

Chapter VII

REMOVAL OF OFFICERS OF THE HOUSE.

1. A proposition to remove an officer a question of privilege. Sections 284–285.¹
 2. Instances of removal, arraignment, and investigation. Sections 286–296.
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284. A proposition to remove an officer of the House for misconduct is a question of privilege.—On August 3, 1854,² Mr. Theodore G. Hunt, of Louisiana, submitted, as a question of privilege, the following resolution:

Resolved, That John W. Forney, the Clerk of this House, by directing and causing to be made the alteration of the House bill No. 342, entitled “An act to aid the construction of a railroad to the Territory of Minnesota,” and mentioned in the report of the special committee of this House, has falsified a record of this House in violation of the parliamentary law and of his sworn duty, and that the said J. W. Forney, Clerk of the House of Representatives, should be, and is hereby, removed from the office of Clerk of this House.

Mr. David T. Disney, of Ohio, made the point of order that this resolution was not privileged.

The Speaker³ said:

The Chair overrules the question of order which has been raised by the gentleman from Ohio. In the opinion of the Chair the question of the gentleman from Louisiana is a question of privilege.

The question being taken on the resolution, it was disagreed to—yeas, 18; nays, 154.

285. On April 18, 1850,⁴ Mr. Albert G. Brown, of Mississippi, presented this resolution:

Resolved, That Robert E. Homer, acting Doorkeeper of the House of Representatives, be, and he is hereby, discharged.

The Speaker⁵ decided that this resolution presented the precise question which was decided by the House on a former occasion not to be a privileged question, or a question of privilege; and, in conformity with that decision, he ruled it out of order.

¹ Charges against officers of the House are questions of privilege. (Secs. 2644–2647 of Vol. III.)

² First session Thirty-third Congress, Journal, pp. 1275, 1276; Globe, pp. 2101–2103.

³ Linn Boyd, of Kentucky, Speaker.

⁴ First session Thirty-first Congress, Journal p. 806; Globe, p. 765, 766.

⁵ Howell Cobb, of Georgia, Speaker.

Mr. Brown having appealed, Mr. Orin Fowler, of Massachusetts, moved to lay the appeal on the table.

On this motion there were yeas 80, nays 85. So the House declined to lay the appeal on the table.

The appeal being open to debate, Mr. Robert Toombs, of Georgia, commented on the fact that the House, by declining to lay the appeal on the table, had indicated a purpose to overrule the Chair. But at the conclusion of Mr. Toombs's remarks Mr. Brown withdrew the appeal and the resolution in order to present the subject to the House in a different form.

286. It being alleged that the Clerk was guilty of official misconduct, a resolution removing him from office was presented and entertained. On January 21, 1815,¹ Mr. James Clarke, of Kentucky, offered this resolution:

Resolved, That Patrick Magruder, Clerk to the House of Representatives, be removed from office; that this House will, on Monday next, proceed to the election of a Clerk.

On January 23 the resolution was considered, the objections to the Clerk relating to his alleged neglect of proper administration of the contingent fund at the time of the destruction of the Capitol.

On a motion to postpone the further consideration of the resolution one week there were ayes 71, noes 71, whereupon the Speaker voted with the ayes.

On January 28, the Clerk resigned.

287. The House by resolution dismissed its Clerk, who had been found guilty of misappropriation of public funds.

The House has requested the executive authority to prosecute one of the officers of the House.

For misappropriation of funds the House arrested its Clerk and arraigned him at the bar.

The Clerk being arraigned to answer charges, leave was given him to address the House.

The Clerk being arraigned, and addressing the House in his defense, the Journal merely records the fact.

Pending examination of the Clerk on a charge of misappropriation of funds, he was suspended from the exercise of his functions.

The Clerk being incapacitated, the House authorized the Chief Assistant Clerk to attest a warrant and exercise the other functions of the Clerk.

The Speaker has authority to issue a warrant of arrest only by order of the House.

On January 17, 1845.² Mr. William Taylor, of Virginia, from the Committee on Accounts, made a report, showing a misappropriation of the funds of the House by the Clerk, and recommending the following:

Resolved, That Caleb J. McNulty be, and he is hereby, dismissed from the office of Clerk of this House.

¹Third session Thirteenth Congress, Journal, pp. 682, 684 (Gales and Seaton ed.); annals, pp. 1085, 1100.

²Second session Twenty-eighth Congress, Journal, pp. 223-227, 230-233; Globe, pp. 147-149, 152-154.

Resolved, That the Secretary of the Treasury be directed to institute forthwith the necessary legal proceedings to ascertain and secure the balance of the public moneys due from Caleb J. McNulty, as Clerk of the House of Representatives.

Resolved, That the President of the United States be requested to cause criminal prosecutions to be commenced against Caleb J. McNulty, late Clerk of this House, for an embezzlement of the public money, and all persons advising or knowingly and willingly participating in such embezzlement, according to the provisions of the act of Congress approved August 13, 1841.

It was objected that the action proposed by the committee was too summary, and Mr. Cave Johnson, of Tennessee, offered this resolution:

Resolved, That the Sergeant-at-Arms be directed forthwith to arrest Caleb J. McNulty, Clerk of this House, and bring him before the House.

Mr. John Quincy Adams, of Massachusetts, expressing doubts as to the power of the House to arrest for a criminal offense, proposed an amendment to provide for summoning the Clerk before the House.

After debate this amendment was disagreed to, and the resolution was agreed to as offered by Mr. Johnson.

Mr. Adams then made the point that a warrant was necessary, and the Speaker¹ said he considered that the Chair had no authority to issue the warrant except by the order of the House. The point was also made that the rules required a warrant to be attested by the Clerk. Accordingly, by suspension of the rules, the following was adopted:

Resolved, That the Speaker of this House issue his warrant for the arrest of Caleb J. McNulty, in accordance with the resolution of this day; and that the Chief Assistant Clerk attest the warrant under the seal of this House.

The Sergeant-at-Arms was then furnished with the Speaker's warrant in accordance with the foregoing resolution and proceeded to execute the order of the House.

On the same day the Sergeant-at-Arms came in with Caleb J. McNulty, Clerk of the House of Representatives, in his custody, when the House proceeded to the consideration of the report and resolutions from the Committee on Accounts.

On motion of Mr. George C. Dromgoole, of Virginia, leave was given Caleb J. McNulty to address the House in his own defense.

The Speaker addressed Mr. McNulty as follows:

By the order of the House I am directed to state to you that you are required to appear before the House on sundry charges contained in a report made by the Committee on Accounts this morning, and the House will now hear what you have to say in defense against these charges. In order that you may be correctly informed of the charges reported by the committee, they will now be read to you.

The report and resolutions were read accordingly.

Mr. McNulty then addressed the House,² denying that he had misappropriated any funds of the House as charged in the report.

Mr. Cave Johnson then proposed the following:

Resolved, That the report of the Committee on Accounts, in regard to Caleb J. McNulty, Clerk of the House, be postponed until to-morrow, at 2 o'clock p. m.; and that the Sergeant-at-Arms hold said C. J. McNulty in custody until the further order of this House.

¹ John W. Jones, of Virginia, Speaker.

² The Journal gives only the statement of this fact and does not give his defense.

Mr. David L. Seymour, of New York, moved that the resolution be amended by striking out all thereof which directed the Sergeant-at-Arms to hold Mr. McNulty in custody.

This amendment was agreed to, yeas 99, nays 76.

Mr. Armistead Burt, of South Carolina, then moved the following amendment:

And that in the meantime the exercise of his functions as Clerk of this House be, and they hereby are, suspended, and that they be performed by B. B. French, the Chief Clerk.

This amendment having been acquiesced in by the House, the resolution as amended was agreed to.

On January 18 the consideration of the report of the Committee on Accounts was considered, and the three resolutions were severally agreed to, by the following votes: 196 to 0; affirmatively without call of the roll; 173 to 4.

Then, the rules requiring viva voce election being suspended, the following resolution was agreed to:

Resolved, That Benjamin B. French be, and he is hereby, appointed Clerk of this House.

Mr. French thereupon appeared, and the Speaker administered to him the oaths of his office.

288. Because of the misconduct of the incumbent, the office of Doorkeeper has been declared vacant, and the duties have devolved upon the Sergeant-at-Arms.

A matter affecting the character of an officer of the House involves a question of privilege.

On May 22, 1876,¹ Mr. Samuel S. Cox, of New York, from the Committee on Rules, to which was referred the resolutions of the House of the 13th and 16th instant, in relation to the Doorkeeper and the consolidation of the offices of Sergeant-at-Arms and Doorkeeper, submitted a report thereon in writing, accompanied by the following resolutions:

1. That the office of Doorkeeper be vacated by its present incumbent.
2. That the duties of Doorkeeper be, and the same are hereby, devolved upon the Sergeant-at-Arms until otherwise ordered.

The resolutions were severally agreed to.²

289. On February 1, 1878,³ Mr. John H. Baker, of Indiana, rising to a question of privilege, made certain charges against J. W. Polk, the Doorkeeper of the House, and moved a preamble reciting the charges, which were of corruption in office, and the following resolution:

Resolved, That the Committee on Reform in the Civil Service be, and it is hereby, directed to inquire into the several matters and things so as aforesaid alleged against said Doorkeeper, and to report at any time to this House whether said Doorkeeper is guilty of any of said alleged acts; and the committee is authorized to send for persons and papers.

¹First session Forty-fourth Congress, Journal, p. 998; Record, pp. 3251–3253.

²This action was the result of a resolution presented to the House on May 13, as a question of privilege, charges against the Doorkeeper having appeared in a newspaper. The Speaker pro tempore [Mr. Cox] held that the resolution, affecting the character of an officer of the House, was a question of privilege. (Journal, p. 948; Record, p. 3066.)

³Second session Forty-fifth Congress, Journal, pp. 339, 358, 783, 792–796; Record, pp. 707, 744, 2209, 2285–2287.

On February 4 Mr. Charles C. Ellsworth, of Michigan, claiming the floor for a question of privilege, which seems to have been admitted as such, presented the statement of the Doorkeeper in reference to the charges, and the same was referred to the committee having the matter in charge.

On April 2 the House proceeded to consider the report of the committee, which recommended the following:

Resolved, That the position of Doorkeeper of the House of Representatives be, and hereby is, declared vacant; and

Further resolved, That until the appointment of a new Doorkeeper, the duties of the office be, and hereby are, devolved upon the Sergeant-at-Arms.

On April 4 the first resolution was agreed to—yeas 139, nays 80. Then the second resolution was agreed to—yeas 122, nays 114.

290. A report from the Committee on Accounts having impeached the integrity of the Doorkeeper, the House removed him.

A motion to proceed to the election of an officer is privileged; but it is not so with a resolution naming a certain person to fill the office.

On May 17, 1858,¹ the House considered a report from the Committee on Accounts, charging the Doorkeeper of the House with irregularities in his office, and offering to the House the following resolution:

Resolved, That R. B. Hackney, the Doorkeeper of the present House of Representatives be, and he is hereby, dismissed forthwith from that office.

After debate, this resolution was agreed to—yeas 141, nays 34.

Mr. John B. Haskins, of New York, then proposed, as a question of privilege, the following resolution:

Resolved, That Darius Truesdell, of New York, be, and he is hereby, appointed Doorkeeper of the House of Representatives, for the Thirty-fifth Congress.

Mr. Thomas S. Babcock, of Virginia, made the point of order that it was not a question of privilege to move to appoint a particular person Doorkeeper, but that it would be in order to move to proceed to the election of Doorkeeper.

The Speaker² sustained the point of order.

The House thereupon voted that on the succeeding day it would proceed to the election of a Doorkeeper, and that until an election should be effected the Sergeant at-Arms should take charge of the property in the office of the Doorkeeper.

291. For permitting a Member under arrest to escape, the Doorkeeper was arraigned at the bar of the House.

An officer of the House being arraigned for neglect of duty, it was voted that he might answer orally.

The Journal recorded the substance of the oral answer of an officer of the House arraigned at the bar for neglect of duty.

On June 6, 1860,³ during proceedings to obtain the attendance of absent Members, under a call of the House, the arrest of absent Members was ordered, and the doors were closed.

¹First session Thirty-fifth Congress, Journal, pp. 833, 835; Globe, pp. 2187, 2195.

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

³First session Thirty-sixth Congress, Journal, p. 1025; Globe, p. 2710.

Pending these proceedings, Mr. John Hickman, of Pennsylvania, offered the following resolution:

Resolved, That the Doorkeeper be called before the bar of the House to answer for the escape of Mr. Stanton, of Ohio, from the floor of the House after he was brought before the House under its warrant.

Mr. Hickman having stated that Mr. Stanton had escaped, the resolution was agreed to.

The Doorkeeper thereupon appeared at the bar of the House, when a question was raised by Mr. Horace Maynard, of Tennessee, as to the mode of response. He held that under immemorial custom the Doorkeeper had no right to address the House, but must present his answer in writing. He was brought before the House in contempt of the House, like a witness.

The question was put to the House, and the House voted that the Doorkeeper should answer orally. The Journal has this entry:

The Doorkeeper appeared at the bar of the House, and the question having been submitted to the House, "Will the House receive a verbal answer?" and decided in the affirmative, he stated "that Mr. Stanton had passed out at one of the side doors, which was in charge of one of the messengers, in company with certain Members who had temporary leave of absence, and that he had censured the messenger for permitting Mr. Stanton to pass without leave."

292. Charges against the Postmaster being sustained, his office was declared vacant and his assistant was directed to perform the duties temporarily.

The resignation of the Postmaster was laid before the House while a resolution of dismissal was pending, and was disregarded.

On September 25, 1890,¹ the House agreed to a resolution directing the Committee on Accounts to investigate the conduct of the Postmaster of the House.

On October 1 that committee reported at length, recommending the adoption of the following resolution:

Resolved, That the office of Postmaster of the House of Representatives be, and the same is hereby, declared vacant; and that the Assistant Postmaster of the House be, and he is hereby, directed to perform the duties of Postmaster until a Postmaster shall be elected and duly qualified.

This resolution was agreed to.²

The report of the committee, but not the testimony, appears in full in the Journal, apparently without any special order.

293. The late Sergeant-at-Arms having announced a deficit in his office, the House authorized investigation by a select committee.—On December 9, 1889,³ the Speaker laid before the House a letter from J. P. Leedom, late Sergeant-at-Arms, announcing that the late cashier of the office had departed without settling his accounts, and that there was a deficit in the cash.

¹First session Fifty-first Congress, Journal, pp. 1083, 1118; Record, p. 10786.

²Shortly before the action of the House on this resolution the resignation of the Postmaster was laid before the House and read. No action was taken on it. (Record, p. 10785.) A Postmaster was elected December 10, 1890 (second session Fifty-first Congress, Journal, p. 42), the election being effected by the adoption of a resolution, which was presented as privileged.

³First session Fifty-first Congress, Journal, p. 14; Record, p. 115.

Thereupon the House by resolution directed the appointment of a select committee to examine the accounts of the office.

294. Certain charges being made against an officer of the House, he petitioned for an investigation.—On August 26, 1789,¹ a petition was presented from Joseph Wheaton, Sergeant-at-Arms of the House, praying that an inquiry might be made into certain charges exhibited against him in an anonymous letter addressed to the Speaker.

The petition was ordered to lie on the table.²

295. A newspaper charge against the Clerk was, at the request of that officer, investigated by the House.

The report of an investigating committee exonerating the Clerk was printed in full in the Journal.

On May 18, 1876,³ the Clerk of the House asked the House by a letter laid before the House by the Speaker to order an investigation into a charge made by a newspaper that he had corruptly used his power in appointing subordinates in his department. The House ordered the investigation. The report⁴ exonerating the Clerk was submitted on June 27 and was printed in full in the Journal, apparently without special order of the House.

296. A candidate for the office of Secretary of the Senate was allowed to address the Senate in explanation of certain charges.

On December 19, 1831,⁵ as the Senate was about to reelect its Secretary, Walter Lowrie, a charge was made that Mr. Lowrie had betrayed executive secrets of the Senate. Thereupon, by unanimous consent, Mr. Lowrie was permitted to address the Senate in his own defense.

¹First session First Congress, Journal, p. 90. (Gales and Seaton ed.)

²On March 31, 1876, the House, on application of the Chief Clerk, ordered an investigation into certain charges against that official. These charges had been made by a Member on the floor. (First session Forty-fourth Congress, Journal, p. 714; Record, p. 2136.)

³First session Forty-fourth Congress, Journal, pp. 975, 1168.

⁴Journal, p. 1168.

⁵First session Twenty-second Congress, Debates, pp. 8, 9.