

## Chapter CLXXXVIII.<sup>1</sup>

### INVESTIGATIONS OF CONDUCT OF MEMBERS.

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1. Propositions to inquire presented as questions of privilege. Sections 394, 395.
  2. Inquiries ordered on the strength of newspaper charges. Sections 396–398.
  3. Various investigations in House and Senate. Section 399.
  4. Procedure wherein inquiry implicates Members or others. Sections 400–403.
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**394. A resolution creating a select committee to investigate charges involving Members of the House was referred to a standing committee with instructions to conduct the investigation.**

**A resolution providing for an investigation of charges that Members of the House and Senate had profited in the stock market by the use of official information was held to involve a question of privilege.**

**A question of privilege takes precedence of business in order on Calendar Wednesday.**

**The mover of a proposition is entitled to prior recognition for allowable motions relating thereto.**

**A committee under instructions by the House to make an investigation and report within a specified time requested and received an extension of time.**

**Witnesses are summoned in pursuance of and by virtue of the authority conferred on a committee to send for persons and papers.**

**Instance wherein a committee of investigation after being authorized to send for persons and papers was further empowered to require witnesses to testify.**

**A committee of the House empowered and instructed to make an investigation was by resolution of the House authorized to employ counsel and accountants.**

**Reports on investigations when submitted to the House are read by unanimous consent only and are not necessarily acted upon by the House.**

**Charges against Members of the House and Senate being unsubstantiated, the resolution and report thereon were laid on the table.**

**On January 3, 1917,<sup>2</sup> Mr. William R. Wood, of Indiana, presented, as a question of privilege, the following preamble and resolution:**

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<sup>1</sup> Supplementary to Chapter LVI.

<sup>2</sup> Second session Sixty-fourth Congress; Journal, p. 84; Record, p. 801.

Whereas Thomas W. Lawson, of Boston, gave to the public a statement which appears in the daily newspapers under date of December 28 and 29, 1916, in which he says, amongst other things, that "If it was actually believed in Washington there was to be a real investigation of last week's leak, there would not be a quorum in either the Senate or House next Monday and a shifting of bank accounts similar to those in the old sugar-investigation days"; and in another statement which appears in the daily press of December 31, 1916, he says, "The good old Capitol has been wallowing in Wall Street leak grafts for 40 years, wallowing hale and hearty"; and

Whereas the statements of the aforesaid Thomas W. Lawson, and each of them, affect the dignity of this House and the integrity of its proceedings and the honesty of its Members;

*Resolved*, That the Speaker appoint a select committee of five Members of the House and that such committee be instructed to inquire into the charges made by the aforesaid Thomas W. Lawson, and for such purpose it shall have power to send for persons and papers and enforce their appearance before said committee, and to administer oaths, and shall have the right to make report at any time.

Mr. Finis J. Garrett, of Tennessee, raised a question of order against the resolution; first, that it was offered on Calendar Wednesday and nothing was in order on that day except a call of committees; and, second, that it did not present a question of privilege.

The Speaker ruled:

In this particular case Mr. Lawson charges by plainest implication that at least a majority of both the House and the Senate have been engaged in illegal and disgraceful speculation growing out of information they had no business to get in the first place and which, if they did get, they had no moral right to act upon. The Chair thinks this charge by Mr. Lawson is in derogation of the dignity of the House and therefore rules that this resolution is privileged.

and held that as such it was in order on Calendar Wednesday.

Thereupon Mr. Robert L. Henry, of Texas, asked for recognition to offer a motion to refer the resolution.

Mr. James R. Mann, of Illinois, made the point of order that Mr. Wood, as the introducer of the resolution, was entitled to the floor.

The Speaker sustained the point of order and recognized Mr. Wood, who moved to refer the resolution to the Committee on Rules, with instructions to report within 10 days.

The motion was agreed to by the House and the resolution was referred to the Committee on Rules.

On January 12,<sup>1</sup> Mr. Henry, from that committee, reported the resolution back to the House with the recommendation that it lie upon the table.

After extended debate the resolution was, on motion of Mr. Henry, by unanimous consent, recommitted to the Committee on Rules, with instructions to report within five days. Other resolutions of similar tenor were likewise referred to the same committee.

On January 13,<sup>2</sup> Mr. Henry submitted, by unanimous consent, the following resolutions, which were agreed to:

*Resolved*, That in the performance of the duties imposed upon it by reference to it of House resolution 420, the Committee on Rules shall have the power to send for persons and papers and to administer oaths and to employ such stenographic and clerical assistance as may be necessary. The expenses incurred hereunder shall be paid out of the contingent fund of the House of Repre-

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<sup>1</sup>Journal, p. 115; Record, p. 1273.

<sup>2</sup>Journal, p. 121, Record, p. 1334.

sentatives on vouchers ordered by this committee and signed by the chairman thereof and approved by the Committee on Accounts, evidenced by the signature of the chairman thereof.

*Resolved*, That in the consideration of House resolutions Nos. 420 and 429, committed to the Committee on Rules, said committee be, and it is hereby, authorized and empowered to require witnesses to answer all questions propounded by said committee or a member thereof, touching the subject matter of said resolutions, and to require any witness called before it to testify fully as to any information in his possession, whether in the nature of hearsay testimony or otherwise, relative to the matters set forth in said resolutions. And said committee is specifically directed to require one Thomas W. Lawson to name any Member of Congress or other person alleged by him in his testimony before said committee on January 8 and 9, 1917, to have given him any information relating to the subject matter of said resolutions or either of them.

On January 17,<sup>1</sup> on motion of Mr. Edward W. Pou, of North Carolina, by unanimous consent, the time within which the committee was instructed to report was extended 30 days.

Whereupon Mr. Pou offered the following resolution, which was agreed to by the House:

*Resolved*, That in the consideration of House resolutions 420, 429, and 446, referred to the Committee on Rules, said committee be and is authorized and empowered to employ counsel to aid in conducting the investigations which it has been directed by the House to make, and also to employ such expert accountants familiar with stock-exchange transactions as may be found necessary in conducting said investigation.

The Committee on Rules or any subcommittee thereof is authorized in the consideration of said resolution to sit during the sessions of the House in Washington or elsewhere.

The expenses incident to the employment of counsel and accountants and those of the committee or subcommittee when sitting outside of Washington shall be paid out of the contingent fund of the House on vouchers signed by the chairman or acting chairman of said committee.

On February 13,<sup>2</sup> Mr. Pou, by direction of the Committee on Rules, asked unanimous consent that 10 additional days be granted in which to complete consideration of the resolution.

The request was acceded to, and on February 27<sup>3</sup> Mr. Henry submitted the unanimous report<sup>4</sup> of the committee.

The report was called up on March 3,<sup>5</sup> and Mr. Mann demanded the reading of the report in full.

Mr. Garrett called attention to the fact that reports on investigations are statements of fact merely, and under the rules of the House may be read by unanimous consent only.

Mr. Mann agreed:

We do not adopt the report. I think the gentleman from Tennessee is right about it.

The report discussed at length the circumstances under which advance notice of the President's message was disseminated, found no evidence to sustain any of charges made in that connection, and closed with the recommendation that the resolution lie on the table.

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<sup>1</sup> Journal, p. 135; Record, p. 1549.

<sup>2</sup> Journal, p. 223; Record, p. 3240.

<sup>3</sup> Record, p. 4439.

<sup>4</sup> House Report No. 1580.

<sup>5</sup> Journal, p. 328; Record, p. 4048.

In presenting the report Mr. Henry said:

Mr. Speaker, this is a unanimous report from the committee. After taking testimony and investigating every source of information that came to this committee, we have concluded that there is nothing to cast suspicion upon any Member of this House or of the Senate or upon any official of this Government. This committee desires to exonerate and does exonerate the Congress of the United States from the innuendo, suggestions, and charges that were made, and we are glad to report that we found nothing even suggesting that there should be criticism of the Members of Congress or of any Cabinet officer or any official of the Government. The report sets these things out at length. The report, speaking for itself, covers all of these points, and I believe there is nothing else that I can say or that I should say to the House, but we ask this body to adopt the report, and then the formal motions to lay these resolutions on the table will be made.

After brief debate the report was adopted, and the resolution was laid on the table.

**395. The presence of unprivileged matter destroys the privilege of a resolution otherwise privileged.**

**A resolution providing for the investigation of a question of privilege loses its privileged character if including an appropriation.**

**A question of the privilege of the House takes precedence over the consideration of a proposition privileged by special order.**

**A committee of investigation in its report criticized a Member who had imputed corrupt motives to other Members of the House.**

**Instance wherein the House adopted the report of a committee of investigation.**

On September 24, 1917,<sup>1</sup> Mr. Joseph W. Fordney, of Michigan, offered as privileged the following:

Whereas the Congressional Record of September 21, 1917, pages 7305 and 7306, contained a statement by the Hon. Thomas J. Heflin, Member of Congress from Alabama, commenting upon the contents of a telegram sent from Washington to Germany by Count von Bernstorff, the representative of the German Government, in which he (Von Bernstorff) asked permission "to pay out \$50,000, as on former occasions to influence Congress," Mr. Heflin used the following language:

"I do not know what Members of Congress, if any, have been influenced by this mysterious German organization. If I were permitted to express my opinion, I could name 13 or 14 men in the two bodies who, in my judgment, have acted in a suspicious manner. If Members have acted in a suspicious manner, by the introduction of resolutions or bills or by speeches in the Congress or out of it, that leads to the conviction that they are not loyal to this Government in the hour of its peril, they ought to be investigated and, if found guilty, they ought to be expelled from the House and from the Senate of the United States."

And

Whereas the Washington Post and other newspapers of September 22, 1917, reported the following interview with or statement furnished by Congressman Heflin concerning the said telegram of Count von Bernstorff, to wit:

"I have heard a story that there is a gambling room in Washington where pro-German and peace-at-any-price Members of Congress get their pay by being extraordinarily lucky at cards. \* \* \* I demand that this matter be investigated and that the guilty Members be expelled from Congress in disgrace. I believe some of this money has reached some Members of Congress. I know I could name 13 or 14 Members of the House and the Senate who have acted in a very suspicious fashion."

<sup>1</sup>First session Sixty-fifth Congress, Record, p. 7367.

And

Whereas in the Washington Post of September 22, 1917, Hon. William Schley Howard, a Member of Congress from Georgia, is reported to have said upon the subject of said telegram that he could point to men in this House who, "I believe, received money. Their actions certainly indicate it and they are certainly more prosperous now than they have ever been."

Therefore be it

*Resolved*, That the Speaker of the House of Representatives appoint a select committee of seven Members of the House, with instructions to inquire into the charges made in the statement of the said Hon. Thomas J. Heflin, Member of Congress from Alabama, as inserted by him in the Congressional Record of September 21, 1917, pages 7305 and 7306, respecting the said telegram of Count von Bernstorff, and also to inquire into the statements of said Heflin which appears in the Washington Post of September 22, 1917, and also the statement of said Howard in said paper and of said date, and all other statements, matters, or things pertaining to such telegram of said Von Bernstorff and comments of Members of Congress thereon. Said committee shall have the power to enforce attendance of persons in Washington or elsewhere, to administer oaths to such persons, and to require the production of such books and papers as may be pertinent to the inquiry. Said committee shall report to the House within 20 days the results of its inquiry and its recommendations, if any, as to appropriate action to be taken by the House against any person or persons involved in this inquiry. To pay the expenses of said committee the sum of \$10,000, or so much thereof as may be necessary, is hereby ordered to be paid out of the contingent fund of the House, on vouchers approved by the Committee on Accounts.

Mr. Finis J. Garrett, of Tennessee, made the point of order that the resolution was not privileged for the reason that it carried an appropriation.

The Speaker<sup>1</sup> sustained the point of order, and referred the resolution to the Committee on Rules.

On October 4,<sup>2</sup> Mr. Hubert D. Stephens, of Mississippi, offered a resolution providing for an investigation of the same subject.

Mr. John N. Garner, of Texas, made the point of order that consideration of the resolution was precluded by a special order adopted on the preceding day providing:

That immediately upon the adoption of this resolution the House shall proceed to the consideration under the general rules of the House of H. R. 6361, entitled "A bill to extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war," and it shall be considered from day to day until disposed of, subject to consideration of conference reports.

The Speaker held that questions of privilege take precedence over all other questions with the exception of the motion to adjourn, and their consideration can not be circumscribed by orders providing for the consideration of other propositions, and recognized Mr. Stephens to present his resolution.

The resolution was agreed to, and Mr. Henry A. Barnhart, of Indiana, chairman of the committee, appointed in pursuance thereof, submitted a report<sup>3</sup> thereon October 6.

The report finds:

On the above statements to Mr. Heflin, taken in connection with the letter from the Secretary of State's office, your committee is of the opinion that there is no justification for and no evidence

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<sup>1</sup> Champ Clark, of Missouri, Speaker.

<sup>2</sup> Record, p. 7786; Journal, p. 400.

<sup>3</sup> Record, p. 7906; House Report No. 201.

upon which to base a further investigation of the question of the corrupt receipts of money by Members of Congress.

The committee then express the opinion:

While your committee makes no recommendation in the premises, we beg to state it as our opinion that in so far as Mr. Heflin's charges impute or might fairly be construed as imputing dishonest or corrupt motives to any Member of Congress, notwithstanding the fact that he now denies any intention of conveying any such imputation, his conduct in that respect is subject to criticism.

After the reading of the report, Mr. Barnhart, by direction of the select committee, moved the previous question on the adoption of the report.

The previous question was ordered, and the question recurring on the report, it was agreed to without division.

**396. The lobby investigation in the Sixty-third Congress.**

**A Member who had been defamed in his reputation as a Representative by a newspaper article presented the case as one of privilege and the House ordered an investigation.**

**Form of resolutions of the House creating, empowering, and instructing the select committee which investigated charges that Members have been improperly influenced in their official capacity.**

**In directing an investigation of charges against certain of its Members the House provided that all meetings of the committee for the purpose of taking testimony or hearing arguments should be open to the public.**

On July 2, 1913,<sup>1</sup> Mr. Swagar Sherley, of Kentucky, submitted, as a question of privilege, the following resolution:

Whereas it appears that on the 29th day of June, 1913, there was published in the World, a newspaper of the city of New York, the following statement, viz:

"7. That among the men whom the lobbyists of this association (meaning thereby the National Association of Manufacturers) had no difficulty in reaching and influencing for business, political, or sympathetic reasons during recent years were: President Taft, Senator Lodge, the late Vice President Sherman, ex-Senator Foraker, Senator Nelson, ex-Senator Hemenway, ex-Speaker Cannon, ex-Congressman Dwight, Republican "whip" of the House from 1909 to 1911; former Congressman James E. Tawney, of Minnesota; former Congressman J. Adam Bede, of Minnesota; Senator Isaac Stephenson, of Wisconsin; former Senator Aldrich, of Rhode Island; Senator Townsend, of Michigan; Senator Gallinger, of New Hampshire; Congressman Webb, of North Carolina; former Congressman J. Sloat Fassett, of New York; former Congressman W. B. McKinley, of Illinois; former Congressman Vreeland, of New York; former Congressman Dalzell, of Pennsylvania; former Senator N. B. Scott, of West Virginia; former Congressman W. S. Bennet, of New York; former Postmaster General James A. Gary, of Baltimore; the late Congressman George A. Southwick, of New York; Congressman W. M. Calder, of New York; Congressman James F. Burke, of Pennsylvania; former Congressman W. H. Ryan, of New York; former Congressman W. M. Wilson, of Illinois; former Congressman Denby, of Michigan; former Congressman Edward H. Henshaw, of Nebraska; former Congressman Jesse Overstreet, of Indiana; former Congressman J. G. Beale, of Pennsylvania; former Congressman W. A. Calderhead, of Kansas; former Congressman Diekema, of Michigan; former Congressman M. A. Driscoll, of New York; former Congressman G. J. Foster, of Vermont; former Congressman P. M. Fowler, of New Jersey; Congressman Swagar Sherley, of Kentucky; former Congressman J. A. Sterling, of Illinois; former Congressman J. P. Swasey, of Maine; former Congressman Charles E. Littlefield, of Maine; Gov. W. T. Haines, of Maine; Ambassador Myron T. Herrick, of Ohio; Ambassador

<sup>1</sup>First session Sixty-third Congress, Record, p. 2297.

Curtis Guild, of Massachusetts; Congressman Richard Bartholdt, of Missouri; the late Congressman Sidney Mudd, of Maryland; and Congressman George W. Fairchild, of the thirty-fourth New York district"; and

Whereas said statement reflects upon the official character and conduct of Representative Swager Sherley, a Member of this House, who has requested an investigation by this body, in accordance with the rules and practices of the House, of the matters so alleged concerning him:

*Resolved*, That the Speaker appoint a select committee of seven Members of the House, and that such committee be instructed to inquire into the matters so alleged concerning the said Representative, and more especially whether, during this or any previous Congress of which the said Representative was a Member, the lobbyists of the said National Association of Manufacturers, or the said association itself, through any officer, agent, or member thereof, did, in fact, reach or influence, whether for business, political, or sympathetic reasons, or otherwise, the said Representative in and about the discharge of his official duties; and if so, when, by whom, and in what manner. And for such purposes the said committee shall have power to send for persons and papers and administer oaths, and shall 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.

Mr. James Hay, of Virginia, having made a point of order that the resolution was not privileged, the Speaker ruled:

It undoubtedly is a privileged resolution. The precedents make it a question of privilege, and the Chair entertains the resolution as a privileged resolution.

On motion of Mr. Robert L. Henry, of Texas, after debate, the resolution was referred to the Committee on Rules, which on the following day<sup>1</sup> submitted<sup>2</sup> as a substitute therefor:

Whereas there have appeared in recent issues of various newspapers published in the United States divers statements and charges as to the existence and activity of a lobby organized by and on behalf of an organization known as the National Association of Manufacturers for the purpose of improperly influencing legislation by Congress, the official conduct of certain of its members and employees, the appointment and selection of committees of the House and for other purposes designed to affect the integrity of the proceedings of the House of Representatives and its Members: Therefore be it

*Resolved*, That the Speaker appoint a select committee of seven Members of the House and that such committee be instructed to inquire into and report upon all the matters so alleged concerning said Representatives, and more especially whether during this or any previous Congress the lobbyists of the said National Association of Manufacturers, or the said association through any officer, agent, or member thereof, did, in fact reach or influence, whether for business, political, or sympathetic reasons or otherwise, the said Representatives or any one of them or any other Representative or any officer or employee of this or any former House of Representatives in or about the discharge of their official duties, and if so, when, by whom, and in what manner.

Said committee shall also inquire whether money has been used or improper influence exerted by said National Association of Manufacturers or other person, persons, association, or organization or any agent thereof to accomplish the nomination or election or secure the defeat for nomination or election of any candidate for the House of Representatives, and said committee shall likewise inquire whether Members of the House of Representatives have been employed by any of said associations or have knowingly aided said associations or any of them for the accomplishment of any improper purpose whatever.

Said committee is also directed to inquire whether improper influence has been exerted by said association or by any other association, corporation, or person to secure or prevent the appointment or selection of any Representative to any committee of the House in this or any other Congress.

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<sup>1</sup>Record, p. 2315.

<sup>2</sup>House Report No. 33; Journal, p. 204.

Said committee shall also inquire whether the said National Association of Manufacturers or any other organization or corporation or association or person does now maintain or has heretofore maintained a lobby for the purpose of influencing legislation by Congress and ascertain and report to what extent and in what manner, if at all, legislation has been improperly effected or prevented by reason of the existence of such lobby, if it be found to exist now or to have existed heretofore.

Said committee, or any subcommittee thereof, may sit in the city of Washington or elsewhere to conduct its investigations during the sessions of the House or recess of Congress. All meetings of said committee or any subcommittee, for the taking of testimony or hearing of argument, shall be open to the public. It shall have power to employ such legal or clerical assistance as may be deemed necessary, to send for persons and papers and administer oaths, and shall have the right to report at any time.

The Speaker shall have authority to sign and the clerk attest subpoenas during the recess of Congress. The expenses of said inquiry shall be paid out of the contingent fund of the House upon voucher, approved by the select committee signed by the chairman thereof, and by the Committee on Accounts, signed by the chairman thereof.

The substitute was agreed to by the House, and the Speaker immediately appointed the committee, which presented its report<sup>1</sup> on December 9.<sup>2</sup>

**397. The lobby investigation in the Sixty-third Congress, continued.**

**Definition by a committee of the House of the term "lobby."**

**Differentiation by a committee of the House between admissible and inadmissible methods of persons and organizations in appealing to Members of Congress.**

**Discussion by a committee of the House as to propriety of the employment of former Members of Congress to advocate or oppose measures under consideration by the House.**

**Discussion as to the propriety of employees of the House accepting employment by agencies interested in pending legislation.**

**A Committee of the House took the view that the acceptance by a Member of loans from individuals or associations organized for the purpose of opposing certain classes of legislation was incompatible with his duty as a Representative.**

**Instance wherein a Member delegated to another not in the service of the House the use of his frank and the occupancy of a room in the Capitol.**

In the outset the report gives the following definition of the word "lobby":

The resolution does not define for us the word "lobby," and distinguished and eminent authorities entertain wide differences of opinion as to its correct definition. The word at one period carried with it a certain idea of acts, sinister and corrupt, and the first impression now made upon the mind of the average man when this word is used in connection with legislative bodies is probably in line with this conception. That it was not so intended to be understood in this resolution, however, appears to be certain, because the second part of paragraph 4 requires the committee to ascertain and report "to what extent and in what manner, if at all, legislation has been improperly effected or prevented by reason of the existence of such lobby, if it be found to exist now or to have existed heretofore." Had it been intended that your committee should consider the word "lobby" as used in the resolution to have the meaning above set forth, there would have been no necessity or occasion for the insertion of the word "improperly" in the subsequent clause.

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<sup>1</sup> Second session Sixty-third Congress, House Report No. 113.

<sup>2</sup> Record, p. 565, Journal, p. 32.

Your committee has therefore in the taking of testimony treated and does, for the purposes of this report, treat the word "lobby" as used in the resolution as having the broad meaning of a person or body of persons seeking to influence legislation by Congress in any manner whatsoever, and under this definition it finds that the National Association of Manufacturers, the National Council for Industrial Defense, the National Tariff Commission Association, the American Federation of Labor, the local associations of intoxicating liquor dealers, and the local loan sharks and pawnbrokers have maintained, and some of them do now maintain, lobbies for the purpose of influencing legislation by Congress.

**Applying this definition the report reaches the conclusion:**

From the testimony adduced before your committee, the conclusion must be inevitable that in so far as Mr. Mulhall's duties in Washington and about the Capitol are concerned he was employed and used by these organizations very largely and primarily for personal lobbying. They believed him to be a man of extended acquaintance among Representatives, Senators, and other public men, and believed that this acquaintance could be capitalized and utilized in influencing individual Members in their official acts, and so affect the general course of legislation; and it was for this purpose that he was employed and retained.

The committee expresses its disapproval of such activities in the following language:

We think it is offensive and outrageous that these associations should have their paid hirelings about this Capitol buttonholing Members of Congress, striving to induce them to remain away from the Chamber when a vote was being taken. We think they went beyond the limits of legitimate effort and that they deserve the severest censure as well as a pointed invitation and suggestion that they completely reform their methods or else remain away in the future. We have striven to make clear our opinion as to the right of persons and organizations to argue and appeal to Representatives and Senators. We would not place one of these upon an unapproachable pedestal and bid the world regard him with awe and in silence. That is not the true theory of representative government; but the Congressman himself is entitled, and what is vastly more important, the public whom he represents is entitled to have him act free from the annoyances and efforts such as clearly were incident to these activities of Mulhall and Emery, whose conduct met the unreserved approval and enthusiastic acclamation of the officials of their respective organizations.

**But finds no grounds for considering it effective:**

There was no evidence presented to your committee which would indicate that under the rule as to improper influence set forth this tariff commission legislation was improperly effected by the lobby which worked in its behalf. At the same time the committee questions the propriety of one who has been a Member of Congress and attained a personal and political influence capitalizing that influence in pressing legislative propositions upon Congress for hire by personal contact and personal efforts with Members, as was done in this case, and we confess to a feeling of regret that upon any question, whatever its merits, the lobbyist for it should be able to say, as Mr. Watson said in this case (p. 2571), "I had various Members of Congress coming to report to me about how their delegations stood."

The report then takes up in their order the several charges under consideration.

As to whether improper influence was exerted in attempting to influence the appointment of Members to committees of the House:

In the Mulhall article it was asserted that at the request of Mr. Emery and Mr. Mulhall three active members of the House Judiciary Committee were removed through the influence of Hon. James E. Watson; that one of these was Mr. George A. Pearre, late a Representative from the State of Maryland, the names of the others not being given; that in the place of the three men removed "three very subservient members" were appointed.

Doubtless the removal or failure to reappoint Mr. Pearre was gratifying to the N. A. M., because of the antagonism of views between them, and it is not beyond the range of possibility that the matter was by some of its representatives discussed with the Speaker, or others known to be close to him, but there is no evidence of any improper influence sought to be exerted upon him and no reason to assume that his act was other than upon his own initiative and responsibility.

As to the use of money or improper influence in securing the election or defeat of candidates for the House:

That the N. A. M. did participate actively and energetically in a number of these campaigns is, however, clearly established. Since about the year 1903 it has participated to a greater or less extent in political activities, giving encouragement and support to those who have strongly advocated the views for which it stood, rendering financial assistance to their campaigns at times, and opposing those who, by vigorous advocacy of the measures they have antagonized, have rendered themselves politically obnoxious to the association.

The report gives in detail the findings of the committee as to definite sums contributed by various organizations on specified occasions in the interest of favored candidates or in opposition to candidates considered antagonistic to their interests, and says:

It has not been possible for your committee to ascertain the aggregate amount which these organizations have expended in the effort to effect nominations and elections of Members of the House of Representatives, but we find that money has been by them expended for that purpose.

On another phase of the same inquiry:

Passing from the simple question of the use of money to that of whether "improper influence was exerted," this being the second part of paragraph 2, your committee has to report that it looks with greatest suspicion upon the act of sending Mulhall abroad in the country furnished with funds to organize temporary and speedily dissolving associations for use in elections, as was done again and again, and the secretiveness practiced induces in the common intelligence of men a surmise that there was not that scrupulousness which is attendant upon cleanly political practice.

The committee however find:

As to the employment of Members for improper purposes:

Inquiry was made of all the representatives of the several organizations that have been referred to herein as to the employment of Members of the House of Representatives and no evidence has been adduced of any such employment by them or by any other person or association.

As to the employment of House employees, the committee find that certain minor employees were employed for routine work the character of which would not necessarily reflect upon their motives, but hold:

Your committee does not believe that employees of the House should be permitted to accept outside employment, even of the character given McMichael in this instance. It tends to excite suspicion in the public mind, and may lead to dangerous and improper activities. This action meets the strong disapproval of your committee. It was a violation of all the proprieties, and all persons connected with it deserve the severest censure.

It also appeared that other employees had been the recipients of tips and gratuities on various occasions, of which the committee says:

For these services liberal gratuities or "tips" were given them from time to time, and these were accepted. Your committee can not conceive that these men in their position and circumstances could have been considered as able to aid or effect in any way the course of legislation, and does not believe that they were employed as agents, but we think the acts of those men who were here as professional lobbyists, in constantly bestowing gratuities upon these employees, was

reprehensible in the extreme and generally we feel that there is impropriety in the tipping of even the menial employees of the House.

The report then discusses individually each Member named in the newspaper article which had given rise to the investigation, and finds that with one exception no evidence was adduced to show that any of them were in any wise improperly influenced by lobbyists either in voting or otherwise.

As to the one exception the report says:

Representative James T. McDermott, of Illinois, is also listed in the summary among those whom the N. A. M. had no difficulty in reaching and influencing for business, political, or sympathetic reasons, and mentioned in the personal narrative of Mulhall.

Mr. McDermott has denied in his testimony very vigorously that the relations between Mulhall and himself ever became close and of an especially friendly character. We think, however, that they did. While we are of opinion that Mulhall has exaggerated largely the intimacy existing between them, we are, at the same time, of opinion that Mr. McDermott has unduly minimized it.

As to loans made:

Evidence in the record as to this is too voluminous and convincing to admit of any other conclusion. We think, too, that the weight of the testimony is that Mr. McDermott did obtain occasional sums of money from Mulhall, in the way of small loans, when they were together, but the testimony convinces us that these were personal acts of Mulhall, and we do not believe that he let McDermott have this money with a view of corrupting him.

That Mr. McDermott may have borrowed some moneys from the N. A. M., we think not improbable, but we do not believe there was any understanding that he was to regularly receive a portion or that there was any corrupt motive in the act. Probably it was an act of impropriety for Mr. McDermott to solicit and accept loans from this salary, knowing its source.

Your committee is of opinion that the most serious question of propriety affecting Mr. McDermott is not in connection with the N. A. M. or the other matters above related, but grows out of his acts and dealings with the Liquor Dealers' Association of the District of Columbia and with George Horning, one of the pawnbrokers, to which allusion has been made.

He further testifies as to procuring loans for McDermott from Horning and Heidenheimer, and also to procuring loans for himself from these men and McDermott aiding him in settling them or, rather, securing the return of his pledges without the payment, in one instance, of the principal, and in another, the interest, and relates other circumstances to show the alleged close relations of Mr. McDermott with the pawnbrokers and his influence with them.

In September, 1912, at the instance and suggestion of Mr. Hugh F. Harvey, secretary of this central body, there was loaned to Representative McDermott out of its treasury the sum of \$500.

We can not say that Mr. McDermott's vote was influenced by this transaction. We have no doubt he would have voted against the Jones-Works bill had it not occurred, but we do not believe that the loan would have been made to him had he not been a Member of Congress, nor do we believe it would have been made had he been favorable to the Jones-Works bill.

As to the use of a room in the Capitol:

The fact of the use of a room in the Capitol by Mr. Mulhall has been referred to heretofore. In the article he claims that this was procured for him by Mr. McDermott. We think this is true or, at least, if he did not procure it for him, he did, having control over it, knowingly permit him to use it. The facts relative to this room, concerning which so much has been said, are that during the Sixty-second Congress two small adjoining rooms in the basement of the Capitol, Nos. 27 and 29, respectively, were allotted to the Committee on Expenditures in the Department of Commerce and Labor, of which Mr. Rothermel, of Pennsylvania, was chairman and Mr. McDermott was ranking member. They were not used for committee purposes, however, but were turned into storage rooms by the chairman, who seldom visited them and who gave Mr. McDermott the right to use them also, and through Mr. McDermott, Mulhall was furnished a key and given the use of the room and did use it for a few hours each day, having a stenographer come there and take

the dictation of his correspondence relative to his association work. His use of the room was limited to a few weeks during the summer.

As to the use of the Member's frank:

As for the use of McDermott's frank, we do not find from the evidence that he authorized its use to an extent, or that it was used by or for Mulhall to an extent, that might properly be classed as abuse thereof. Some books and documents were mailed under it to officials of the association by Mulhall, but it is not in evidence that its use was so delegated by him as to be a violation of the law relative to the franking privilege.

The report concludes:

Your committee can go no further than ascertain and report to the House the facts as it finds them. The Members of the House know Mr. McDermott, know his ideals and his characteristics as the public generally does not and in the nature of things can not know them. His training and associations have not given him the ethical perceptions and standards relative to public office that usually characterize public men.

We can not say that he has been corrupted in his votes, but some things which a private citizen may do with impunity must be avoided by one in official station, and we should feel that we had shirked a duty which we owe to the House and the country did we not say that we are driven, much to our regret, to the conclusion that he has been guilty of acts of grave impropriety, unbecoming the dignity of the distinguished position he occupies.

Separate views were filed by Mr. William J. MacDonald, of Michigan, concurring in the conclusions reached by the committee but expressing the opinion that the situation was of graver import than that indicated in the majority report.

The report was read in full, and Mr. MacDonald offered resolutions—

Directing the House to determine whether certain officers and agents of the National Association of Manufacturers have not been guilty of practices rendering them liable to punishment for contempt.

Directing the House to determine whether, under the report of the Select Committee on Lobby Investigations, Representative James Thomas McDermott has not been shown to be guilty of disgraceful and dishonorable misconduct and venality rendering him unworthy of a seat in the House, and justly liable to expulsion from the same.

Mr. Garrett made the point of order that the motions were not privileged.

The Speaker<sup>1</sup> overruled the point of order, and Mr. Garrett submitted the following:

*Resolved*, That the report of the select committee appointed under House resolution No. 198, and the findings and testimony, be referred to the Committee on the Judiciary, with directions to report to the House at the earliest practical date what action, if any, should be taken by the House thereon.

The resolution prevailed, yeas 133, nays 34, and the report of the special committee was referred to the Committee on the Judiciary which submitted its report<sup>2</sup> thereon April 24, 1914.

**398. The lobby investigation in the Sixty-third Congress, continued.**

**Discussion by a committee of the power of the House to expel or otherwise punish its Members for disorderly behavior.**

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<sup>1</sup> Champ Clark, of Missouri, Speaker.

<sup>2</sup> Second session Sixty-third Congress, House Report No. 570, Record, p. 7199; Journal, p. 481.

**Discussion of the power of the House to punish persons other than Members for offenses affecting the dignity, orderly procedure, or integrity of the House.**

**A committee which had been empowered to investigate specific charges against certain Members recommended general legislation dealing with such offenses.**

**A committee of investigation appointed by the House, having declared a Member guilty of conduct of grave impropriety and warranting censure, the Member resigned and the House discontinued the proceeding.**

The report of the Committee on the Judiciary considers:

First, The power of the House to punish its Members.

Second, The power of the House to punish persons other than Members.

On the first proposition the committee decide:

That it is within the power of the House to punish its Members for disorderly behavior and by a two-thirds vote expel a Member.

The two methods of punishment of a Member under the practices of the House are by expulsion and by censure.

In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective membership of the respective Houses of Congress, restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.

In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.

**This opinion is supplemented:**

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.

**As to the second question, the committee holds:**

The principle is well settled that each House of Congress has power to punish for contempt of its authority persons other than Members. The power to punish its Members, it must be observed, is derived from express provision of the Constitution. The power to punish persons other than Members for offenses committed/against either House of Congress is not found in any express

provision of the Constitution, but is an implied power inherent in legislative bodies as in courts originating from necessity and used as a means of self-protection and self-preservation, the exercise of which has long been sanctioned by custom and usage under American and English jurisprudence. Such a power is necessarily an undefined power, more or less arbitrary in its nature, and must be invoked and exercised in such summary way as may be deemed best to meet the exigencies of the situation arising in each particular case.

The report further says, however:

Your committee is not prepared to say that on account of the failure of Congress to exercise a power or by reason of the limited number of precedents bearing upon the particular question, that no case could arise wherein the assertion of such power would be necessary in order to protect the House or the dignity and honor of its membership, but in searching the precedents we have failed to find a single case in which either House of Congress ever attempted to punish persons other than Members for contempts committed in a previous Congress. The only case we have been able to find in which Congress undertook to punish a person other than a Member by an affirmative resolution of censure is in the case of President Andrew Jackson. If it should be contended that the adoption of the resolution of censure in that case is a precedent for such action, the contention is at once answered by subsequent action on the expunging resolution which was later adopted by the Senate in the same case. There can be no question that Congress has a right to inquire into the conduct of persons in their relation to its affairs in previous Congresses for the purpose of gathering information which may be used as a basis for remedial legislation or in dealing with its own Members. The right of either House of Congress to punish for contempts of its authority or for interfering with its proceedings is no longer questioned, but it has been held that the punishment in each particular case ceases with the termination of the Congress that imposed it.

From the reasoning and conclusions reached by the Supreme Court in the case of *Anderson v. Dunn*, it is manifest that the power of a legislative body to punish or censure persons other than Members rests upon an entirely different principle from its power to deal with its own Members, and begins with the opening of each Congress and terminates with its adjournment. The exercise of such power by either House, it would seem by clearest inference, therefore, is limited and restricted to acts or practices in contempt of its immediate authority, or, if committed against the authority of the House, in a previous Congress, and complaint thereof is made and inquiry into such acts and conduct is instituted by the House in a subsequent Congress, the acts and conduct complained of must be repeated in defiance of its own authority before punishment can properly be imposed therefor.

The committee accordingly concludes:

We have found no precedents to sustain the contention that this House has power to punish persons other than Members for acts committed during the Sixty-second Congress which may have constituted contempts of the authority of the then existing House, but which in no way relate to the affairs of the present House or its Members, and we therefore conclude that grave doubt exists as to its authority to do so.

As to the facts, the committee agrees:

The facts set forth in the report of the select committee and the conclusions and findings of the select committee are abundantly sustained by the testimony.

Applying the principles of law herein enunciated, and observing the rules of sound policy, which we conclude ought to govern the House in dealing with a Member for improper conduct, we fail to find in the record that satisfactory character of evidence which in our judgment would warrant or justify the expulsion of Representative James T. McDermott. At the same time we do not exonerate him and cannot and have no disposition to exculpate him from the imputations and consequences resulting from his own improper acts as disclosed by the testimony embodied in the hearings.

The adoption by the House of the following resolution is therefore recommended:

*Resolved*, That Representative James T. McDermott, while a Member of a former Congress, in his associations with M. M. Mulhall, a lobbyist of the National Association of Manufacturers, and in accepting loans of large sums of money from George D. Horning, a pawnbroker, and from Hugh F. Harvey, a member of the Retail Liquor Dealers' Association, both then vitally interested in legislation pending before such former Congress, was guilty of acts of impropriety incompatible with that high sense of honor and decorum which should characterize the conduct of a Member of this House, and that the House strongly condemns such conduct of the said James T. McDermott, and declares that he was thereby guilty of acts of grave impropriety unbecoming the distinguished position he held.

In addition to these findings and recommendations, the Committee deems itself authorized to further recommend:

Your committee reports that the testimony taken by the select committee as aforesaid, is voluminous, covering more than 2,900 printed pages and deals not only with the lobby activities of the National Association of Manufacturers and the National Council for Industrial Defense, but with the operations of the American Federation of Labor, the Liquor Dealers' Association of the District of Columbia, the local pawn brokers' association, and other organizations and associations which, by different methods, some proper and some improper, have heretofore attempted by varying means to influence individual Members of Congress and to control or defeat legislation that vitally affected the interests of their respective organizations.

We therefore feel that the most substantial service we can render the House or the country in submitting this report is not in recommending action by the House touching the conduct of its own Members or of particular individuals or associations who have become involved in charges disclosed by the testimony found in the hearings of the select committee, but in recommending the enactment of substantive legislation to prevent the recurrence of similar abuses in the future. With this end in view, by the direction of the Committee on the Judiciary a bill prepared by the subcommittee, the purpose of which is to regulate lobbying before either House of Congress, has been introduced in the House by the chairman of the subcommittee, Mr. Floyd, and has been referred to the Committee on the Judiciary, and is now before the committee for consideration. It is expected that at an early date your committee will be able to perfect and report to the House for its favorable consideration the proposed legislation, the necessity for which is made manifest by the disclosures of improper and disreputable practices brought to light in the investigations and hearings of the select committee. We submit as a part of this report, for the information of the House, the bill which has been introduced as aforesaid.

The committee then submit in full a proposed bill embodying such legislation.

Mr. John M. Nelson, of Wisconsin, and Mr. George S. Graham, of Pennsylvania, submit minority views concurring in the findings of the majority, but holding Mr. McDermott's conduct to be so inconsistent with his public duty as to warrant his expulsion by the House.

Mr. Louis Fitz Henry, of Illinois, in separate views, also concurs in the findings of the majority but dissents from its conclusion that the House is without power to censure the conduct of those shown to have been engaged in disreputable practices against the honor, dignity, and integrity of the House.

The report was referred to the Calendar of the House, but before it could be considered Mr. McDermott arose in his place, and after addressing the House presented his resignation therefrom.<sup>1</sup>

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<sup>1</sup>Second session Sixty-third Congress, Record, p. 12431; Journal, p. 789.

**399. The investigation of charges against Burton K. Wheeler, a Senator from Montana.**

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

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

**Application of the statute prohibiting Members of Congress from serving in causes to which the United States is party.**

**Discussion of the latitude of inquiries conducted by the Senate under the right to determine the qualifications of its Members.**

**A Senator having been indicted in the United States district court, the Senate, prior to the trial, investigated the charges and exonerated him.**

On April 9, 1924,<sup>1</sup> in the Senate, Mr. Burton K. Wheeler, of Montana, said:

Mr. President and Members of the Senate, I have risen to a question of personal privilege because of an article appearing in the morning papers. I appreciate that I am a new Member in this body, that I am a stranger to most of you, so for that reason I trust you will pardon me for giving you just a brief statement as to my career before I came to the Senate.

I have never at any time or on any occasion appeared before the Department of the Interior in behalf of Mr. Campbell or appeared in any other department of the Government of the United States. I defy those people to produce one scintilla of evidence that I ever appeared for them as attorney before any department of the Government of the United States. The contract which I entered into with Mr. Campbell expressly provided that I should not appear in any of the departments here in Washington. I expressly told him that, and I told former Representative Stout the same thing.

Let me say to you Senators here to-day that you are the judges of the qualifications of the Members of this body. I should be delighted to have this body appoint any committee, any Members of the United States Senate, to investigate these charges that have been filed against me, and I venture the assertion that after you have done it you will see a report that there is not a scintilla of evidence casting the slightest reflection upon my honesty or upon my integrity.

Thereupon Mr. Thomas J. Walsh, of Montana, submitted a resolution, which was agreed to, as follows:

*Resolved*, That a committee consisting of five members of the Senate be appointed by the President pro tempore to investigate and report to the Senate the facts in relation to the charges made in a certain indictment returned against Senator Burton K. Wheeler in the United States District Court for the State of Montana.

The Senate also agreed to this resolution:

*Resolved*, That in pursuance of Senate Resolution No. 206, providing for the appointment of a committee to investigate charges made in an indictment against Senator Burton K. Wheeler, said committee or any member thereof be, and hereby is, authorized during the Sixty-eighth Congress to send for persons, books, and papers, to administer oaths, and to employ stenographic assistance at a cost not to exceed 25 cents per hundred words, to report such hearings as may be had in connection therewith, the expenses thereof to be paid out of the contingent fund of the Senate; and that the committee, or any subcommittee thereof, may sit during the sessions or recesses of the Senate.

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<sup>1</sup>First session Sixty-eighth Congress, Record, p. 5946.

The President pro tempore<sup>1</sup> appointed as the committee Messrs. William E. Borah, of Idaho, as chairman, George P. McLean, of Connecticut, Thomas Sterling, of South Dakota, Claude A. Swanson, of Virginia, and T. H. Caraway, of Arkansas.

On May 14<sup>2</sup> Mr. Borah presented the report of the committee, which declared:

In conclusion, the committee wholly exonerates Senator Burton K. Wheeler from any and all violation of section 1782 of the Revised Statutes of the United States, and find that he neither received or accepted, or agreed to receive or accept, any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States was a party, or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever.

The committee further states that in its opinion Senator Wheeler was careful to have it known and understood from the beginning that his services as an attorney for Gordon Campbell, or his interests, were to be confined exclusively to matters, of litigation in the State courts of Montana, and that he observed at all times not only the letter but the spirit of the law.

The report quotes section 1782 of the Revised Statutes, alleged to have been violated, which reads:

No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a department or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than \$10,000, and shall, moreover, by conviction therefor be rendered forever thereafter incapable of holding any office of honor trust, or profit under the Government of the United States.

The committee construe this section as follows.

Under this statute an agreement to receive compensation for services rendered, or to be rendered, before any department, court-martial, bureau, officer, or any civil, military, or naval commission is made an offense; the receiving of compensation in violation of the statute, whether pursuant to a previous agreement or not, is also made an offense. In other words, if a party agrees to receive compensation for such services he is guilty under the statute; or if he receives compensation without any previous agreement he is also guilty of an offense.

However, the committee further hold:

This statute in no way prohibits or interferes with a Member of Congress from appearing before any department, court-martial, bureau, officer, or any civil, military, or naval commission, provided he does so free from any agreement to receive compensation or without receiving compensation therefor. The sole question which your committee was authorized to investigate, therefore, was, Did Senator Wheeler agree to receive compensation, directly or indirectly, for services rendered, or to be rendered; or did he receive compensation for services rendered, or to be rendered, relative to his appearance or services before any department, court-martial, bureau, officer, or any civil, military, or naval commission?

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<sup>1</sup> Albert B. Cummins, of Iowa, President pro tempore.

<sup>2</sup> Senate Report No. 537.

The committee then report the following finding of facts:

Your committee finds:

First. That during the months of January and February, 1923, after his election to the Senate, Senator Wheeler entered the employ of Gordon Campbell as his attorney, the said contract of employment including the firm of lawyers under the name of Wheeler & Baldwin.

Second. That, according to the terms of employment by which he entered the service of Campbell as his attorney, the said firm of Wheeler & Baldwin was to receive a retainer's fee of \$10,000 per annum; that \$2,000 thereof was paid January 9, 1923, and \$2,000 thereof on February 16, 1923, and that the balance is still unpaid.

Third. That it was fully understood and agreed between all parties to said contract of employment that the services of Senator Wheeler and his firm related alone to the litigation then pending, or to be brought, in the State courts of Montana, said Campbell being at that time interested in a number of lawsuits, some 19 or 20 at least in number.

Fourth. That said Burton K. Wheeler did not at any time agree to receive compensation for services before any department, court-martial, bureau, officer, or any civil, military, or naval commission at Washington, and did not at any time receive compensation for such services before any department, court-martial, bureau, officer, or any civil, military, or naval commission.

Fifth. That, on the other hand, the sole contract of employment which he had with Campbell related to matters of litigation in the State courts of Montana; that Senator Wheeler did not at any time appear for said Campbell or his companies before any of the departments in Washington under agreement to receive compensation, and did not at any time receive compensation for any appearance or services rendered before said Government departments.

On May 19,<sup>1</sup> Mr. Sterling read minority views which thus propose to define the scope of the investigation:

The language of the resolution is broad enough to include an inquiry not only as to whether there was probable cause upon which the Federal grand jury for the district of Montana might properly return an indictment against Senator Wheeler but also whether Senator Wheeler was in fact guilty of the charges laid in the indictment.

The view here expressed is limited to the first of these propositions, namely, as to whether the indictment was justified by the evidence before the grand jury. The second proposition, as to whether Senator Wheeler is in fact guilty of the crime, is not, in my opinion, a proper subject of inquiry by the committee, that being solely a matter for determination by the court in which the indictment is pending.

In support of the latter contention, Mr. Sterling said:

A grand jury is one of our time-honored institutions, and has special recognition in our Federal Constitution. Neither the Senate nor the President has any power to control the action of grand juries or in any way to overturn indictments returned by grand juries. When a valid indictment has been found, the party indicted must be put upon trial, unless the district attorney concludes, and the court concurs, that for some legitimate reason the indictment should be withdrawn. The legislative branch of the Government nor either House of Congress should attempt to exercise the power to determine in advance of such trial, whether the defendant is in fact guilty, and its right or power so to determine is seriously questioned. Such determination not only encroaches upon the legal functions of the court but is likely so to prejudice public sentiment at the proper place of trial as to make it difficult and perhaps impossible for either the Government or the defendant to obtain a fair and impartial jury. Furthermore, when a committee of the Senate calls before it, in open session, all the witnesses of the prosecution and examines them before trial, the defendant Senator is accorded an advantage to which no other defendant is entitled under the law, an advantage to which he, merely because he is a Senator, is not entitled.

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<sup>1</sup> Record, p. 8861.

On this point Mr. Borah said in reply:

The committee was not authorized to find whether there was probable cause for the returning of an indictment. The committee was not authorized to delay action until the courts of Montana should have acted. The committee was specifically directed to find the facts and report them to the Senate touching the subject covered by the indictment. Indeed, Mr. President, if we had desired to encroach upon the authority of the court or if we had in any way ever sought to interfere with judicial proceedings, we would have accomplished that more perfectly and completely by following the course suggested by the Senator from South Dakota than in any other way.

I would not have sat upon a committee which was authorized to inquire as to whether a grand jury had probable cause for its action. That, in my judgment, is wholly beyond any authority which the Senate could confer upon any committee. That does not concern us at all as we sit here. But whether the facts which are the basis of that charge are sufficient to justify us in saying that the junior Senator from Montana shall or shall not hold his seat in the Senate is a matter the jurisdiction of which is given to this body and to this body alone. Even if a jury in Montana should proceed to the trial of Senator Wheeler and convict him, this body would still have devolved upon it the duty of determining whether or not Senator Wheeler should retain his seat in this body. If a jury in Montana should proceed to acquit him, this body would still have devolved upon it the duty of determining whether or not he should sit as a Senator in this body. But to send a committee of the Senate out to inquire whether or not a grand jury had probable cause for performing its function is a duty which no one who understands the obligations and duties of the Senate would ever think of conferring upon a special committee coming from this body.

Mr. Sterling also differed with the committee as to the statute involved:

At the outset of the committee's proceedings, the chairman indicated that "it might be well to read into the record the statute under which this charge is made." He then read into the record section 1782 of the Revised Statutes. It did not occur to the chairman, nor I think to the other members of the committee at the time, that section 1782 was repealed by the act of Congress of March 4, 1909, and by the same act, section 113 of the Criminal Code was enacted. Section 113 differs materially from the old statute and is considerably enlarged so as to include Senators from the time of their election and either before or after they have actually qualified. Section 113 is hereinafter set forth.

Section 113 of the Criminal Code, thus cited, reads in part as follows:

SEC. 113. Whoever, being elected or appointed a Senator, Member of, or Delegate to Congress or a resident commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, \* \* \* directly or indirectly receive or agree to receive any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, \* \* \* shall be fined not more than \$10,000 and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

The presentation of evidence before the committee is thus criticized in the minority views:

In the presentation of evidence before the committee, the customary order was reversed and eight witnesses were heard who, supposedly, had been summoned at the instance of Senator Wheeler with the view of refuting the charges laid in the indictment and of proving that Senator Wheeler was not guilty thereof. This was not in accord with my conception of the proper function of the committee, as above stated, but tended to extend the inquiry far beyond any legitimate scope.

Indeed, from my viewpoint, the hearing might very properly have been entirely *exparte*, to determine alone the question of probable cause. It may be granted, however, the course of procedure which was followed was perhaps justified by the emphatic assertions made by Senator Wheeler in his remarks on the floor of the Senate, that the indictment in Montana was the result of a "frame up" by his political enemies and that there was not "one scintilla of truth in the things with which" he was charged.

None of the witnesses thus called at the instance of Senator Wheeler had appeared before the grand jury, and obviously their testimony can serve no useful purpose in determining the question of probable cause. In the testimony of these witnesses, there is an utter lack of evidence in any manner substantiating the statement of Senator Wheeler that improper motives actuated the Government officers who either made the investigation or presented the evidence to the grand jury which returned the indictment. In other words, the charge of "frame up" failed entirely of proof. It may be stated further that several other witnesses were brought from Montana, at the instance of Senator Wheeler, but as none of them were called to testify, it is fair to assume that they had no information bearing upon the question.

With this view, Mr. Borah took issue as follows:

The Senator from South Dakota has referred to the fact that some seven or eight witnesses were subpoenaed, as he supposes, at the suggestion of Senator Wheeler, and that we began at the wrong end of the controversy. Instead of inquiring whether or not the grand jury was justified or had probable cause for its action, he complains that we proceeded at once to inquire as to the facts. Now, as a matter of fact, the first thing which the chairman did after he was appointed was to send a telegram to the presiding judge of the court in Montana asking for the minutes of the grand jury proceedings, the names of the witnesses, and the documentary evidence which had gone before the grand jury. Some of the witnesses were suggested by Senator Wheeler, some of their names came from other sources, and from the reply to the telegram to which I have referred, and the names of some of the witnesses subpoenaed came from those with whose views the Senator from South Dakota is more in sympathy, from those who were interested in securing all the evidence possible against Senator Wheeler.

As chairman of the committee, I subpoenaed every witness, except one, to whom I will refer in a moment, and called for every piece of documentary evidence that was suggested by friend or foe of Senator Wheeler or that was suggested by the Senator from South Dakota. No evidence has been left out of the hearings, and anyone who intimates that there was any partiality anywhere in the proceedings did not follow the proceedings of the committee with any degree of fairness.

The minority views discuss in detail evidence, both oral and documentary, adduced before the committee, and conclude:

From the foregoing testimony of Rhea and Glosser, together with the documentary evidence, it would seem clear that the grand jury at Great Falls was justified in returning the indictment against Senator Wheeler; and from the view which has heretofore been expressed in this statement as to the proper functions of the committee, it is unnecessary to discuss the testimony of the other witnesses further than to say that this testimony is all contradicted, if not refuted by, the documentary evidence herein referred to. The testimony of Senator Wheeler himself consists largely of a categorical denial of the charges made in the indictment and a denial of the statements of witnesses, qualified in some important instances by the statement that to the best of his recollection certain statements had not been made or certain things had not occurred.

Senator Wheeler, having been charged by a Federal grand jury with the violation of a Federal statute, should be remitted to the proper forum where he will have full opportunity to explain, deny, or refute the charges made against him and where the Government likewise, through its counsel, will be accorded the right to present its case in a lawful and orderly way. That forum is the Federal District Court for the State of Montana; and before a jury duly impaneled and sworn to try the case according to the law and the evidence.

On May 23,<sup>1</sup> Mr. Borah offered the following resolution:

*Resolved*, That the report submitted by the chairman of the special committee appointed to investigate the charges against Senator Burton K. Wheeler be adopted and approved and the special committee be discharged.

As a substitute for this resolution, Mr. Sterling proposed the following:

*Resolved*, That it is the sense of the Senate that no action be taken upon the majority and minority reports presented to the Senate in the matter of the investigation of the charges made in the indictment returned against Senator Burton K. Wheeler in the United States District Court for the State of Montana, and that pending the trial on such charges no question shall be made or raised as to the qualifications of Senator Wheeler or as to his right to a seat in the Senate on account of such charges.

The substitute being rejected after lengthy debate by a vote of yeas 5, nays 58, Mr. Selden P. Spencer, of Missouri, offered this substitute, which was disagreed to, yeas 8, nays 56:

*Resolved*, The Senate, having before it the majority and minority reports of its special committee empowered "to investigate and report to the Senate the facts in relation to the charges made in a certain indictment returned against Senator Burton K. Wheeler in the United States District Court for the State of Montana", and bearing in mind that the duty of the Senate in the matter has to do only with the "qualifications of its own Members" and its right to punish or expel a Member, declares that no reason has been presented to the Senate which questions the right of the junior Senator from Montana to membership in the Senate, and discharges its committee from further consideration of the matter.

The resolution adopting and approving the report of the committee was then adopted, yeas 56, nays 5.

**400. A Member having introduced a resolution authorizing an investigation of charges made by himself and proven by the investigation to be unfounded, the committee of investigation reported conclusions censuring the Member, and the House by resolution adopted the report and approved the conclusions.**

**Discussion as to wherein a resolution authorizing an investigation was deficient.**

**In appointing committees of investigation it is obviously necessary to disregard the former usage that the proposer of the committee should be its chairman.**

**A committee of investigation permitted persons affected by the investigation to consult counsel and adopted rules for asking questions of persons under examination before the committee.**

**Discussion of the extent of the House's power to compel testimony and the production of books and papers.**

**Discussion of the use of the subpoena duces tecum in procuring books and papers from a private person.**

**Conclusion reached by a committee of investigation condemning the formulation and prosecution of groundless charges against a Member of the House.**

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<sup>1</sup>Senate Journal, p. 383; Record, p. 9256.

**Report of a committee holding in contempt of the House a Member who had permitted the dissemination of letters in his name reflecting upon the honor and integrity of Members of the House.**

**A motion for the previous question takes precedence of the motion to postpone.**

On March 6, 1908,<sup>1</sup> Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted the following preamble and resolution which were agreed to by the House:

*Whereas*, Mr. George L. Lilley, a Representative from the State of Connecticut, on his responsibility as a Member of this House, before the Committee on Rules, has, among other things, stated in substance that the Electric Boat Company of New Jersey and their predecessors, the Holland Boat Company, have been engaged in efforts to exert corrupting influence on certain Members of Congress in their legislative capacities, and have in fact exerted such corrupting influence: Therefore be it

*Resolved*, That a committee of five Members be appointed to investigate the charges made by said George L. Lilley of corrupt practices on the part of said company and of Members of Congress with respect to legislation, and that said committee shall have authority to send for persons and papers and to take testimony in Washington, District of Columbia, or elsewhere, either before the full committee or any subcommittee thereof. Said committee shall report as speedily as possible with such recommendation, if any, as to the committee shall seem meet.

The preamble and resolution were reported in lieu of the following resolution previously introduced by Mr. George L. Lilley, of Connecticut, and referred to that committee:

*Resolved*, That a special committee of five Members of the House be appointed by the Speaker to investigate the conduct of the Electric Boat Company of New Jersey and their predecessors, the Holland Boat Company, respecting the methods employed by said companies in connection with past and proposed legislation before Congress: *Provided*, That said committee may employ a stenographer and one clerk, and is hereby authorized and empowered to send for persons and papers, to compel the attendance of witnesses, and to administer oaths, and that the expenses incurred hereunder shall be paid out of the contingent fund of the House on vouchers approved by the chairman of said committee: *Provided further*, That said committee shall report their findings to this House at such time as said investigation may have been concluded.

The report<sup>2</sup> of the select committee so authorized differentiates between the purport of the two resolutions as follows:

The resolution indorsed by Mr. Lilley to be referred to the Committee on Rules makes no reference to Members of Congress or to any one but the Electric Boat Company. It does not charge the company with corruption or misconduct. It asks for an investigation of the conduct of the company respecting the methods employed by it in connection with past or proposed legislation, but it does not even suggest the nature of the legislation the author had in mind or what conduct or methods are to be examined. It was therefore not a privileged resolution under the rules of the House, and could not be called up by its author in case the committee to which it was referred did not report it. On its face the resolution disclosed no grounds for its report or even consideration by a committee.

**And further:**

It is very clear that had a committee been appointed under the resolution introduced by Mr. Lilley, it would have been powerless. No witness could have been compelled to answer a single

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<sup>1</sup>First session Sixtieth Congress, Record, p. 2972.

<sup>2</sup>House Report No. 1727.

question or produce a paper, save by his own voluntary act. The resolution charged nothing, but proposed merely the appointment of a special committee "to investigate the conduct of the Electric Boat Company of New Jersey and their predecessor, the Holland Boat Company, respecting the methods employed by said companies in connection with past or proposed legislation before Congress." There was not even an allegation that there had been any conduct, and certainly none that it had been improper, and there was no reference whatever to the conduct of Members of the House with regard to legislation. Such an investigation would therefore have been entirely outside of and beyond the jurisdiction of the House itself, and, of course, beyond that of any committee of the House.

Again, in summing up the case, the committee reported as the first of its conclusions:

First. That House resolution 255, introduced by Mr. Lilley, was an impotent resolution, and no evidence could have been compelled thereunder, and that this investigation required the adoption of House resolution 288 of the Committee on Rules, under which the inquiry has proceeded.

The disregard in modern practice of the earlier custom of appointing the proposer of a committee of investigation as its chairman is illustrated by the following excerpt from the report:

MR. LILLEY'S EXPECTATION THAT HE WOULD BE CHAIRMAN AND HAVE CHARGE OF THE INVESTIGATION  
EXPLAINS IN PART HIS ATTITUDE

Mr. Lilley's singular attitude toward the investigation which his charges had instituted, his somewhat incoherent and irrelevant statements to the committee, and his unwillingness to give to the committee those facts on which his charges were based and which they thought he ought to be quick to impart, puzzled the committee more at the time than they would have done had the committee known what the evidence subsequently disclosed, that Mr. Lilley expected, when he introduced his resolution, to be made chairman of the investigating committee with power to employ counsel and conduct the proceedings, and thus be relieved of the necessity of either disavowing or making good his charges against his colleagues. The appointment of this committee, however, relieved Mr. Lilley of all responsibility for the conduct of the investigation, and simply left to him the duty of communicating to the committee the information on which he based the charges made by him on his responsibility as a Member of the House.

The report discloses that the committee permitted parties affected by the investigation to consult counsel at all public hearings, and otherwise provided for the orderly conduct of the investigation as follows:

When the committee met on March 12, this resolution, which had been adopted in executive session, was read for the information and guidance of Mr. Lilley and all other persons interested:

*Resolved*, That Hon. George L. Lilley, the Electric Boat Company, and such other parties affected by the investigation as may desire to do so, may be accompanied by and consult with counsel in all public hearings of the committee; and that in view of these circumstances and in accordance with the well-established precedents of both Houses of Congress for insuring the orderly conduct of such investigation, the examination of all witnesses shall be conducted by a member of the committee to be designated for that purpose from time to time by the chairman; and that such questions or course of examination as parties interested, or their counsel, may desire shall be submitted in writing to the committee."

The report thus discusses the power of the House to compel testimony and the production of books and papers:

The power of a select committee of one House of Congress to compel the testimony of witnesses and the production of books and papers can not, of course, rise higher than the authority

of the House itself, and that power must be found in the Constitution, either in express terms or by necessary implication.

The right to exercise the power in question and to punish for contempt is limited to very few cases. Each House, acting separately, is by the Constitution expressly authorized to be the judge of the elections, returns, and qualifications of its own Members, to compel their attendance, in such manner and under such penalties as it may provide, to determine the rules of its proceedings, punish its Members for disorderly behavior, and, by a two-thirds vote, to expel a Member.

In the course of the investigation, Mr. Lilley demanded that a subpoena duces tecum be issued to certain witnesses. In compliance with his request such subpoenas were made out in blank and delivered to him to be filled out as he thought best to accomplish the desired purpose.

One of them, served upon Isaac L. Rice, president of the Electric Boat Company, read as follows:

The said Isaac L. Rice to bring with him all books of accounts, showing payments made to attorneys and employees for work performed or to be performed at Washington or in any Congressional district of the United States. Also all vouchers covering expenses of that character. Also all checks, check books, check stubs, showing all such checks issued for such employment. Also all vouchers and memoranda showing payments to Elihu B. Frost for expenses of every kind and character at Washington or elsewhere in promoting the interests of legislative enactments of appropriation and for the procurement of contracts. All books, records, vouchers, checks or check stubs, drafts, or other evidences of any money contributed by Isaac L. Rice personally to the campaign fund of any political party in the United States. Also certified list of all stockholders of the Electric Boat Company at the present time. Also certified list of all stockholders of the Holland Torpedo Boat Company, as well as those who have ever at any time owned or held stock of either of those companies.

In response to this subpoena Mr. Rice appeared with the books and papers described in the subpoena, but submitted by counsel that neither the committee nor the House had authority to investigate purely private books and papers in the absence of positive evidence that they contained anything relating to the conduct of Members.

The committee held:

It must be conceded that in any event the subpoena is altogether too broad. The evidence shows that the company operates several manufacturing plants and has several hundred employees. The demand to produce the books and documents showing payments to them "for work performed, or to be performed, in Washington or in any Congressional district of the United States" would include the services of attorneys in the trial of litigation and of mechanics engaged in boat building anywhere in the United States, all of which is clearly beyond the scope of this inquiry, and equally beyond the power of the House itself.

In other particulars the subpoena is too broad. What has this House or this committee to do with "the procurement of contracts" unless in some way the conduct of Members in regard to legislation is involved? It is true that a new subpoena might be issued or this one, limited in scope so as to call only for books, check stubs, vouchers, etc., showing payments to campaign funds for the election or defeat of Members of Congress, conditioned upon their agreement to vote for certain legislation, but all through the most thorough and exhaustive examination each and every one of the officers, agents, and attorneys of the company have sworn that there are no such books and papers to be produced because there were no such payments.

The question is whether, in the face of such positive and uncontradicted testimony, and in the absence of any specific charge pertaining to any particular year, or any particular Congress, or any particular Congressional district, or any particular campaign fund of any particular party, but merely upon indefinite and general charges shown to have been based entirely upon rumor, the

committee is authorized to examine books, papers, and accounts relating to the private affairs of this private corporation merely for the purpose of determining whether or not in their testimony the officers have lied. If they have told the truth, there is nothing in their books and papers into which this committee or the House itself has authority to inquire.

The requirement of the books and papers seems to have been desired chiefly to prove payments to campaign funds. Prior to the passage of the act of 1907 there was no Federal law making such contributions illegal. That act makes it an offense to contribute to political funds for the election or defeat of Congressmen, and makes it an offense punishable, not by the House, but through the instrumentality of the proper court. It is conceivable, however, that in a proper case where there was a specific allegation that such contribution had affected the conduct of a Member of the House, testimony as to such contribution by a corporation might properly be demanded by the House, not for the punishment of the corporation, but as a basis of proper action against the Member. In this case there is no allegation that any Member has been corrupted, and there is positive evidence that no contribution whatever has been made, and that there are no books showing any payment of any character having a tendency to affect legislation.

Furthermore, the subpoena, like the charges of Mr. Lilley, has no relation to any particular date or dates, but covers all time from the incorporation of the company to the present moment. There is no allegation anywhere that any candidate for a seat in the present House was either elected or defeated by the use of campaign funds contributed by this corporation. It may well be asked, What jurisdiction has this present House to inquire into allegations against Members of any preceding House?

Many authorities might be cited in addition to those herein mentioned, but they are sufficient to convince us that under all the facts of this case if we were to persist in our demands and positive refusals to comply being made the House should certify the fact to the district attorney of the District of Columbia under the law, the courts would not sustain an indictment against the officers of these corporations for failure to produce their books and papers.

Among the conclusions reached by the committee were the following:

That Representative Loud was made the object of anonymous charges that were without any foundation in fact.

That Mr. Lilley violated his obligation as a Member of this House in formulating and urging before this committee the groundless charges against Representative Loud.

That Mr. Lilley violated his obligations as a Member of this House in permitting his clerk to send out letters in Mr. Lilley's name reflecting upon the honor and integrity of Members of this House.

That Mr. Lilley acted in contempt of this House in not disavowing openly upon the floor of the House the letter to Goff, published over his signature, reflecting upon the honor and integrity of Members of this House.

That no Member of this House has been induced by the officers of the Electric Boat Company or any one else to act in his official capacity from corrupt or improper motives.

The report of the committee was submitted on May 20, 1908,<sup>1</sup> and Mr. Sereno E. Payne, of New York, immediately offered the following:

*Resolved*, That the report of the select committee appointed under House resolution 288 to investigate charges made by George L. Lilley, a Representative of the State of Connecticut, is hereby approved, and the conclusions of said committee are hereby adopted as the conclusions of the House of Representatives of the Congress of the United States, and that the said committee be discharged from further consideration of said charges.

After debate, Mr. Payne moved the previous question, when Mr. Herbert Parsons, of New York, demanded recognition to move to postpone consideration of the resolution until the first Monday in December.

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<sup>1</sup>Record, p. 6602; Journal, p. 949.

The Speaker<sup>1</sup> held that under the rule<sup>2</sup> the motion for the previous question took precedence of the motion to postpone.

The previous question was ordered and the resolution was then agreed to, yeas 159, nays 82.

**401. Provisions of the statute relative to solicitation of contributions for political purposes do not apply to such solicitations by one Member of Congress from another.**

**A committee to which a resolution had been committed, having submitted a report making no recommendations thereon and proposing another resolution neither germane to nor recommended as a substitute for the original resolution, was permitted to withdraw it and file an amended report recommending the proposed resolution as a substitute.**

**A committee to which a resolution providing for an investigation was referred, itself conducted the investigation and reported, in lieu of the resolution, its findings on the subject.**

On September 18, 1913,<sup>3</sup> Mr. James R. Mann, of Illinois, presented, as privileged, the following:

Whereas the act to codify, revise, and amend the penal laws of the United States, approved March 4, 1909, provides in section 118 that no Senator or Representative \* \* \* shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever \* \* \* from any person receiving any salary or compensation from moneys derived from the Treasury of the United States; and

Whereas it is provided in section 119 of said act that no person shall in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section \* \* \* solicit, in any manner whatever, or receive any contribution of money or other thing of value for any political purpose whatever; and

Whereas it is alleged that the Democratic national congressional committee, composed in chief part of Members of this House, has directed to be sent, and it is alleged there has been sent, to the Democratic Members of this House, a letter stating that an assessment has been levied upon the Democratic Members of this House soliciting contributions from such Members for political purposes, and it is alleged that said letter has been signed by a Member of this House and delivered to other Members of this House in the Capitol Building and in the House Office Building, which letter is alleged to read as follows:

“SEPTEMBER 15, 1913.

“At a meeting of the Democratic national congressional committee, August 28, 1913, the following resolution presented by Senator Thomas, of Colorado, was unanimously adopted:

“*Resolved*, That an assessment of \$100 be made on each Democratic Member of the House of Representatives and the United States Senate, to be paid to the chairman of the congressional committee as follows: \$25 at once; \$25 on or before January 1, 1914; balance on or before July 1, 1914.”

“The committee is in debt to the extent of nearly \$4,000 and has no money in the treasury. The object of the foregoing resolution is to secure funds with which to pay the debts of the committee and begin the work of the approaching campaign.

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<sup>1</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>2</sup> Section 4 of Rule XVI.

<sup>3</sup> First session Sixty-third Congress, Record, p. 5132.

“Checks should be made payable to Hon. William G. Sharp, treasurer, and handed to—, member of the committee from your State, who will make return thereof to the treasurer. The entire amount may be paid at once or in installments provided by the resolution.

“Trusting that you will favor the committee with an early payment, I beg to remain,

“Very sincerely, yours,

“FRANK E. DOREMUS, *Chairman.*”

And whereas section 122 of said act provided that whoever shall violate any provision of section 118 or section 119 shall be fined not more than \$5,000 or imprisoned not more than three years, or both: Therefore

*Resolved, etc.,* That a committee of seven Members shall be appointed by the Speaker to investigate and report to this House whether any Members of this House have been guilty of violating any of the provisions of the Criminal Code by soliciting or receiving or by being in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person receiving any salary or compensation from moneys derived from the Treasury of the United States, and particularly from Members of this House, to the end that it may be ascertained whether the Members of this House, constituting in part the lawmaking branch of the Government are above the law.

On motion of Mr. Charles R. Crisp, of Georgia, the resolution was referred to the Committee on Election of President, Vice President, and Representatives in Congress, which submitted the following report<sup>1</sup> thereon:

Your committee is firmly of opinion that congressional committees or members thereof may lawfully solicit and receive contributions for political purposes from Senators and Representatives in Congress; that such solicitation or receipt of contributions from Senators or Representatives may be lawfully made and had in offices assigned Senators and Representatives, and therefore recommends the adoption of the following resolution:

*Resolved,* That it is no violation of section 118 of the Criminal Code of the United States for a Senator or Member of the House to solicit or receive assessments or contributions for political purposes from other Senators or Members of the House.

*Resolved,* That it is no violation of section 119 of the Criminal Code of the United States for a Senator or Member of the House to solicit contributions for political purposes from other Senators or Members of the House by letters written in his office in the Senate or House Office Building.”

Mr. Mann made the point of order that the report was not in fact a report on the resolution referred to the committee, as it made no recommendations either favorable or adverse thereon, and that while it included a recommendation for the passage of another resolution appended at the end of the report, it was not germane to the resolution originally referred to the committee and was not reported as a substitute therefor.

The Speaker<sup>2</sup> sustained the point of order, and Mr. William W. Rucker, of Missouri, from the Committee, by unanimous consent, withdrew the report and filed an amended report<sup>3</sup> which presented the following conclusions:

If a Member of Congress cannot receive campaign contributions from another Member, then members of the same political belief will be prohibited from organizing and supporting a committee of their own members for the purpose of promoting their own reelection or the success of their political party. This would give the statute an effect bordering on absurdity. It is inconceivable that Congress intended any such effect. No reason in morals can be assigned in support of such intention; no demand by the public can be pleaded as its justification; no question of public policy can be urged in its behalf.

<sup>1</sup> House Report no. 655.

<sup>2</sup> Champ Clark, of Missouri, Speaker.

<sup>3</sup> House Report No. 677.

We conclude that this is a case where the letter of the law must yield to reason and the intentment of Congress, and that therefore sections 118 and 119 of the Criminal Code should not be construed to prohibit one Senator or Member of Congress from soliciting campaign contributions from another Senator or Member of Congress or from making such solicitation in the office furnished such Senator or Member of Congress in a Government building.

Section 119 of the Criminal Code was also taken from "An act to regulate and improve the civil service of the United States," approved January 1, 1883.

If the foregoing conclusion is correct, of course it follows by the same reasoning that section 119 does not prohibit a Member of Congress from mailing requests from his office in the House Office Building to other Members of Congress for campaign contributions.

The committee, after a full consideration of the facts and of the sections of the Criminal Code referred to in the resolution (H. Res. 256), is firmly of opinion that congressional committees or members thereof may lawfully solicit and receive contributions for political purposes from Senators and Representatives in Congress; that such solicitation or receipt of contributions from Senators and Representatives may be lawfully made and had in offices assigned Senators and Representatives in Government buildings; that the appointment by the Speaker of a committee of seven Members of the House to investigate and report upon the matters contained in and referred to in the resolution (H. Res. 256) is wholly useless and unnecessary because they are fully covered by this report.

In accordance with this finding the committee recommended the adoption of the following as a substitute for the original resolution:

In accordance with the facts herein reported and the conclusions herein expressed, your committee reports back to the House the resolution with recommendations that the House adopt, as a substitute therefor, the following resolutions:

*Resolved*, That it is no violation of section 118 of the Criminal Code of the United States for a Senator or Member of the House to solicit or receive assessments or contributions for political purposes from other Senators or Members of the House.

*Resolved*, That it is no violation of section 119 of the Criminal Code of the United States for a Senator or Member of the House to solicit contributions for political purposes, from other Senators or Members of the House, by letters written in his office in the Senate or House Office Buildings."

The report was called up on the following day<sup>1</sup> and after extended debate, the resolution recommended as a substitute was agreed to, yeas 178, nays 80. The resolution as amended was then agreed to without division.<sup>2</sup>

**402. The investigation of charges against John W. Langley, of Kentucky, and Frederick N. Zihlman, of Maryland.**

**Two unnamed Members having been implicated in a report by a Federal grand jury, the House directed the Attorney General to transmit the names of the Members implicated and the nature of the charges against them.**

**Instance wherein an executive officer declined to transmit information requested by the House.**

**A member of the Cabinet declining on his own responsibility to transmit data requested by the House was criticized for failure to communicate such refusal through the President as incompatible with public interest.**

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<sup>1</sup> Second session Sixty-third Congress, Record, p. 8678.

<sup>2</sup> Journal, p. 575; Record, p. 8830.

**The House, when advised by the Attorney General that certain charges against Members were under investigation by the Department of Justice, did not insist on its request for information relative thereto.**

On March 6, 1924,<sup>1</sup> the House agreed to the following resolution:

Whereas a grand jury of the District Court of the United States for the Northern District of Illinois, southern division, impaneled at the February term, 1924, has reported to that court that certain evidence has been submitted to them involving the payment of money to two Members of Congress:

*Resolved*, That the Attorney General be directed to transmit to the House of Representatives the names of the two Members of Congress and the nature of the charges made against them.

On March 8,<sup>2</sup> the Speaker laid before the House a communication from the Attorney General declining to comply with this request of the House, as follows:

MARCH 6, 1924.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: Resolution No. 211 of the House of Representatives of the United States passed March 6, 1924, directing me to transmit the names of the two Members of Congress mentioned in the report of the grand jury of the District Court of the United States for the Northern District of Illinois, eastern division, and the nature of the charges made against such Members of Congress can not be complied with by me for the reasons—

First, I am unwilling to make public the name of any man against whom any criminal charge has been made until the evidence in my possession convinces me that there is reasonable ground to believe that the person is guilty as charged and until proper legal steps shall have been taken to protect the public interests.

Second. To transmit to you the nature of the charges made against any persons under investigation in the Department of Justice is incompatible with the public interest and will tend to defeat the ends of justice.

If, however, the House of Representatives of the United States, acting within its constitutional power (under Article I) to punish its Members for disorderly behavior or to expel such Member, requests that all the evidence now in the possession of anyone connected with the Department of Justice shall be turned over to the House of Representatives to enable it to determine what action should be taken by the House in reference to the conduct of any of its Members, I will direct all such evidence, statements, and information obtainable to be immediately turned over to you or to such committee as may be designated by the House and will await the complete investigation of the facts of the House before continuing the investigation now being made by the Department of Justice. To have two tribunals attempting to act upon the same facts and to hear the same witnesses at the same time will result in confusion and embarrassment and will defeat the ends of justice.

Until I am requested by a resolution of the House of Representatives to submit these matters to the jurisdiction of the House the investigation now being conducted of the matters referred to in said resolution will continue in accordance with the usual rules of the department.

Respectfully,

H. M. DAUGHERTY, *Attorney General*.

On motion of Mr. Nicholas Longworth, of Ohio, this communication was referred to the Committee on the Judiciary which submitted its report thereon March 10,<sup>3</sup> with the following conclusions:

Under the reply of the Attorney General there is but one of two courses open to the House of Representatives:

<sup>1</sup>First session Sixty-eighth Congress, Record, p. 3736.

<sup>2</sup>Record, p. 3803.

<sup>3</sup>House Report No. 282.

(a) The House take full charge of the investigation and evidence of the alleged charges and relieve the Department of Justice from any further responsibility.

(b) Allow the Department of Justice to continue the investigation now being made.

While there is a difference of opinion among the membership of your committee as to the correctness of the position of the Attorney General that the ends of justice would be imperiled by giving to the House the names of the Members of the House and the charges against them as requested by the House, and while it is a high duty which the House owes to itself and to the country at large to purge itself at the quickest possible moment, of all those, if any there be, unworthy to sit in that body, your committee is unwilling to recommend to the House that it permit itself to be placed in the position of being responsible for the suspension of proceedings by the Attorney General in connection with this matter.

The committee accordingly recommend:

Your committee, therefore, recommends to the House that no further action be taken for the present by the House to procure from the Attorney General the information heretofore requested of the Attorney General by the House and submits the following resolution:

*Resolved*, That the House take no further action for the present to procure from the Attorney General the information heretofore requested of the Attorney General by the House under House Resolution 211.

In the meantime Mr. John W. Langley, of Kentucky, and Mr. Frederick N. Zihlman, of Maryland, mentioned in the public press as the two Members referred to, rose severally to questions of personal privilege in the House and emphatically denied any guilt.

On March 11, Mr. George S. Graham, of Pennsylvania, from the Committee on the Judiciary, called up the resolution recommended by the committee, when Mr. Fred H. Dominick, of South Carolina, offered a substitute declaring the reply of the Attorney General not responsive to the request of the House and directing him to transmit to the House the names of the two Members and the nature of the charges against them.

During the debate on the proposed substitute Mr. John N. Garner, of Texas, expressed criticism of the action of the Attorney General in refusing the information on his own responsibility instead of following custom in permitting the President to advise the House that compliance with its request was incompatible with public interest.

Pending action on the substitute, Mr. Graham offered the following amendment, which was agreed to, yeas 178, nays 162:

*Resolved*, That in view of its extreme importance to the House, the Attorney General be, and is hereby, requested to proceed at once and give preference and precedence to this investigation and report the results to this House.

Mr. Dominick's substitute was then rejected, yeas 152, nays 184, and the resolution recommended by the committee as amended was passed by a vote of yeas 222, nays 108.

**403. The case of John W. Langley and Frederick N. Zihlman, continued.**

**A proposition to investigate charges against Members was presented as a question of privilege.**

**A decision by the House to procure from the Attorney General certain information is not such disposition as to preclude a proposition to secure the same information through one of its own committees.**

**A resolution relating to the privilege of the House takes precedence over a conference report.**

**A Member having been indicted by a grand jury, a committee of the House assumed that until final disposition of his case he would take no part in any business of the House or its committees.**

**A committee which had been empowered to investigate charges of corruption against Members recommended that action by the House be delayed pending trial in the courts.**

Immediately upon the passage of the resolution recommended by the committee, Mr. Finis J. Garrett, of Tennessee, offered the following resolution which the Speaker held to be privileged:<sup>1</sup>

Whereas a grand jury of the District Court of the United States for the Northern District of Illinois, southern division, impaneled at the February term, 1924, has reported to that court that certain evidence has been submitted to them involving the payment of money to two Members of Congress;

Whereas the honor and dignity of the Congress require that the facts be immediately ascertained, to the end that such action as is essential for the Congress itself to take may be promptly taken: Therefore be it

*Resolved*, That a select committee of five Members of the House shall be appointed by the Speaker thereof whose duty it shall be to proceed forthwith to make an investigation of such allegation and ascertain—

(a) Whether said “two Members of Congress” so charged are Members of the House of Representatives; and

(b) If so, to make such further investigation as may be essential to establish the truth or falsity of said allegation.

Said committee shall have power to send for persons and papers and administer oaths and shall be permitted to sit during the sessions of the House and any recess thereof and at such place or places as may be necessary to discharge the duties herein imposed.

*Resolved further*, That the Speaker is hereby authorized to issue subpoenas to witnesses upon the request of the committee or any subcommittee thereof at any time, including any recess of the Congress; and the Sergeant at Arms is hereby empowered and directed to serve all subpoenas and other processes put into his hands by said committee or any subcommittee thereof.

*Resolved further*, That said committee shall report to the House as promptly as possible the results of its inquiries together with such recommendations as it may deem advisable.

A point of order by Mr. Louis C. Cramton, of Michigan, that the resolution related to subject matter already disposed of by the House was overruled by the Speaker.

The Speaker also held the resolution of highest privilege and subject to consideration notwithstanding a proposal by Mr. Cramton to call up the conference report on the Interior Department appropriation bill.

On the following day this resolution was agreed to, and the Speaker appointed as members of the committee so authorized, Mr. Burton, Mr. Purnell, Mr. Michener, Mr. Wingo, and Mr. Moore of Virginia.

On May 15 Mr. Burton, from this committee, submitted a report,<sup>2</sup> Stating that the committee had—

<sup>1</sup>Record, p. 3995.

<sup>2</sup>House Report No. 759.

formally ascertained that the Members referred to were Representatives Frederick N. Zihlman, of Maryland, and John W. Langley, of Kentucky.

As to Mr. Langley, the committee say:

It was agreed by the committee that, in view of the indictment and probable immediate trial in the District of Columbia of Representative Langley, the committee would first consider the Zihlman case. Since then Representative Langley has been indicted, tried, convicted, and sentenced in the Federal court for the eastern district of Kentucky. It is understood that he has initiated appellate proceedings, and therefore it would seem proper that further action by the committee in respect to him be deferred for the present, it being assumed that, until the final disposition of the case, he will take no part whatever in any of the business of the House or its committees.

As to Mr. Zihlman, the committee say:

The evidence is conflicting and sharply contradictory, and the question of the credibility of individual witnesses has frequently arisen. Taken as a whole, in the opinion of the committee, the evidence does not establish the truth of the charge against Representative Zihlman, and, accordingly, the committee recommends that, so far as he is concerned, no further action is required or should be taken by the House.

The report, which was referred to the House Calendar, was not acted on by the House.<sup>1</sup>

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<sup>1</sup>Mr. Zihlman was subsequently acquitted. Both Mr. Langley and Mr. Zihlman were reelected, and Mr. Zihlman took his seat in the Sixty-ninth Congress.