

Chapter III.

THE PRESIDING OFFICER AT ORGANIZATION.

1. Clerk calls House to order and presides. Sections 64, 65.¹
 2. Election of a chairman in place of Clerk. Sections 66, 67.
 3. Early practice of Clerks to decide questions of order. Sections 68–72.
 4. Later practice as to authority of Clerk. Sections 73–80.²
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64. A rule—which, however, is not operative at the time the House is organized—provides that the Clerk shall call the new House to order and preside until the election of a Speaker.

At the organization of the House the Clerk calls the roll of Members by States in alphabetical order.

Pending the election of a Speaker or a Speaker pro tempore the Clerk preserves order and decorum and decides questions of order, subject to appeal.

Present form and history of section I of Rule III.

Section 1 of Rule III provides:

The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or a Speaker pro tempore, call the House to order, preserve order and decorum, and decide all questions of order subject to appeal by any Member.

This rule was adopted on January 27, 1880,³ in Committee of the Whole, while the revised code was under consideration. The committee had at first recommended a section providing only that the Clerk should, pending the election of a Speaker, preserve order and decorum and decide all questions of order subject to appeal to the House, taking, in fact the latter half of the old rule, 146, which dated from March 19, 1860,⁴ and provided:

* * * and pending the election of Speaker, the Clerk shall preserve order and decorum, and he shall decide all questions of order that may arise, subject to an appeal to the House.

¹ Thanked by the House for presiding. Section 222.

² Decisions as to motions to correct the roll and appeals. (See sec. 22 of this volume.) Declines to open a communication addressed to the Speaker. Section 47.

³ Second session Forty-sixth Congress, Record, p. 555.

⁴ First session Thirty-sixth Congress, pp. 1211, 1237.

As the rules are not adopted until after the Speaker is chosen, this rule is evidently of persuasive effect only at the time of organization.

65. In 1820 there arose a question as to the right of the Clerk, presiding during organization, to rule a motion out of order.—On November 15, 1820,¹ after twenty-one ineffectual ballotings for Speaker, under the rule which provided that “a majority of the votes given shall be necessary to an election; and, when there shall not be such a majority on the first ballot, the ballot shall be repeated until a majority be obtained,” Mr. Peter Little, of Maryland, moved a resolution that the lowest on each ballot should be dropped at the succeeding ballot, and that any votes given for such lowest person should not be taken into account.

The Clerk of the House² declared that, under the rules of the House which prescribed the mode of election by ballot, he could not receive this motion.

Mr. John Randolph, of Virginia, protested against what he pronounced an assumption of power on the part of the Clerk, and asserted the right of any Member to propound any question to the House through the Clerk, or from himself if he thought proper. Mr. Little asserted his right to make the motion, but waived the right to save time.

66. In 1837 a proposition was made that the Members-elect choose one of their number to preside during organization; but it was laid on the table and the Clerk of the last House continued to act.—On September 4, 1837,³ at the organization of the House, the Clerk of the last House was calling the roll of Members-elect by States, when, in the State of Massachusetts, the name of Mr. Caleb Cushing was called. Mr. Cushing arose in his place and said that before responding he wished to say a few words in explanation. He saw before him many Members who were said to be elected, but there was no authentic knowledge on the subject. They were not, in his opinion, Members of the House until a Speaker had been elected and they had qualified. He was aware that it had been the usage of the House that the Clerk should prepare a roll as he had done, should call the Members individually, and should also officiate at the organization of the House. The standing rule of the House provided that he should be Clerk until a successor should be appointed. But the arrangement which should be adopted would be for the gentlemen present to be organized under the presidency of one of their own number.

The roll call having been completed and a question as to the election of two Members from Mississippi having been raised, Mr. R. Barnwell Rhett, of South Carolina, submitted this motion:

That Lewis Williams, of North Carolina, being the oldest Member of the House of Representatives, be appointed chairman of this House, to serve until the House be organized by the election of a Speaker.

Mr. Williams opposed this motion, and urged that the Clerk be allowed to preside over the organization as he had from the beginning of the Government. To this Mr. Henry A. Wise, of Virginia, replied that there was no Clerk of this House, and that the rule of the last House continuing the Clerk until his successor should be elected had no force in this House.

¹ Second session Sixteenth Congress, Annals, pp. 437, 438.

² Thomas Dougherty, of Kentucky, Clerk.

³ First session Twenty-fifth Congress, Journal, p. 4; Globe, pp. 1–3.

On motion of Mr. Isaac Toucey, of Connecticut, the motion of Mr. Rhett was laid on the table without a division.

67. The Clerk of the last House having declined to put any motions except the motion to adjourn during organization of the new House, the Members-elect chose one of their number chairman.

The Clerk presiding during organization declined to put a question, whereupon a Member-elect put the question from the floor.

A clerk, presiding at the organization, having proposed to read a paper explaining his reasons for certain acts, the Members-elect declined to permit him to do so.

Discussion of the functions of the Clerk of the former House presiding at the organization of a new House.

On December 2, 1839,¹ the day fixed by the Constitution for the meeting of Congress, at 12 o'clock meridian, Hugh A. Garland, Clerk to the late House of Representatives, called the Members to order; and suggested that, if not objected to, he would proceed to call over a list of Members of the Twenty-sixth Congress for the purpose of ascertaining who were present and whether a quorum was in attendance.

No objection being made, the Clerk commenced the call of the roll by States, beginning with the State of Maine; and, having called as far as the State of New Jersey, and having called the name of Joseph F. Randolph from that State, he rose and stated that five seats from New Jersey were contested; that it was not for him to undertake to decide who were entitled to them; and that, if it was the pleasure of the House, he would pass by the further call from New Jersey, and complete the call of the roll, when he would submit the documents and evidence in his possession to the House, who alone were capable of deciding upon them.

This course was objected to by Mr. William Cost Johnson, of Maryland.

The reading of the credentials of John B. Aycrigg, William Halstead, John P. B. Maxwell, Charles C. Stratton, and Thomas Jones Yorke, was then called for; and being read, Mr. Charles F. Mercer, of Virginia, asked that the law of New Jersey relative to elections of Members of the House of Representatives of the United States be read; when Mr. Cave Johnson, of Tennessee, asked that the credentials of Philemon Dickerson, William R. Cooper, Joseph Kille, Daniel B. Ryall, and Peter D. Vroom, claiming to be Members of the House of Representatives of the United States from the State of New Jersey in place of John B. Aycrigg and his associates, be also read.

Before either the law or credentials were read, debate arose. It was urged that as Messrs. Aycrigg and his associates held credentials from the governor of New Jersey, under the broad seal of the State, and precisely similar to the credentials by virtue of which Mr. Randolph of that State had already been called, they had a prima facie right to be called and participate in the organization of the House. There was objection to this, and a proposition that the subject of the New Jersey contest be laid aside until the roll of the residue of the Members should have been called.

¹ First session Twenty-sixth Congress, Journal, pp. 1-6; Globe, pp. 1-20.

The Clerk, in the course of the day's proceedings, declared that, under the present imperfect state of the organization of the House—no quorum having answered to their names, and there being no rules in existence for the government of the body—he did not feel authorized, under these circumstances, to put any question to the House except by general consent.

A motion being made to adjourn, the Clerk decided that he could not submit that motion to the House, and so the House, by general consent, adjourned until the next day, without a question put to that effect. On the succeeding day, also, the House adjourned without motion put by the Clerk; but on December 4, after a motion to adjourn had been made, the Clerk stated that, on the two preceding days, he had not adverted to that clause of the Constitution of the United States which provides that less than a quorum may adjourn from day to day. Having now adverted to that clause, he had changed the opinion heretofore given, that he could not, in the present state of the organization of the House, put the question on an adjournment; that he would now put a question on a motion to adjourn, but on no other motion.

On December 3 the Clerk stated that he had reduced his reasons for the course he had taken to writing, and asked permission of the House to read them. This was refused.

In the discussion which arose as to the functions of the Clerk, Mr. Henry A. Wise, of Virginia, speaking of the present Clerk, said it was true that he was not technically an officer of the House. But by the law of usage and necessity he was always permitted to hold the office which he now held. He was the quondam Clerk of the last Congress, and presented himself here, firstly to render to his successor the records of the office; and, secondly, he was here by the law of usage. The ordinance of 1785 imposed upon the Clerk (Secretary) of the preceding Congress the duty of keeping a roll of Members of Congress, and of calling over that roll at their meeting. There was also a resolution of 1791 relating to this duty of the Clerk. Thus the Clerk was bound by the law of usage.

Mr. John White, of Kentucky, contended that the ordinance of 1785 and the resolution of 1791 were of no more binding effect than the rules of the last House.

Mr. Daniel B. Barnard, of New York, contended that the Clerk was not only the Clerk of the last House of Representatives, but also the Clerk of this House. And he would so continue until his successor should be appointed. It was a cardinal principle of the common law that the public interests should never be permitted to suffer for want of an incumbent to fill important offices, and by the common as well as by the parliamentary law the functionary holds over until his successor is appointed. It was in analogy to the common law that the parliamentary rule was adopted that the clerk of the House of Commons should hold over until his successor should be appointed. This was the settled parliamentary rule in this country as well as in England. The Clerk, in assuming his seat and calling the House to order, was doing nothing more than he was fully warranted in doing. More than that, he undoubtedly had the authority to put questions—any question which the House in its partially disorganized condition might entertain.

The Clerk still persisted in declining to put any question except the motion to adjourn. Various propositions were submitted: To call the uncontested names,

and, a quorum of such having been ascertained, to let them decide the contested cases before proceeding to the election of a Speaker; to choose a temporary Speaker and a committee of elections, for the consideration of the contests, and after the settlement to choose a permanent Speaker; to proceed and call the New Jersey claimants having the certificates from the governor; to allow those to whose election there was no objection to pass upon the right of challenged gentlemen to participate in the organization.

The Clerk putting the question on none of these propositions, Mr. John Quincy Adams renewed the proposition to call the names of the gentlemen having the certificates from the governor of New Jersey, and on this proposed to put the question himself.

At this point Mr. R. Barnwell Rhett, of South Carolina, asked the Clerk if he would put questions to the House. To this the Clerk replied that he would put no question except to adjourn; but said that, with the consent of the House, he would put questions as chairman of a meeting of the gentlemen present, if instructed to do so by the Members present, but he would not do so as Clerk of the House of Representatives.

Mr. William Cost Johnson objected to his putting questions as chairman.

Mr. Rhett then moved that Mr. Lewis Williams, of North Carolina, the oldest Member of the House, be appointed Chairman of the House, to serve until the election of a Speaker. Mr. Williams declining to serve, Mr. Rhett read in his place the following resolution:

Resolved, That the Hon. John Quincy Adams be appointed Chairman of this House, to serve until the election of a Speaker.

Mr. Rhett then put the question on the said resolution to the Members, and it passed in the affirmative.

Mr. Adams was then conducted to the chair by two Members of the House, and proceeded to discharge the duties of the position.

Mr. Charles F. Mercer, of Virginia, then moved that the rules of the late House of Representatives, so far as applicable to this body in its present state of organization, be the rules for the government of its proceedings.

And the question on this motion being put by the Chairman, it passed in the affirmative unanimously.

68. In the earlier days the Clerk of the last House presiding at the organization declined to decide questions of order and referred them to the House.—On December 4, 1843,¹ at the time of the organization of the House and after the presence of a quorum had been announced, but before the election of a Speaker, Mr. Daniel D. Barnard, of New York, arose and proposed to read in his place a paper in the nature of a protest of himself and other Members of the House against the participation of the Representatives of certain States in the election of Speaker.

Objection was made that it was not in order to read the paper pending the election of Speaker.

¹First session Twenty-eighth Congress, Journal, p. 7; Globe, pp. 2, 3.

The Clerk¹ begged respectfully to state to the House that, in its present state, he should feel it to be his duty to put the question on granting leave, to the House, and not, in his humble capacity, undertake to decide a question of that magnitude.

A motion being submitted, the Clerk put the question that Mr. Barnard have leave to read the paper, and the motion was decided in the negative, 59 ayes and 124 noes.

69. On December 21, 1849² before the election of a Speaker, Mr. Samuel W. Inge, of Alabama, moved that the resolution adopted on the 14th instant, prohibiting debate until the election of a Speaker, be rescinded.

Mr. Robert Toombs, of Georgia, having taken the floor, proceeded to debate the motion.

Mr. Joseph M. Root, of Ohio, called Mr. Toombs to order for debating.

Mr. Toombs declined to surrender the floor, but proceeded in spite of the protests of Members.

The Clerk³ requested Mr. Toombs to allow the motion to be put.

Mr. Toombs declined to yield, and proceeded amidst much confusion, declaring that the Clerk could not put the question while he held the floor.

Mr. John Van Dyke, of New Jersey, called Mr. Toombs to order.

The Clerk (Mr. Toombs continuing to speak) put the question whether the gentleman from Georgia, being called to order, should be allowed to proceed.

Mr. Toombs continued to speak, but the Clerk, having put the question, declared that the point of order was sustained by the House, and that the gentleman from Georgia was decided out of order.

Mr. Toombs continued to speak, but the Clerk proceeded to put the question on the motion of Mr. Inge, and the question being put, the yeas and nays were demanded and ordered.

The Clerk thereupon began to call the roll, and Mr. Toombs continued his speech, concluding during the roll call.

70. In the Thirty-first Congress the House did not choose a Speaker until December 22, 1849, nineteen days after the assembling of the Congress. The Clerk³ of the preceding House presided during this time. He did not decide questions of order, but submitted them to the House for decision. Thus, on December 5⁴, a motion was made to lay a pending resolution on the table, and the question was asked whether the motion to lay on the table was debatable, no rules having been adopted. The Clerk referred the question to the House, which decided that the motion was not debatable.

Again, on December 6⁵, the question arose again, and Mr. William Duer, of New York, made the point of order that the motion to lay on the table was not debatable. The Clerk said that it was a point for the House to decide. The Clerk could not call any gentleman to order.

¹ Matthew St. Clair Clarke, Clerk.

² First session Thirty-first Congress, *Globe*, pp. 61, 62.

³ Thomas J. Campbell, Clerk.

⁴ First session Thirty-first Congress, *Journal*, p. 34; *Globe*, pp. 6, 8, 17.

⁵ *Globe*, p. 8.

Again on December 11¹, a motion for a call of the House was pending and a motion to amend it was made. Mr. Jacob Thompson, of Mississippi, asked if the motion was in order. The Clerk declared that it was for the House and not the Clerk to decide the question of order.

71. On December 5, 1859,² before the election of a Speaker, Mr. John B. Clark, of Missouri, rose and proposed to submit some remarks.

Mr. Henry C. Burnett, of Kentucky, raised the question of order that debate was not in order since no question was before the House.

The Clerk³ said:

The Clerk having no power to decide the point of order which has been raised, will submit it to the House. * * * The Clerk will state that he has carefully examined this subject, and can find no authority conferred upon him as Clerk of the former House, except to put questions, when raised, to the House for its decision. He will not, therefore, take upon himself the power to decide this question.

Mr. Clark having been permitted to proceed, Mr. Israel Washburn, Jr., of Maine, made the point of order that the gentleman from Missouri must confine himself to the question.

The Clerk said:

The Clerk can not undertake to decide whether the gentleman from Missouri is confining himself to the question of order or not. If the point of order be insisted on, he must submit the question to the House.

72. On December 6, 1859,⁴ before the election of a Speaker, Mr. Horace Maynard, of Tennessee, asked of the Clerk whether he would make decisions of questions of order, or refer them to the House to be settled by majorities.

The Clerk³ said:

The Clerk, in answer to the inquiry of the gentleman from Tennessee, begs leave to read from the Manual, in order that the House may understand the power which the Clerk has in deciding questions which may arise. This is the only authority the Clerk has been able to find upon the subject.

“When but one person is proposed and no objection made, it has not been usual in Parliament to put any question to the House; but without a question the Members proposing to conduct him to the Chair. But if there be objection, or another proposed, a question is put by the Clerk. As are also questions of adjournment.”

“That being all that the Clerk can find, he does not feel authorized to decide questions of order as they arise.”

73. Discussion of the functions and authority of the Clerk of the former House presiding at the organization of the new House.—On December 8, 1859⁵ before the election of a Speaker, a question arose as to the power of the Clerk of the preceding House, who was presiding, to decide questions of order. The Clerk⁶ had repeatedly declined to decide such questions, and when the precedent of December 26, 1835, was quoted, explained that the Clerk in the Thirty-fourth Congress, while suggesting his opinions on points of order, in no instance claimed the right to make a final decision.

¹ Globe, p. 17.

² First session Thirty-sixth Congress, Globe, pp. 2, 3.

³ James C. Allen, Clerk.

⁴ First session Thirty-sixth Congress, Globe, p. 19.

⁵ First session Thirty-sixth Congress, Globe, p. 66.

⁶ James C. Allen, of Illinois, Clerk.

Mr. John S. Millson, of Virginia, in the discussion of this question, said:

The Clerk is not the presiding officer of this House in any sense of the word. When the Clerk puts a question to the House, it is the House putting a question to itself, selecting its own officer as its organ. When the Clerk propounds a question to this House, he has no more control over the House and exercises no other function than the reading clerk when he calls the yeas and nays. It is the House calling the roll through its own appointed agent. No man can preside over the House of Representatives who is not a Member of the House of Representatives. It is in this respect that we differ from the Senate of the United States, over which, by the Constitution, the Vice-President of the United States is appointed to preside. The mistake has originated altogether from the convenient usage of permitting, by the sufferance of the House, the Clerk of the former House to propound questions, for in the absence of any other constituted agent there must be some one to address the House; but the person so speaking is not a part of the House, but simply the mouthpiece of the House. And I submit to gentlemen, if they would protect the dignity of this body, that they would never consent to regard the Clerk in any other light than as one who for convenience sake is permitted to propound questions to the House, just as the reading clerk is permitted for convenience sake to call the names of Members when the yeas and nays are ordered.

On the other hand, Mr. Horace Maynard, of Tennessee, voiced the opposite opinion:

It is not Mr. Allen, as I understand, who is temporarily the presiding officer of the House; it is the Clerk of the last House, who by law is placed for the time being as the presiding officer over this unorganized body; who is placed there for the very purpose of giving it organization; who is placed there with the power of general parliamentary law in his hands to exercise, and who is, to all intents and purposes, the presiding officer of the House as long as it remains in its present inorganic condition. When that organization shall be effected by a selection of a gentleman of our own body as the Speaker and presiding officer, the Clerk then becomes for that purpose *functus officio*, but till that time he is, *ex vi termini*, compelled to be the presiding officer of the House; and, like any other presiding officer, he must, under the parliamentary law, exercise the power which that law confers upon him and clothes him with. One of these powers is to decide questions of order as they arise; and unless practically he decides these questions— although he may not formally do it—the wheels of business will be blocked, and we could not go forward a single step. He is, unconsciously perhaps, deciding questions of order continually. He does so in giving the floor to this or the other Member, in asking a Member's permission to allow an interruption, and in many other ways which I need not instance.

74. Before the election of a Speaker the Clerk recognizes Members.—Before the election of a Speaker in 1859 the Clerk, Mr. James C. Allen, of Illinois, recognized Members who were to address the House, and when complaint was made by a Member, on December 21, explained that he was governing the recognitions so as to give an opportunity to all Members who applied for time.¹

75. In 1855, while the Clerk was presiding at the organization of the House, a question of order was decided by him, and the decision sustained.—On December 26, 1855.² before the election of a Speaker or the adoption of rules, the House was considering a proposition that the Hon. James L. Orr, of South Carolina, be invited to preside over the House until the election of Speaker, and on this Mr. Lewis D. Campbell, of Ohio, had demanded the previous question.

Pending this, Mr. George W. Jones, of Tennessee, moved that the House take a recess until 11 o'clock and 59 minutes to-morrow.

Mr. Joshua R. Giddings, of Ohio, submitted as a question of order that it was not competent to take a recess pending the demand for the previous question.

¹First session Thirty-sixth Congress, *Globe*, p. 209.

²First session Thirty-fourth Congress, *Journal*, p. 181; *Globe*, p. 87.

The Clerk ¹ decided that the motion to take a recess was in order.

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

76. In 1863, at the organization of the House, the hold-over Clerk disclaimed authority to enforce the rules, but decided points of order as authorized by a rule of the last House.—At the organization of the House on December 7, 1863,² Clerk Emerson Etheridge held that he had no power to preserve order, having no power to enforce the rules. No rules had been adopted, but the rules Nos. 146, 147, dated March 19, 1860, provided that “these rules shall be the rules of the House of Representatives of the present and succeeding Congresses, unless otherwise ordered,” and that “pending the election of a Speaker, the Clerk shall preserve order and decorum, and shall decide all questions of order that may arise, subject to appeal to the House.”³

77. On December 7, 1863,⁴ the Clerk ⁵ of the last House presided at the organization of the House, and ruled on points of order on two several cases. No objection was made, and in the first case no appeal was taken. In the second case Mr. Thaddeus Stevens, of Pennsylvania, appealed from the decision of the Clerk, but withdrew his proposition before a vote on the appeal.

78. Before the completion of the organization of the House, in 1869, the Clerk refused to entertain a motion referring to a committee a subject relating to the election of a Member.—On March 4, 1869,⁶ at the organization of the House, after the roll of Members-elect had been called and the presence of a quorum had been announced, Mr. George W. Woodward, of Pennsylvania, offered this resolution as a question of privilege:

Resolved, That the returns of the election from the Twenty-first district of Pennsylvania be referred to the committee of elections to be appointed, with instructions to report at as early a day as practicable which of the claimants to a seat in this House has the prima facie right thereto.

Mr. Glenni W. Scofield, of Pennsylvania, made the point of order that the Clerk could not, at the organization, entertain a motion for reference to a committee.

The Clerk ⁷ sustained the point of order.⁸

79. In 1869 the hold-over Clerk, basing his authority on the law of 1863, declined to entertain a question of order or an appeal pending the motion to proceed to election of Speaker.—On March 4, 1869,⁹ at the time of the organization of the House, the previous question had been ordered on the motion to proceed to the election of a Speaker, when Mr. James Brooks, of New

¹ John W. Forney, Clerk.

² First session Thirty-eighth Congress, Journal, p. 1051; Globe, p. 5.

³ The House has come definitely to the conclusion that one House may not impose its rules on a succeeding House. (See secs. 6743–6745 of Vol. V of this work.)

⁴ First session Thirty-eighth Congress, Globe, pp. 5, 6.

⁵ The Clerk was Emerson Etheridge.

⁶ First session Forty-first Congress, Globe, p. 3.

⁷ Edward McPherson, of Pennsylvania, Clerk.

⁸ For discussions in House and Senate on the law of 1866 relating to the organization of the House, including the designations of the officers to act in case of the death, disability, etc., of the Clerk, see Globe, second session Thirty-ninth Congress, pp. 66, 67, 379.

⁹ First session Forty-first Congress, Globe, p. 4.

York, announced that he rose to a question of order, and proceeded to call attention to the alleged fact that the Clerk had omitted, in calling the roll of States, to call the names of the Members from Georgia and Louisiana.

The Clerk¹ said:

The gentleman is out of order. The question is upon the adoption of the resolution that the House now proceed to the election of Speaker.

Mr. Brooks having proposed to appeal, the Clerk declined to entertain the appeal, and when Mr. Brooks persisted, directed him to take his seat, saying:

The Clerk by law is Clerk of the House until his successor is elected and qualified * * *. The Clerk will take pleasure in saying to the gentleman that he (the Clerk) is governed by the law of the land and the rules of the House. * * * The Clerk has no desire whatever to make any decision doing violence to the feeling of any gentleman of the House. He has no desire to do an act officially calculated to bring the body into confusion, but at the same time he is compelled, under the obligations which are resting upon him, so to administer the law and the rules as to effect, as a prime duty, the organization of the House. He regrets very much if any decision which he felt called upon to make has been held by any of the gentlemen affected as an invasion of their personal rights, for it was not so intended; and the Clerk begs, inasmuch as the question has proceeded thus far, that the persons indicated as tellers may take their places and the organization be effected.

80. In 1867 the Clerk, acting under the law of 1863, declined to entertain any proposition not consistent with the organization of the House.

The Clerk, presiding at the organization, has declined to entertain a protest, although it related to the organization.

On March 4, 1867,² at the organization of the House, the Congress having assembled in accordance with the act of January 22, 1867, the Clerk had called the roll of Members-elect, and had announced the presence of a quorum.

Mr. James F. Wilson, of Iowa, moved that the House proceed to the election of a Speaker *viva voce*.

Mr. James Brooks, of New York, being recognized in debate, proceeded to present the protest of Members of the minority party of the House against proceedings for its organization until certain States should be represented. Mr. Brooks asked that this protest be entered on the Journal.

The Clerk¹ said:

The Clerk declines to entertain any paper of the character of that indicated by the gentleman from New York, or any other matter pending the action of the House. The Clerk is now acting under the law; his duties are clearly prescribed, and it is impossible for him to entertain any motion or any business not consistent with the organization of the House.

¹ Edward McPherson, of Pennsylvania, Clerk.

² First session Fortieth Congress, Globe, pp. 3, 4.