it was determined in the affirmative.

On motion by Mr. Saulsbury—

Ordered, That George T. Anthony, the other witness named in the writ of attachment of December 18, 1879, be discharged as from contempt without appearing before the Senate.

It was stated that Mr. Anthony had been before the committee, and would return to Washington and come before the Senate if necessary.

1703. Various instances of arrest of witnesses for contempt of the Senate.—On January 8, 9, and 11, 1877,[1] the Senate took proceedings in relation to Enos Runyon, a witness who declined to answer certain questions deemed pertinent by the Senate in regard to the transmission of money to Oregon at the time of the election. The Senate ordered the arrest of Runyon, but afterwards ordered his discharge on report from the committee that he had appeared and answered the questions. He evidently was not arraigned before the Senate.

1704. On February 5, 1877,[2] the Senate ordered the arrest of J. F. Littlefield, a witness who had failed to appear, although seen in the Capitol about the time he should have appeared and was told by an officer of the Senate that he was expected to appear. The witness had appeared before the committee the day before and had not been discharged. Some objection was made to ordering an arrest under these circumstances, but it was done.

1705. On February 13, 1877,[3] the Senate ordered the arrest of Conrad N. Jordan for refusing to respond to a subpoena duces tecum. commanding him to appear before a committee of the Senate and bring certain papers. On the 23d he was brought before the Senate and arraigned. Previously he had been allowed to appear before the committee and testify. When arraigned he made a statement in writing, explaining why he had failed to respond to the subpoena. A proposition was made to direct the matter to be certified to the district attorney, but the point was made and insisted on that the witness should first have the opportunity of appearing before the committee. It was urged that the arrest had been merely for failing to appear, and not for refusal to testify. Finally, the witness having announced that he was ready to go before the committee and answer proper questions, the Senate ordered his discharge.

1706. On January 20, 1880,[4] the Senate allowed the discharge of a recusant witness against whom had been issued a warrant for arrest for contempt, but who had voluntarily appeared and testified before the committee at a time when the Senate had not been in session. The witness had then departed, leaving the promise that he would appear in person before the Senate to answer the attachment if required. The Senate did not require this, but ordered his discharge.

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[1] Second session Forty-fourth Congress, Record, pp. 473, 493, 566.

[2] Second session Forty-fourth Congress, Record, p. 1258.

[3] Second session Forty-fourth Congress, Record, pp. 1512, 1855, 1864. For form of the warrant of arrest in this case see Record, p. 1855.

[4] Second session Forty-sixth Congress, Record, p. 415.

1707. Instances wherein the House has ordered arrests which do not appear to have been made.—On June 8, 1860,[1] the following resolution was reported from the select committee appointed to investigate the alleged influence of the Executive in the House, and was agreed to by the House:

Resolved, That the Speaker of the House of Representatives be directed to issue process for the arrest of Charles A. Dunham, of New York; Alexander Hay, Gideon G. Wescott, and Albert Schofield, of the city of Philadelphia; William Kearns, of Reading, in the State of Pennsylvania.

1708. On June 27, 1862,[2] the House ordered the arrest of Michael C. Murphy, a recusant witness, but it does not appear that the witness was arrested.

1709. On April 15, 1864,[3] the House ordered the arrest of John Donahue, a witness who had been summoned and who had failed to appear before the Committee on Public Expenditures. It does not appear that the arrest was effected.

1710. On January 14, 1867,[4] the House ordered the arrest of Thomas H. Oakley, who had declined to testify before the Committee on Public Expenditures. It does not appear that Oakley was ever brought before the House.

1711. On June 30, 1876,[5] the House ordered the arrest of William F. Shaffer, a witness who had failed to appear before a committee.

1712. An instance wherein the House refused to punish contumacious witnesses.—On August 28, 1850,[6] Mr. Edward Stanly, of North Carolina, from the select committee appointed under the resolution of the House of the 6th of May relative to officeholders under the last administration interfering in elections, made a report that two witnesses, Thomas Ritchie and C. P. Sengstack, had refused to answer certain questions put to them by the committee. Mr. Stanly thereupon presented the following resolution:

Resolved, That whereas the select committee of this House, acting by the authority of the House under a resolution of the 6th of May last, have reported that Thomas Ritchie and C. P. Sengstack have peremptorily refused to give evidence in obedience to a summons duly issued by said committee; therefore,

Resolved, That the Speaker of the House issue his warrant, directed to the Sergeant-at-Arms, to take into custody the persons of said Ritchie and said Sengstack, that they may be brought to the bar of the House to answer for an alleged contempt of this House, and that they be allowed counsel on that occasion should they desire it.

On August 31, after debate which related chiefly to the political questions involved, the resolutions were disagreed to, yeas 49, nays 122.

1713. In a case where the House has the right to punish for contempt, its officers may not be held liable for the proper discharge of ministerial functions in connection therewith.—In the case of Stewart *v.* Blaine,[7]

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[1] First session Thirty-sixth Congress, Journal, p. 1034; Globe, p. 2761.

[2] Second session Thirty-seventh Congress, Journal, p. 947; Globe, p. 2986.

[3] First session Thirty-eighth Congress, Journal, p. 532; Globe, p. 1660.

[4] Second session Thirty-ninth Congress, Journal, p. 166; Globe, p. 447.

[5] First session Forty-fourth Congress, Journal, p. 1189.

[6] First session Thirty-first Congress, Journal, pp. 1318, 1336, 1345–1349; Globe, pp. 1678–1681, 1692, 1714, 1724.

[7] This was a suit for false imprisonment brought against Mr. Speaker Blaine by a witness imprisoned by order of the House. See Section 1689 of this chapter.

the opinion of the Supreme Court of the District of Columbia was delivered by Chief Justice Carter, and is as follows (1 MacArthur, p. 457):

The whole subject of controversy in this case as presented to the court is resolved in the question, Had the House of Representatives of the United States jurisdiction in the premises?

If jurisdiction over the subject and person of the plaintiff resided in the House, the ministerial functions discharged by the Speaker and Sergeant-at-Arms in the premises were justified in the jurisdiction. Under the principles of law regulating the relations of ministerial officers to those around them and affected by their acts, two questions are fundamentally important. Has the authority issuing process jurisdiction of the subject and of the person against whom process goes? These two questions answered affirmatively, nothing remains in the determination of the question as to their right to execute the process. Their liability thenceforward is regulated by the responsibility as to the manner in which they do it, a subject not made matter of complaint in this case.

The question of power to punish for contempt in the case now before the court was settled by the Supreme Court of the United States in the case of Anderson *v.* Dunn more than half a century ago after a stout contest and upon thorough deliberation. This authority has been uniformly acquiesced in for over fifty years, and until reversed must be regarded as conclusive with this court. If authority, the subject of this controversy is stare decisis.

In making this decision the court confines itself strictly to the adjudication of the case made. We are not engaged in the investigation of the rights of a citizen held in durance vile under an application by writ of habeas corpus.

The court also announces that the case of Stewart *v.* Ordway (the Sergeant-at-Arms) involved the same questions and would be decided in the same way.

1714. An early discussion as to form of resolution ordering the arrest of a contumacious witness.—On January, 12, 1849,[1] Mr. George Fries, of Ohio, from the select committee appointed to investigate the official conduct of the Commissioner of Indian Affairs, reported the following resolution:

Resolved, That the Sergeant-at-Arms be required to take David Taylor into custody and confine him unless he agrees to answer all proper questions which the select committee before whom he has been testifying shall ask of him.

Mr. Fries explained that this witness, who had been duly subpoenaed, was under examination by a subcommittee, and after having given a portion of his testimony declined to answer further. The subcommittee reported to the full committee, and in the course of the debate it was stated that the witness had declined before the full committee to testify further.

The case of Whitney was discussed as a precedent, and finally Mr. Joseph R. Ingersoll, of Pennsylvania, offered an amendment to strike out all after the word "resolved" and insert the following:

That whereas the select committee, acting by authority of the House under a resolution of the 11th of August, 1848, has reported that David Taylor has peremptorily refused, in the course of his examination before said committee, to answer any further questions which may be put to him by said committee; therefore,

Resolved, That the Speaker of this House issue his warrant, directed to the Sergeant-at-Arms, to take into custody the person of the said David Taylor, that he may be brought to the bar of the House to answer for an alleged contempt of the House, and that he be allowed counsel on that occasion should he desire it.

This resolution going over to the succeeding day, on that day Mr. Fries, by direction of the committee, withdrew the subject from the consideration of the House, and no further action was taken thereon.

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[1] Second session Thirtieth Congress, Journal, pp. 238, 242; Globe, pp. 242–244.

1715. The House having considered and determined the disposition of a person in custody, a further proposition relating thereto was held not to be privileged.—On January 30, 1873,[1] Mr. Aaron A. Sargent, of California, as a question of privilege, proposed the following:

Resolved, That the Sergeant-at-Arms, in executing the order of the House in relation to the custody of Joseph B. Stewart, shall keep the said Stewart in custody in the jail of the District of Columbia.

Mr. John F. Farnsworth, of Illinois, having objected that the resolution was not in order as a question of privilege, the Speaker[2] sustained the point of order, and, when Mr. Sargent took an appeal, said, in submitting the appeal:

An appeal having been taken from the decision of the Chair, the Chair will state that this matter was brought before the House by the committee. It has been fully adjudicated by the House. The House has voted upon sundry and divers propositions and has come to a final resolution thereon, ordering a distinct thing to be done, imposing a duty on two officers of the House—first on the Speaker, to address a certain question to the witness, and next on the Sergeant-at-Arms to take him into custody. The Chair decides that on that statement from the committee, as a privileged question, by the action of the House the privilege is exhausted. The gentleman from California desires to offer a resolution proposing to make another disposition of the subject than that which the House has just made by its vote. The Chair has ruled this resolution out as not pertaining to a question of privilege.

The appeal being stated, it was, on motion of Mr. Henry L. Dawes, of Massachusetts, laid on the table.

1716. The House has assumed the expenses incurred by Members and officers in defending suits brought by persons punished by the House for contempt.—On April 9, 1870,[3] Mr. John A. Bingham, of Ohio, presented, as a matter relating to the privileges of the House, the following resolution reported from the Committee on the Judiciary:

Resolved, That a sum not exceeding two thousand dollars, being the expenses and counsel fees incurred by Benjamin F. Butler, Member of the Fortieth Congress, in defending a suit brought against him by Charles W. Woolley, in the city of Baltimore, for his action as a Member of this House in sustaining its rights and privileges, be paid from the contingent fund of the House.

Mr. Bingham argued that the Member against whom the action was brought had done the acts for which it was brought as a Member of the House in the course of his duty as such; therefore he was defending the privileges of the House in resisting the suit.

The resolution was agreed to without division.

1717. On June 28, 18744[4], the House agreed to the following resolution:

Resolved, That the House assume the defense of the Speaker and the Sergeant-at-Arms in the suits against them by Joseph B. Stewart for alleged false imprisonment while in custody, under the order of the House, as a recusant witness, in February, 1873, recently decided against Stewart by the Supreme Court of the District of Columbia, and the expenses of said defense be paid by the Clerk from the contingent fund of the House, upon the approval of the Committee on Accounts.

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[1] Third session Forty-second Congress, Journal, p. 279; Globe, p. 988.

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

[3] Second session Forty-first Congress, Journal, p. 596; Globe, p. 2547.

[4] First session Forty-third Congress, Journal, p. 1321; Record p. 5445.

1718. In 1860 the Massachusetts court decided that a warrant directed only to the Sergeant-at-Arms of the United States Senate might not be served by deputy in that State.—On February 15, 1860,[1] Mr. John M. Mason, of Virginia, in the Senate, reported from the select committee appointed to investigate the circumstances of the raid of John Brown at Harpers Ferry,[2] a preamble and resolution reciting that F. B. Sanborn, of Concord, Mass., had failed to answer the summons of the committee to appear and testify, and providing that the President of the Senate issue a warrant "directed to the Sergeant-at-Arms, commanding him to take into custody," etc., the body of the said Sanborn. This resolution gave no authority to the Sergeant-at-Arms to delegate this power to a deputy.

The resolution was adopted by the Senate, and on April 16, 1860, Mr. Mason presented in the Senate the warrant of the Sergeant-at-Arms, with his return thereon, stating that on April 3 he had arrested the said Sanborn at Concord, and reciting the circumstances of the collecting of a mob immediately upon the arrest, and then the forcible taking of Sanborn by a deputy sheriff of the county of Middlesex, armed with a writ of habeas corpus. A copy of the record of the proceedings of habeas corpus was made a part of the return, and showed that Sanborn had been liberated on the ground that the warrant was insufficient in law. This return was referred to the Committee on the Judiciary.

On June 7,[3] Mr. James A. Bayard, of Delaware, from the Committee on the Judiciary, made a report on the subject, holding that, although in general delegated power might not be delegated, every public officer might, for merely ministerial purposes, appoint a deputy. And the service of a warrant, whether by distress upon goods and chattels or by arrest of the person, was a purely ministerial act, seemed scarcely questionable.

The committee recommended no action on the part of the Senate, expressing confidence that the higher court of Massachusetts, to which an appeal had been taken, would reverse the finding on the habeas corpus proceedings.

The case having been carried to the supreme court of Massachusetts, at the April term of 1860, in an opinion[4] delivered by Chief Justice Shaw, the court decided that—

a warrant issued by order of the Senate of the United States for the arrest of a witness for contempt in refusing to appear before a committee of the Senate, and addressed only to the Sergeant-at-Arms of the Senate, can not be served by deputy in this Commonwealth.

In the course of this opinion the court says:

The Sergeant-at-Arms of the Senate is an officer of that house, like their doorkeeper, appointed by them, and required by their rules and orders to exercise certain powers mainly with a view to order and due course of proceeding. He is not a general officer, known to the law, as a sheriff, having power to appoint general deputies, or to act by special deputation in particular cases; nor like a marshal, who holds analogous powers, and possesses similar functions, under the laws of the United States, to those of sheriffs and deputies under the State laws.

But even where it appears, by the terms of the reasonable construction of a statute, conferring an authority on a sheriff, that it was intended he should execute it personally, he can not exercise it by general deputy, and of course he can not do it by special deputation. (Wood *v.* Ross, 11 Mass., 271.)

But upon the third point, the court are all of opinion that the warrant affords no justification. Suppose that the Senate had authority, by the resolves passed by them, to cause the petitioner to be arrested

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[1] First session Thirty-sixth Congress, Globe pp. 778, 1722.

[2] See section 1722 of this chapter.

[3] Senate Report No. 262.

[4] 15 Gray, p. 399.

and brought before them, it appears by the warrant issued for that purpose that the power was given alone to McNair, Sergeant-at-Arms, and there is nothing to indicate any intention on their part to have such arrest made by any other person. There is no authority in fact given by this warrant, to delegate the authority to any other person. It is a general rule of the common law, not founded on any judicial decision or statute provision, but so universally received as to have grown into a maxim, that a delegated authority to one does not authorize him to delegate it to another. Delegata potestas non potest delegari. Broom's Maxims (3d ed.) 755. This grows out of the nature of the subject. A special authority is in the nature of a trust. It implies confidence in the ability, skill, or discretion of the party intrusted. The author of such a power may extend it if he will, as is done in ordinary powers of attorney, giving power to one or his substitute or substitutes to do the acts authorized. But when it is not so extended, it is limited to the person named.

The counsel for the respondent asked what authority there is for limiting such warrant to the person named; it rather belongs to those who wish to justify under such delegated power, to show judicial authority for the extension.

On the special ground that this respondent had no legal authority to make the arrest, and has no legal authority to detain the petitioner in his custody, the order of the court is that the said Sanborn be discharged from the custody of said Carleton

The warrant, a copy of which is appended to the decision, was directed to "Dunning R. McNair, Sergeant-at-Arms," etc., in the usual form, to arrest F. B. Sanborn, and bore this indorsement:

SENATE CHAMBER, *February 16, A. D. 1860.*

I do appoint and hereby empower Silas Carleton to serve this warrant, and to exercise all the authority in relation thereto, with which I am vested by the foregoing.

D. R. MCNAIR,
Sergeant-at-Arms of the Senate of the United States.

1719. The right of a Sergeant-at-Arms charged with the arrest of a witness to intrust the duty to a deputy was discussed somewhat on January 29, 1872,[1] in the Senate, with reference to the Senate precedent of 1860.

1720. A joint committee has ordered a contumacious witness into custody.—On March 9, 1864, we find the joint committee on the conduct of the war under the authority given them by the concurrent resolution creating them, agree to the following:

Resolved, That Francis Waldron be ordered into the custody of the Sergeant-at-Arms of the Senate to be safely and securely kept until further order of the committee, said Francis Waldron having refused to testify before this committee.

And on March 11 the committee ordered the witness discharged, on the ground that his testimony could not be relied on, and no beneficial result could be obtained by forcing him to testify.[2]

1721. A witness having declined to testify before a joint committee, a question arose as to whether one House or both should take proceedings to punish for contempt.

Form of subpoena issued by a joint committee.

On December 6, 1871,[3] in the Senate, Mr. John Scott, of Pennsylvania, from the Joint Committee on the Condition of the Late Insurrectionary States, presented two reports, one relating to Clayton Camp and David Gist, of South Caro-

[1] Second session Forty-second Congress, Globe, pp. 664, 665.

[2] Second session Thirty-eighth Congress, Senate Report No. 142, journal of the committee, pp. 20, 21.

[3] Second session Forty-second Congress, Globe, pp. 24, 37, 212, 216.

lina, who, after being duly summoned, failed and refused to appear before a subcommittee, and the other relating to W. L. Saunders, of North Carolina, who, while testifying, had declined to answer certain questions pertinent to the subject of inquiry.

The report gave the following as the form of subpoena issued by the joint committee:

United States of America—Congress of the United States.

To David Gist, greeting:

Pursuant to lawful authority, you are hereby commanded to appear before the subcommittee of the Joint Select Committee to Inquire into the Condition of the Late Insurrectionary States, on Thursday, the 20th day of July, 1871, at 10 o'clock a. m., at their committee room at Columbia, S. C., then and there to testify what you may know relative to the subject-matters under consideration by said committee.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To John R. French, Sergeant-at-Arms of the Senate of the United States, to serve and return.

Given under my hand, by order of the committee, this 18th day of July, in the year of our Lord 1871.

JOHN SCOTT,
Chairman of the Select Committee.

In the case of Saunders, which was first considered, the committee reported a preamble reciting the testimony of the witness, the authority of the committee, etc., concluding with the following:

Resolved by the Senate of the United States (the House of Representatives concurring), That W. L. Saunders, of Chapel Hill, and State of North Carolina, a witness heretofore duly summoned before a joint select committee of the two Houses of Congress, having been lawfully required to testify before a subcommittee, duly authorized by said joint select committee to take his testimony, and having, in the course of the investigation, refused to answer proper inquiries put to him by the chairman of said joint committee, be forthwith arrested by the Sergeant-at-Arms of the Senate, and brought before the Senate at its bar, by the order of the Senate duly issued by the Vice-President, under his hand and the seal of the Senate; and that said Saunders be detained, by virtue thereof, by the Sergeant-at-Arms of the Senate until he answer for his contempt of the order of the Senate in the matter aforesaid, and abide such further order as may be made in the premises.

A question arose as to the propriety of this proceeding. Mr. Scott stated that the committee knew of no precedent to guide them, but had conceived the contempt to be against the whole body of Congress, and that it would be proper and within the power of the two Houses to authorize one House to deal with the witness. Mr. George F. Edmunds, of Vermont, recalled that in a previous Congress the joint committee on retrenchment had reported a contumacious witness to the Senate, and a warrant was issued by the Senate alone and the witness compelled to answer. But no question had been made as to this procedure.

Mr. Edmunds having raised a question as to the mode of procedure proposed by the resolution reported by Mr. Scott, moved to amend it by making it a simple resolution of the Senate instead of a concurrent resolution.

In support of the amendment it was urged that each body of the members composing the joint committee was the representative of its own House, and therefore that any contempt of the committee transmitted itself to the rights and powers of the two Houses separately. And the two Houses possessed individually the

the power to punish. This power was independent with each, and each having it, no action of the other was necessary to enforce it. If the power to punish was only a concurrent authority, then neither House could delegate it, but it must be exercised by both Houses concurrently. The original form of the resolution merely amounted to the Senate asking the consent of the House of Representatives to punish a contempt against itself. A punishment in the Senate would not be a bar to subsequent punishment in the House. If the Senate required the aid of the House to lay hold on the witness, the Senate's powers would be too slender to deal with him after his arrest. Both the law and the Constitution gave to the two Houses separately the power to punish for refusal to testify, but neither gave such power to the two Houses acting together. A joint committee had not that power with regard to witnesses possessed by the select committee of the single House.

On the other hand, it was urged that the offense was against the two Houses jointly, that the act of 1857 did not apply to such a case, that as the committee was constituted by the joint action of the two Houses, it was proper for the arrest to be made under the same authority, and there could be then no harm in a trial by the Senate, as it was admitted that the Senate had a right to try on its own account. But that trial should be by consent of the other House, because the two Houses might differ in the matter.

Mr. Scott stated that precedents were rare on the subject, because joint committees were in so little favor in the English Parliament that none had been appointed since the year 1695.

On December 19 the amendment was rejected without division, and the resolution was agreed to. But on the same day a motion to reconsider the vote agreeing to the resolution was entered.

It does not appear that the matter was further acted on. The resolution relating to Camp and Gist was likewise not acted on.

1722. In 1860 the Senate imprisoned Thaddeus Wyatt in the common jail for contempt in refusing to appear as a witness.

The right to coerce the attendance of witnesses in an inquiry for legislative purposes was discussed in the Wyatt case.

Discussion of the extent of the Senate's power of investigation.

On December 14, 1859,[1] the Senate, after debate, agreed unanimously to a resolution providing that a committee be appointed to inquire into the facts attending the late invasion and seizure of the armory and arsenal at Harpers Ferry by a band of armed men, and report whether the same was attended by armed resistance to the authorities and public force of the United States, and the murder of any citizens of Virginia, or any troops sent there to protect public property; whether such invasion was made under color of any organization intended to subvert the government of any of the States of the Union; the character and extent of such organization; whether any citizens of the United States not present were implicated therein or accessory thereto by contributions of money, arms, ammunition, or otherwise; the character and extent of the military equipments in the hands or

[1] First session Thirty-sixth Congress, Globe, p. 141.

under the control of said armed band; where, how, and when the same were obtained and transported to the place invaded; also, to report what legislation, if any, is necessary by the Government for the future preservation of the peace of the country and the safety of public property—the committee to have power to send for persons and papers.

The committee was appointed, consisting of Senators James M. Mason, of Virginia; Jefferson Davis, of Mississippi; Jacob Collamer, of Vermont; Graham N. Fitch, of Indiana, and James R. Doolittle, of Wisconsin.

On February 21, 1860,[1] Mr. Mason, from the committee, reported the following preamble and resolution:

Whereas Thaddeus Hyatt, of the city of New York, was, on the 24th day of January, A. D. 1860, duly summoned to appear before the select committee of the Senate, appointed "to inquire into the facts attending the late invasion and seizure of the armory and arsenal of the United States at Harpers Ferry, in Virginia, by a band of armed men," and has failed and refused to appear before said committee, pursuant to said summons: Therefore,

Resolved, That the President of the Senate issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into his custody the body of the said Thaddeus Hyatt, wherever to be found, and to have the same forthwith before the bar of the Senate to answer as for a contempt of the authority of the Senate.

After debate the resolution was agreed to, yeas 43, nays 12.

On March 6[2] the Sergeant-at-Arms appeared at the bar of the Senate having Mr. Hyatt in custody, and submitted the following preamble and resolution, which were agreed to, yeas 49, nays 6.

Resolved, That Thaddeus Hyatt, of the city of New York, now in custody of the Sergeant-at-Arms, on an attachment for contempt in refusing obedience to the summons requiring him to appear and testify before a committee of the Senate, be now arraigned at the bar of the Senate, and that the President of the Senate propound to him the following interrogatories:

First. What excuse have you for not appearing before the select committee of the Senate, in pursuance of the summons served on you on the 24th day of January, 1860?

Second. Are you now ready to appear before the said committee and answer such proper questions as shall be put to you by said committee?

And that the said Thaddeus Hyatt be required to answer said questions in writing and under oath.

On March 9[3] the witness presented a sworn statement questioning the authority of the committee and declining to answer the questions. As part of this statement he presented the argument of his counsel, Messrs. S. E. Sewall and John A. Andrew, who thus summarized the objections to the Senate's jurisdiction:

The inquisition delegated to the committee, being an inquiry as to who committed crimes, was a judicial one, and a usurpation of the functions of the judiciary.

The object of the inquisition being unconstitutional, the Senate could have no power to compel the attendance of witnesses before the committee.

The investigations being made with a view to legislation can not give the Senate authority to make a judicial inquisition as to the authors of specific crimes, if it would not otherwise have possessed such authority.

Even had the inquisition been constitutional, still, being for legislative purposes, the Senate could not coerce the attendance of witnesses.

All the powers of the Senate are derived from the Constitution, and not gained by long prescription, like those of the Houses of Parliament in Great Britain.

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[1] First session Thirty-sixth Congress, Globe, pp. 849, 859.

[2] Globe, p. 999.

[3] Globe, p. 1076.

The power of committing witnesses for contempt in cases of this kind is not given directly by the Constitution, or by necessary implication, because legislation can be effected by it without any such power.

This is not a case in which the Senate has judicial or quasi-judicial power; in which case authority to compel the attendance of witnesses as a necessary incident of the power need not be disputed.

Since the statute of 1857 has made the refusal of a witness to appear before a committee an indictable offense, the Senate can not try any such witness for a contempt, because that would be to try him for a crime without a jury, in violation of the Constitution. We deny, then, the power of the Senate committee to act as inquisitors in regard to crimes. We deny their right to drag our client from his home in New York to testify before them.

If the Senate can thus usurp some of the functions of the judiciary, what other functions of the judiciary or the executive may they not assume? The liberties of the people are gone, if the Senate by its own power can create a secret inquisitorial tribunal, and compel any witnesses they please to appear before it.

The power of punishment for contempt is always arbitrary and dangerous, whether exercised by courts or legislative bodies. The constitutions and the legislation of the United States and of the several States have been constantly aiming to limit and define it. It is dangerous, because the party injured becomes the judge in his own case both of law and fact. It involves, therefore, a violation of one of the first principles of justice, and is only to be sustained by the extremest necessity. We believe that the House and Senate have seldom been called to act in a case of alleged contempt in which the power has not been seriously questioned, and in which, from a just sense of its arbitrary character, they have not aimed to make the punishment light rather than severe. In the cases, for instance, of John Anderson and General Houston, the reprimands of the Speaker of the House appear small punishments compared with the gravity of the charges against them.

On March 12[1] Hyatt was brought to the bar and Mr. Mason proposed the following preamble and resolution, which, after long debate, were agreed to, yeas 44, nays 10:

Whereas Thaddeus Hyatt, appearing at the bar of the Senate, in custody of the Sergeant-at-Arms, pursuant to the resolution of the Senate of the 6th of March instant, was required by order of the Senate then made, to answer the following questions, under oath and in writing: "1. What excuse have you for not appearing before the select committee of the Senate, in pursuance of the summons served on you on the 24th day of January, 1860? 2. Are you ready to appear before said committee and answer such proper questions as shall be put to you by said committee?" time to answer the same being given until the 9th of March following; and whereas on the said last named day the said Thaddeus Hyatt, again appearing in like custody at the bar of the Senate, presented a paper, accompanied by an affidavit, which he stated was his answer to said questions; and it appearing, upon examination thereof, that the said Thaddeus Hyatt has assigned no sufficient excuse in answer to the question first aforesaid, and in answer to the said second question, has not declared himself ready to appear and answer before said committee of the Senate, as set forth in said question, and has not purged himself of the contempt with which he stands charged: Therefore,

Be it resolved, That the said Thaddeus Hyatt be committed by the Sergeant-at-Arms to the common jail of the District of Columbia, to be kept in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate; and for the commitment and detention of said Thaddeus Hyatt, this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having the said Thaddeus Hyatt in custody shall be informed by said Hyatt that he is ready and willing to answer the questions aforesaid, it shall be the duty of such officer to deliver the said Thaddeus Hyatt over to the Sergeant-at-Arms of the Senate, whose duty it shall be again to bring him before the bar of the Senate, when so directed by the Senate.

In the course of the debate preceding the adoption of this preamble and resolution, Mr. Charles Sumner, of Massachusetts, argued that the Senate had no right

[1] Globe, p. 1100.

to compel testimony required for legislative purposes only. On June 15,[1] when the Senate ordered the discharge of Hyatt from confinement, Mr. Sumner spoke again on this subject, thus summarizing his argument:

We must not forget a fundamental difference between the powers of the House of Representatives and the powers of the Senate. It is from the former that the Senator from Virginia has drawn his precedents, and here is.his mistake.

To the House of Representatives are given inquisitorial powers expressly by the Constitution, while no such powers are given to the Senate. This is expressed in the words, "the House of Representatives shall have the sole power of impeachment." Here, then, obviously, is something delegated to the House, and not delegated to the Senate—namely, those inquiries which are in their nature preliminary to an impeachment—which may or may not end in impeachment; and since, by the Constitution, every "civil officer" of the General Government may be impeached, the inquisitorial powers of the House may be directed against every "civil officer," from the President down to the lowest on the list.

This is an extensive power, but it is confined solely to the House, Strictly speaking, the Senate has no general inquisitorial powers. It has judicial powers in three cases under the Constitution:

1. To try impeachments.

2. To judge the elections, returns, and qualifications of its members.

3. To punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

In the execution of these powers, the Senate has the attributes of a court; and, according to established precedents, it may summon witnesses and compel their testimony, although it may well be doubted if a law be not necessary, even to the execution of this power.

Besides these three cases, expressly named in the Constitution, there are two others, where it has already undertaken to exercise judicial powers, not by virtue of express words, but in self-defense:

1. With regard to the conduct of its servants, as of its printer.

2. When its privileges have been violated, as in the case of William Duane, by a libel, or in the case of Nugent, by stealing and divulging a treaty while still under the seal of secrecy.

It will be observed that these two classes of cases are not sustained by the text of the Constitution; but if sustained at all, it must be by that principle of universal jurisprudence, and also of natural law, which gives to everybody, whether natural or artificial, the right to protect its own existence; in other words, the great right of self-defense. And I submit that no principle less solid could sustain this exercise of power. It is not enough to say that such a power would be convenient, highly convenient, or important. It must be absolutely essential to the self-preservation of the body; and even then, in the absence of any law, it may be open to the gravest doubts.

1723. In 1877 the Senate, after discussion, decided that certain telegrams relating to the Presidential election should be produced by a Witness.—On January 2, 1877,[2] the Committee on Privileges and Elections of the Senate, who were instructed to inquire into the recent election in Oregon, reported to the Senate that William M. Turner, manager of the Western Union Telegraph office at Jacksonville, Oreg., being called and sworn as a witness by the committee, had declined to answer certain questions, on the ground that both by the laws of Oregon and the instructions of the company he was forbidden to divulge anything that passed over the wires. The questions which the witness refused to answer were presented in the report, and concerned dispatches relating to alleged transfers of money from New York to Oregon after the election in November, and to an alleged dispatch making a request that the canvass be withheld for a time. The

[1] Globe, p. 3007.

[2] Second session Forty-fourth Congress, Record, pp. 397, 439, 476.

committee reported that it was important to have the witness answer the questions, as the answers might be material to the investigation, and therefore recommended the adoption of the following:

Resolved, That William M. Turner is in duty bound under his oath to answer the questions that have been propounded to him as above stated, and that he can not excuse himself for answering the same by reason of his official connection with the Western Union Telegraph Company as the manager of their office at Jacksonville, Oreg.

This resolution was debated at length on January 5 and 8, especially as to the principle involved in an invasion of the secrecy of the telegraph. The law of Oregon was shown to refer only to willful disclosures, and it was argued, from cases decided, that it did not preclude answers before a proper tribunal. The debate developed a general sentiment against the practice of demanding the disclosure of private dispatches, except where there was reason to believe that particular telegrams contained material information, in which case, such might be properly demanded.

The resolution was agreed to, yeas 35, nays 3.

1724. In 1860 the Senate looked to House precedents in dealing with a witness in contempt.—On February 15, 1860,[1] in the Senate, Mr. John M. Mason (of Virginia) made a report concerning certain witnesses who had failed to appear before the committee investigating the invasion of Harpers Ferry. He said that the resolution to compel the attendance of the witnesses was drawn according to the precedents of the House of Representatives, he not having found a case where a witness had declined to appear before a committee of the Senate.[2] The resolution compelling the attendance of the witnesses was agreed to.

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[1] First session Thirty-sixth Congress, Globe, p. 778.

[2] There had been such a case, however, in 1852. On August 13, 1852, a select committee of the Senate reported the contumacy of John McGinnis, a witness, with a resolution declaring that he had committed a contempt, and directing his imprisonment in the jail of the District. The resolution went over to the next day, when it was withdrawn, the witness having taken the oath and testified. (First session Thirty-second Congress, Globe, pp. 2201, 2212.)