

Chapter CLXXV.¹

PUNISHMENT AND EXPULSION OF MEMBERS.

1. Punishment for abuse of leave to print in the Record. Section 236.
 2. Censure for conduct in debate. Section 237.
 3. Punishment for crime. Section 238.
 4. In the Senate. Section 239.
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236. For abuse of the leave to print, the House censured a Member after a motion to expel him had failed.

In the absence of a Member against whom resolutions of expulsion were offered, consideration of the resolutions was postponed with notice that the Sergeant-at-Arms would be asked to deliver to the Member or his secretary a copy of the resolution with notice of its pending consideration.

A proposition to censure is not germane to a proposition to expel. (Contra 5923.)

The question on agreeing to resolutions of expulsion having been decided adversely, the Speaker recognized a Member of the opposition to offer resolutions of censure.

Form of censure administered by the Speaker to a Member by order of the House.

A Member having been subjected to censure, the Speaker, after deliberation, laid before the House a letter of explanation and apology from the Member.

A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard.

The Speaker having censured a Member by order of the House, the censure appears in full in the Journal.

Resolutions providing for the expulsion of a Member were presented as privileged.

On October 24, 1921² the House agreed, yeas 314, nays 1, to a motion by Mr. Frank W. Mondell, of Wyoming, to expunge from the Record an extension of remarks inserted on the previous legislative day by Mr. Thomas L. Blanton of Texas.

¹ Supplementary to Chapter XLII.

² First session Sixty-seventh Congress, Record, p. 6687; Journal, p. 498.

Subsequently,¹ Mr. Mondell, as a question of privilege, submitted the following:

Whereas Thomas L. Blanton, Representative from the seventeenth district of the State of Texas, did on October 4, 1921, ask unanimous consent to extend his remarks in the Congressional Record "upon the improvements in the Government Printing Office," which consent was granted by the House; and

Whereas under such permission the said Thomas L. Blanton did insert and cause to be printed in the Congressional Record for Saturday, October 22, 1921, grossly indecent and obscene language, unworthy of a Member of the House of Representatives, contrary to the rules of the House, derogatory to its dignity, and in violation of its confidence: Therefore be it

Resolved, That the said Thomas L. Blanton, by his conduct as aforesaid, has forfeited all right to sit as a Representative in the Sixty-seventh Congress, and is hereby expelled and declared to be no longer a Member of this House.

Mr. Finis J. Garrett, of Tennessee, called attention to the fact that Mr. Blanton was absent and asked that the resolution be withdrawn.

Mr. Mondell said:

I will not withdraw the resolution, but I shall not press it for consideration at this time. While our rules do not require it, in order that there may be no question as to the service of notice on the gentleman from Texas of the resolution which I have just presented, I shall ask the Sergeant-at-Arms to deliver him, or his secretary in his absence, a copy of the resolution at the earliest possible moment, and notice that it will be taken up Thursday.

On October 27,² Mr. Mondell called up the resolution. At the conclusion of Mr. Mondell's remarks, the Speaker said:

The Chair will recognize the gentleman from Texas, Mr. Blanton, if he desires to be heard.

Thereupon Mr. Blanton addressed the House in his own behalf.

In the course of debate, Mr. Garrett proposed to offer the following substitute for the pending resolution:

Whereas Thomas L. Blanton, a Representative in Congress from the State of Texas, did on the 4th day of October, 1921, ask unanimous consent to extend his remarks in the Congressional Record "upon the improvements in the Government Printing Office," which consent was granted by the House; and

Whereas under the permission thus obtained the said Thomas L. Blanton did insert and cause to be printed in the Congressional Record for Saturday, October 22, 1921, a certain letter or communication purporting to have been written by one Millard French to George H. Carter, Public Printer, which said communication contained language that was so indecent, obscene, vulgar, and vile as to render it unmailable had it been contained in any other than an official publication; and

Whereas the said Thomas L. Blanton by taking the responsibility of inserting such matter in the Congressional Record has offered an indignity to the House of which he is a member and to the people represented by the membership of the Congress whose official organ the publication is, for which he deserves the severe rebuke and censure of the House: Therefore be it

Resolved, That the said Thomas L. Blanton be, and he is hereby, voted the censure of this body, and the Speaker of the House is hereby directed to summon him to the bar of the House and deliver to him its reprimand and censure.

Mr. Mondell made the point of order that the substitute proposed was not germane to the original proposition.

¹Record, p. 6755; Journal, p. 501.

²Record, p. 6880; Journal, p. 508.

The Speaker¹ said:²

The Chair has given considerable attention to this point of order. It seems to the Chair very clear. It does not seem that a motion of censure, if this were a new question, would be germane to a motion to expel. The two are very different intrinsically. Then, the motion to expel requires a two-thirds majority; a motion to censure requires simply a majority. Suppose the amendment was adopted and the motion to expel was amended by a motion to censure; would that still be a motion to expel amended and require a two-thirds vote for its adoption or would it be a motion to censure? But probably that is not final, because it might be interpreted as a substitute. The decision which the gentleman from Massachusetts, Mr. Luce, cited from section 5923 of Hinds' precedents appears to be strictly on the point, but the Chair examined it in the Record, and he finds in the decision of the Chair that this point was not at all alluded to. It went over for two days, and when the decision was made this point of order was not even referred to. And the Chair does not think, consequently, that that is a precedent. There is a precedent, although the Chair does not think this either is final, in which Speaker Henderson said in the Roberts case:

"Does anyone contend that changing a resolution from a condition where a mere majority can carry it through to a resolution which will require a two-thirds vote to carry it through—that such an amendment is germane to the original proposition?"

"The Chair does not entertain a single doubt but that this is not germane to the original resolution."

Of course, that case was different from this, and therefore the Chair does not think it is a direct precedent. But it seems to the Chair that in the nature of things, and looking at it as a new question, a motion to censure is not germane to a case to expel. And the Chair is confirmed by the conditions that exist on this resolution. Both motions are privileged, and therefore if the motion to expel should not prevail the motion to censure would still be in order, and therefore the remedy would still exist. And as to the objections made by the gentleman from Texas, Mr. Black, that this motion is necessary in order that the House may express itself, it must be remembered that men who are opposed to doing anything might well vote, and often do vote, for a milder amendment, and if they carry that then vote against the whole proposition. So it would not follow on this amendment that a man who voted for the amendment would necessarily, if that amendment carried, vote for the resolution as amended. So the vote on the amendment would not really produce the result which the gentleman from Texas, Mr. Black, referred to, of allowing the House to express its judgment. The Chair thinks that, inasmuch as both motions are privileged, the House will have the right to express itself if two-thirds do not vote for a motion to expel. The Chair sustains the point of order.

The vote recurring on the original resolution, there appeared yeas 204, nays 113; and so, two-thirds not concurring, the resolution was not agreed to.

Thereupon, the Speaker recognized Mr. Garrett, who submitted as a question of privilege the resolution previously offered as a substitute.

The vote being taken, the resolution was agreed to, yeas 293, nays 0.

Thereupon, by direction of the Speaker, the Sergeant at Arms appeared at the bar with Mr. Blanton, when the Speaker said:

Mr. Blanton, by a unanimous vote of the House—yeas, 293; nays, none—I have been directed to censure you because, when you had been allowed by the courtesy of the House to print a speech which you did not deliver, you inserted in it foul and obscene matter, which you knew you could not have spoken on this floor; and that disgusting matter, which could not have been circulated through the mail in any other publication without violating the law, was transmitted as part of the proceedings of this House to thousands of homes and libraries throughout the country, to be read by men and women, and, worst of all, by children, whose prurient curiosity it would excite

² Frederick H. Gillett, of Massachusetts, Speaker.

³ Expressly overruling decision at section 5923 of this work.

and corrupt. In accordance with the instructions of the House and as its representative, I pronounce upon you its censure.

This censure by the Speaker appears in full in the Journal.

On the following days¹ the Speaker pro tempore² laid before the House a communication with the following explanation:

The Chair is in receipt of a communication addressed to the Speaker of the House and which the writer of the communication has requested should be laid before the House to-day. The Chair after conference with the majority leader, the gentleman from Wyoming, Mr. Mondell, and the minority leader, the gentleman from Tennessee, Mr. Garrett, feels that the request of the writer of the communication is entitled to be recognized, and therefore directs the Clerk to read the letter.

The Clerk read as follows:

OCTOBER 28, 1921.

Hon. FREDERICK H. GILLET,
Speaker House of Representatives.

MY DEAR MR. SPEAKER: I am involved in no issue now before the House, hence what I now say is not a sacrifice of any principle.

When I expressed a wish of being able to place before the country the record expunged, I was misunderstood by my colleagues, who believed that I would circulate the objectionable language. My intention was not to do this, but to circulate the expunged record with all the objectionable words and abbreviations contained in the employee's affidavit eliminated, and circulated only to show to the country the honest bona fide purpose of my remarks.

I realize that the judgment of no human is infallible. I bow to the collective judgment of my colleagues, against none of whom I harbor malice, and offer this my apology to the House for what my colleagues in their decision determined was an error.

Very sincerely,

THOMAS L. BLANTON.

237. The Speaker may not pronounce censure except by order of the House. On June 8, 1933,³ Mr. Thomas L. Blanton, of Texas, rising to a question of personal privilege, called attention to an article in the current issue of a newspaper in which it was charged that on the preceding day he had been censured by the Speaker.

The Speaker said:⁴

The Chair will state to the gentleman from Texas that the Speaker has no authority whatever to censure any Member of Congress unless ordered to do so by the House itself.

The Speaker did not violate the rules. Neither did the House censure the gentleman from Texas, because the House permitted the gentleman's remarks to remain in the Record.

238. A Member convicted in the courts resigned after the House had ordered an inquiry.

A Member convicted by the courts refrained from participation in the proceedings of the House pending action on his appeal.

It is the custom of the House to defer final action against Members under criminal charges pending disposition in the court of last resort.

The House will not expel a Member for reprehensible action prior to his election, even when convicted for an offense.

¹ Record, p. 6968.

² Joseph Walsh, of Massachusetts, Speaker pro tempore.

³ First session Seventy-third Congress, Record, p. 5335.

⁴ Henry T. Rainey, of Illinois, Speaker.

A committee announced as a fundamental principle that the House could not permit in its membership a person serving a sentence for crime.

A Member whose qualifications; were being investigated by a special committee having resigned, the committee was discharged.

On December 9, 1925,¹ Mr. Theodore E. Burton, of Ohio, offered the following resolution:

Resolved, That the credentials presented to the House of Representatives by John W. Langley, Representative elect from the tenth district of the State of Kentucky, be referred to a select committee of five members, to be appointed by the Speaker, to inquire into the election returns and qualifications of mid Representative elect. Said committee shall report to the House the result of its inquiries, together with such recommendations as it may deem advisable.

In debating the resolution, Mr. Burton explained:

The facts may be briefly stated. A committee was appointed in the first session of the last Congress to investigate certain charges against Members. It appeared that during their investigations an indictment had been found against Mr. Langley in the District of Columbia, and, further, that an indictment had also been found against him in the United States Court for the Eastern District of the State of Kentucky. Mr. Langley was convicted before that district court early in May of last year and sentenced to a term of two years. The committee reported that as the courts had taken jurisdiction and proceedings were to be instituted before an appellate court it seemed the proper and best thing to suspend further proceedings in the House. An appeal or writ of error was taken to the appellate court, the Circuit Court of Appeals for the Sixth Circuit, which very recently affirmed the conviction in the district court. In the meantime Mr. Langley was elected a Member of this Congress. A motion for a rehearing was made very recently. That has been heard and the motion denied, though execution of the sentence has been suspended. But there is now a further opportunity which the attorneys for the defendant intend to utilize, and that is to apply for a writ of certiorari to the Supreme Court of the United States. The time for that is comparatively brief. It must be within 90 days after the decision of the circuit court.

The resolution was agreed to, and the Speaker immediately appointed the committee, which reported on December 22, 1925.²

The report briefly summarizes the history of the case:

While a Member of the Sixty-eighth Congress, on May 13, 1924, Mr. Langley was convicted of conspiracy in the United States District Court for the Eastern District of Kentucky under section 37 of the Penal Code, and was sentenced to serve a term of two years in the Atlanta Penitentiary. From this conviction a writ of error was taken to the Circuit Court of Appeals for the Ninth Circuit. That court, on November 13, 1925, affirmed the conviction in the district court. A motion for rehearing was filed and decided against the accused on December 4 last. On December 8 a stay of execution of the sentence was ordered by the circuit court, to continue until five days after the first motionday in the United States Supreme Court for the year 1926—January 4—with the further provision that if prior to that date a petition for certiorari should be presented in that court the execution of the sentence should be deferred until a decision should be rendered upon the petition.

At the November election for 1924, Mr. Langley was reelected as a Representative from the tenth Kentucky district.

The committee unanimously agree that under the long-established custom of the House the circumstances do not warrant expulsion and the report states:

Without an expression of the individual opinions of the members of the committee, it must be said that with practical uniformity the precedents in such cases are to the effect that the House will

¹First session Sixty-ninth Congress, Record, p. 567.

²House Report No. 30.

not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884, Speaker Carlisle decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member, and added, "That has been so frequently decided in the House that it is no longer a matter of dispute."

The committee, however, are just as strongly of the opinion that the circumstances require action on the part of the House at the appropriate time and agree that:

A more serious question arises, however, in the case of Mr. Langley, in that the House could not permit in its membership a person serving a sentence for crime.

Such action, according to the report, is delayed only because of the further custom of the House to defer final disposition of such cases until passed upon by the court of last resort:

It is, however, again in accordance with precedent that final action shall not be taken until a criminal charge has been disposed of in the court of last resort.

The committee are informed that a petition for certiorari on behalf of Mr. Langley has already been filed in the Supreme Court, seeking a reversal of the conviction. There is every prospect of an early disposition of this petition, and the committee recommend that no action be taken at present. It is well known that Mr. Langley is not participating in the proceedings of the House, and it is understood that his resignation will be immediately presented in case of the refusal of the petition for certiorari.

And the committee reserve the right to submit a further report if occasion requires:

The committee do not ask at this time to be discharged from the duties imposed upon them. If there should be unusual delay in action on the petition for certiorari, or other circumstances arise which would seem to require action, the committee desire leave to make a further report to the House.

However, on January 11, 1926,¹ Mr. Langley addressed to the Speaker the following resignation:

HOUSE OF REPRESENTATIVES, *Washington, D. C.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

MY DEAR MR. SPEAKER: I hereby tender my resignation as a Representative elect to the Sixty-ninth Congress from the tenth Kentucky district, to take effect immediately. I would appear on the floor and do this myself but for the state of my health and other conditions. I am taking this action for two reasons:

First. The action of the Supreme Court in denying my application for a writ of certiorari.

Second. I do not wish to cause my colleagues in the House any embarrassment. Most of them have been my associates and warm, personal friends, having served with many of them for nearly 20 years, and I am glad to believe that, notwithstanding the unfortunate circumstances which have recently surrounded me, they will have faith in the reiteration which I now make of my absolute innocence of the charges upon which my prosecution has been based, and that the day will yet come when my complete vindication will follow.

Very respectfully.

JOHN W. LANGLEY.

A copy of the resignation was transmitted by the Speaker to the Governor of the State of Kentucky, and on motion of Mr. Burton, by unanimous consent, the committee was discharged.

¹First session Sixty-ninth Congress, Record, p. 1861.

239. A proposition for the censure of a Senator was entertained as privileged.

A Senator who had employed an official of a manufacturing association as a clerk in the formulation of a tariff bill was censured by the Senate.

The introduction in official capacity to confidential committee conferences of a representative of business organizations interested in legislation under consideration was declared by resolution to be contrary to senatorial ethics.

A Senator against whom a resolution of censure was pending addressed the Senate without permission being asked or given.

On September 30, 1929,¹ in the Senate, a subcommittee of the Committee on the Judiciary, instructed by resolution,² "to inquire into the activities of lobbying associations and lobbyists," reported:

Your committee, having had under consideration the matter of the association of one Charles L. Eyanson, assistant to the president of the Manufacturers Association of Connecticut (Inc.), with Hon. Hiram Bingham, a Senator from that State, during the consideration by the Finance Committee of the Senate and the majority members thereof of the pending tariff bill and having completed that phase of its work, beg leave to report as follows:

The Manufacturers Association of Connecticut (Inc.) is an organization in the nature of a trade association, the purpose of which is to promote the general interests of its members in their business, manufacturing establishments of the State of Connecticut, including the New York, New Haven & Hartford Railroad Co. Its business at Hartford, Conn., is under the immediate supervision and direction of the said Charles L. Eyanson under the president thereof, E. Kent Hubbard. Eyanson is paid a salary of \$10,000 per annum, by the association. He came to Washington while the tariff bill referred to was under consideration by the Committee on Ways and Means of the House of Representatives in the early part of the present year, and aided members of the association in preparing arguments and data for submission by them to the committee referred to.

Eyanson came to Washington to take position, in effect, as a clerk in the office of Senator Bingham, in which he had a desk where he received callers who came to consult with him or Senator Bingham or both. He assembled material for the use of Senator Bingham in connection with the hearings before the Senate Committee on Finance and attended the hearings, occupying a seat from which he could communicate at any time with Senator Bingham and aided him with suggestions while the hearings were in progress. After the hearings were completed the majority members went into secret session for the purpose of considering the bill. At that time, at the direction of Senator Bingham, Eyanson was sworn in as clerk of the Committee on Territories and Insular Possessions, of which Senator Bingham was then and is now the chairman, displacing one Henry M. Barry, who was told by Senator Bingham that his salary would nevertheless continue. This course was purused, the committee was told by Senator Bingham, that Eyanson might be "subject to the discipline of the Senate," the significance of the phrase being left unexplained.

After Eyanson had thus been introduced into the secret meetings of the majority members and had sat with them for some two or three days, Senator Smoot, chairman of the committee, inquired of Senator Bingham whether, Eyanson, was an officer or employee of the Manufacturers Association of Connecticut, and being advised that he was, Senator Bingham was told by Senator Smoot that objection had been made to Eyanson's presence in the committee and intimated it would be better if he did not longer attend. Senator Bingham then inquired as to the attitude of other members of the committee and from the view thus elicited reached the conclusion that

¹First session Seventy-first Congress, Senate Report No. 43.

²Senate Resolution 20.

Eyanson ought not longer to attend the meetings and he did not. Eyanson drew his salary as clerk of the Committee on Territories and Insular Possessions. At the end of his first months service as such he turned the amount so received over in cash to Senator Bingham. The remainder of his salary while he continued on the rolls he drew and turned over to Mr. Barry, the whole amounting to \$357.50.

After the departure of Eyanson from Washington on the completion of his work here with Senator Bingham, the latter transmitted to him a check for \$1,000, which has never been cashed, the recipient having determined tentatively on its receipt to return it personally rather than by letter to Senator Bingham, but now remains undecided as to what disposition he should make of the check.

On November 4, 1929,¹ Mr. George W. Norris, of Nebraska, referred to this report and offered the following resolution:

Resolved, That the action of the Senator from Connecticut, Mr. Bingham, in placing Mr. Charles L. Eyanson upon the official rolls of the Senate at the time and in the manner set forth in the report of the subcommittee of the Committee on the Judiciary is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned.

A request that consideration of the resolution be delayed having been submitted by Mr. Simeon D. Fess, of Ohio, the President pro tempore² said:

The Chair is of the opinion that the resolution is privileged.

Request then being preferred by Mr. Fess that consideration of the resolution be postponed until the following day, the President pro tempore continued.

Although privileged, with the assent of the mover of the resolution, it will go over one day.

On November 4,³ during consideration of the resolution in the Senate, Mr. Bingham participated in the debate and thus analyzed the issues raised by the pending resolution:

The resolution asks for the condemnation of my having placed Mr. Eyanson, secretary to the president of the Connecticut Manufacturers' Association, on the Senate rolls on three grounds: First, that it is contrary to good morals; second, that it is contrary to senatorial ethics; and third, that it tends to damage the honor and reputation of the Senate.

In the first place, it is claimed that the employment of Mr. Eyanson was contrary to good morals. It is difficult, Mr. President, to know exactly what is meant by this expression "contrary to good morals"; but if it means anything at all it must mean that there was something in this employment which was immoral in the sense of being dishonorable or corrupt. To this charge, Mr. President, I plead not guilty. There was nothing in his employment which was dishonorable or corrupt. Not one dollar of the public money was wasted. Not a single taxpayer's dollar was employed for any sinister purpose. I did not profit to the extent of one dollar by any part of this transaction. There was nothing contrary to good morals.

Now, let us take the second point: It is claimed that his being placed on the rolls of the Senate was contrary to senatorial ethics. It is fair to assume, Mr. President, that the expression "senatorial ethics" relates to what is considered by senatorial practice to be right or wrong. Again, Mr. President, I plead not guilty.

Everyone in the Senate knows that to each Senator there are assigned four clerkships. It may not be generally known to the public, but it is known to every Senator that the Senator himself is considered the sole judge as to the nature of the employment to which these clerks

¹ Record, p. 5131.

² George H. Moses, of New Hampshire, President pro tempore.

³ Record p. 5063.

should be put and the character of the persons appointed to those positions. There is no restriction on who should be appointed or how he or she shall be employed. That is the custom of the Senate. That is the nature of senatorial ethics so far as these positions are concerned.

So far as I have been able to learn, according to senatorial ethics, no official of the Government, no official of the Senate, no committee of the Senate has ever held that a Senator was answerable as to whom he appointed or as to how the clerk was used. In view of this fact, Mr. President, I do not see how my placing of Mr. Eyanson on the rolls as one of my four clerks can possibly be held to be contrary to senatorial ethics.

The third charge, Mr. President, is that my action tends to bring the Senate into dishonor and disrepute. In order for this action to bring the Senate into dishonor and disrepute it must have had some sinister motive and must have been directed against the interest of the people of the United States.

Mr. President, I do not believe that those who have done me the honor of listening to or of reading my previous statements will accuse me of having had dishonorable or unpatriotic motives. My sole desire was to secure the best possible information on a difficult and intricate subject, particularly as it related to the people who elected me to the United States Senate.

My sole object, my sole purpose in placing Mr. Eyanson on the official rolls of the Senate was so that I might be the better prepared to present the case of my constituents in Connecticut, both employers and employees, both producers and consumers; that I might be the better prepared to meet in committee and on the floor of the Senate the arguments of those who are opposed to a high protective tariff.

Mr. President, this was my motive. This was my sole object. In carrying it out not a dollar of the public funds was misused. Nothing dishonorable or disreputable was attempted. Nothing was done contrary to good morals or to senatorial ethics.

Mr. Norris replied:

This is not a question of the vindication of the Senator from Connecticut or of his condemnation. It is a question of the honor of this body. No one has disputed the evidence; no one has contradicted the facts which were brought out.

After extended debate an amendment disavowing any imputation of corrupt motives was incorporated and the resolution was agreed to, yeas 54, nays 22, in the following form:

Resolved, That the action of the Senator from Connecticut, Mr. Bingham, in placing Mr. Charles L. Eyanson upon the official rolls of the Senate and his use by Senator Bingham at the time and in the manner set forth in the report of the subcommittee of the Committee on the Judiciary (Rept. No. 43, 71st Cong., 1st sess.), while not the result of corrupt motives on the part of the Senator from Connecticut, is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned.