

Chapter XLII.

PUNISHMENT AND EXPULSION OF MEMBERS.¹

1. Provisions of the Constitution and parliamentary law. Sections 1236–1288.
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1236. The Constitution provides that the House may punish its Members for disorderly behavior, and expel a Member by a two-thirds vote.—The Constitution in Article I, section 4, provides:

Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member.

1237. Provisions of the parliamentary law in cases where charges arise against a Member from report of a committee on examination of witnesses in the House.—In Jefferson's Manual³ certain principles are laid down regarding the conduct of Members:

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws. (2 Hats., 219.) The rule is, that if a charge against a Member arise out of a report of a committee or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against him. He is then to be heard and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated—that is, the question must be moved—himself heard, and then to withdraw. (2 Hats., 121, 122.)

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared his voice has been disallowed, even after a division.⁴ In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to. (2 Hats., 119, 121; 6 Grey, 368.)

¹ See Chapter LII, sections 1641–1665, of this volume for punishment of Members for contempt. A proposition to investigate conduct of a Member or punish him is a question of privilege (Secs. 2648–2655 of Vol. III.)

² Discussion of power to expel in Roberts's case (sec. 475, Vol. 1), in the Senate case of Smoot (sec. 481, Vol. I), and in relation to Delegates (sec. 469, Vol. 1).

³ Jefferson's Manual is made the rule of the House in those particulars where the rules are silent. (See sec. 6757, Vol. V of this work.)

⁴ See sections 5949–5963 of Volume V of this work for interpretation of the rule relating to personal interest.

1238. Proceedings when it is necessary to put a Member under arrest, or when on public inquiry matter arises affecting a Member.—Section III of Jefferson's Manual, on the subject of privilege, provides:

When it is found necessary for the public service to put a Member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a Member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper. (2 Hats., 259.) Of which see many examples. (ib., 256, 257, 258.) But the communication is subsequent to the arrest. (1 Blackst., 167.)

1239. A Member having resigned, and expulsion therefore not being proposed, the House adopted a resolution censuring his conduct.—On February 28, 1870,¹ the Speaker laid before the House a letter from Mr. John T. Deweese, of North Carolina, informing the House through the Speaker that he had, by letter and telegraph, tendered his resignation as a Member of the Forty-first Congress to the governor of North Carolina. The letter was read and laid on the table.

On March 1, Mr. John A. Logan, of Illinois, from the Committee on Military Affairs, reported the following resolution:

Resolved, That John T. Deweese, late a Representative in Congress from the Third Congressional district of North Carolina, did make an appointment to the United States Naval Academy in violation of law, and that such appointment was influenced by pecuniary considerations, and that his conduct in the premises has been such as to show him unworthy of a seat in the House of Representatives, and is therefore condemned as conduct unworthy of a Representative of the people.

Mr. Logan explained that the committee would have reported a resolution of expulsion had not the House by its action in a previous case decided against expelling a Member who had resigned.

The resolution was then agreed to, yeas 170, nays 0.

1240. A resolution of censure should not apply to more than one Member.—On February 27, 1873,⁷ Mr. Fernando Wood, of New York, proposed a resolution censuring several Members for alleged connection with the Credit Mobilier.

Mr. Samuel J. Randall, of Pennsylvania, raised the question of order that it was not in order to include in a resolution of censure more than one name.

The Speaker³ said:

Upon all questions affecting the personal or representative character of a Member the gentleman from New York will himself see the propriety of each Member standing absolutely on his own merits.⁴

1241. Instance of the presentation in the Senate of a petition for the expulsion of a Senator.—On Friday, February 9, 1906,¹ in the Senate the Vice President presented the petition of C. W. Post, a citizen of the United States, praying for the expulsion from the United States Senate of Thomas C. Platt, a Senator from the State of New York; which was referred to the Committee on Privileges and Elections.

This petition was signed by "C. W. Post" before a notary public, whose signature and seal appear thereon.

¹ Second session Forty-first Congress, Journal, pp. 390, 396; Globe, pp. 1597, 1616, 1617.

² Third session Forty-second Congress, Globe, p. 1835.

³ James G. Blaine, of Maine, Speaker.

⁴ See, however, instance wherein the Senate by one resolution expelled several Senators. (Sec. 1266 of this chapter.)

⁵ First session Fifty-ninth Congress, Record, p. 2331.

1242. The Senate declined to investigate charges against the Vice President, it being urged that he was subject to impeachment proceedings only.—On January 28, 1873,¹ the Vice-President (Mr. Colfax) asked the Senate for a committee to investigate certain charges made against his character. The proposition was opposed by Mr. Allen G. Thurman, of Ohio, on the ground that the Vice-President was not a Member of the Senate who might be expelled, but an officer of the Government, who should be proceeded against by process of impeachment, if at all. The motion for the appointment of the committee was not agreed to.

1243. In a single instance the Senate annulled its action in expelling a Member.—On March 3, 1877,² the Senate annulled the action whereby on July 11, 1861, William K. Sebastian was expelled. The resolution of annulment was adopted on report from the Committee of Privileges and Elections, which held that the Senate possessed this right of review.

1244. Parliamentary law as to offenses committed by a Member in the House, especially in debate.—Section III of Jefferson's Manual, on the subject of privilege, provides:

If an offense be committed by a Member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it till the House has punished the offender, or referred him to a due course. (Lex Parl., 63.)

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts, but not of the House itself. (2 Nalson, 450; 2 Grey, 399.) For whatever is spoken in the House is subject to the censure of the House; and offenses of this kind have been severely punished by calling the person to the bar to make submission, committing him to the Tower, expelling the House, etc. (Seeb., 72; L. Parl., c. 22.)

1245. The House considered but did not act on propositions to expel or censure a Member who had published in a newspaper an article alleged to be in violation of the privileges of the House.—On February 21, 1839,³ Mr. Sergeant S. Prentiss, of Mississippi, rising to a question of privilege, moved the following resolutions:

Resolved, That this House proceed forthwith to inquire—

First. Whether Alexander Duncan, a Member of this House from the State of Ohio, be the author of a certain publication, or publications, under his name, in relation to the proceedings of this House and certain Members thereof, published in the Globe newspaper of the 19th instant;

Second. Whether, by said publication or publications, the said Alexander Duncan has not been guilty of a violation of the privileges of this House; of an offense against its peace, dignity, and good order; and of such grossly indecent, ungentlemanly, disgraceful, and dishonorable misconduct, as renders him unworthy of a seat in this House, and justly liable to expulsion from the same.

After debate, Mr. Prentiss offered the following as a modification of his proposition:

That, as Alexander Duncan has avowed himself the author of the publication in the Globe, he be, and is hereby, expelled from the House.

Debate arose over this proposition, Mr. John Quincy Adams, of Massachusetts, calling attention to the fact that it involved the constitutional power of the House

¹Third session Forty-second Congress, Globe, p. 895.

²Second session Forty-fourth Congress, Record, pp. 2193–2203

³Third session Twenty-fifth Congress, Journal, pp. 618–631; Globe, pp. 197, 199.

to expel a Member. Finding opposition, Mr. Prentiss withdrew the proposition to expel.

On the succeeding day, Mr. Waddy Thompson, jr., of South Carolina, proposed a substitute, which was accepted by Mr. Prentiss, in the form of a preamble reciting the article from the Globe in full, with other matters pertinent to the controversy, and concluding with a resolution that Mr. Duncan had subjected himself to the just censure of the House, and should be reprimanded by the Speaker.

After debate, Mr. Sherrod Williams, of Kentucky, moved that the matter be laid on the table, and the motion was agreed to, yeas 117, nays 95.

1246. A Member was censured for presenting a resolution insulting to the House.

A Member against whom a resolution of censure was pending participated in the debate.

On May 14, 1866,¹ Mr. Robert C. Schenck, of Ohio, as a question of privilege, submitted the following:

Resolved, That John W. Chanler, a Representative from the Seventh district of the State of New York, by presenting this day a resolution to be considered by this House, in the following terms:

“Resolved, That the independent, patriotic, and constitutional course of the President of the United States in seeking to protect by the veto power the rights of the people of this Union against the wicked and revolutionary acts of a few malignant and mischievous men meets with the approval of this House and deserves the cordial support of all loyal citizens of the United States,” has thereby attempted a gross insult to the House, and is hereby censured therefor.

After debate, in the course of which Mr. Chanler spoke in his own behalf, the question was taken and there were yeas 72, nays 30, and so the resolution was agreed to.

1247. A Member who had used offensive words against the character of the House, and who declined to explain when called to order, was censured by order of the House.—On January 15, 1868,² during the consideration of the bill (H. R. 439) supplementary to the act to provide for the more efficient government of the rebel States, when Mr. Fernando Wood, of New York, was called to order for the use of the following words:

A monstrosity, a measure the most infamous of the many infamous acts of this infamous Congress.

On demand of Mr. John A. Bingham, of Ohio, the words were taken down, and the Speaker³ decided that they were not in order.

Mr. Wood having declined to explain, the question was put: Shall the Member be permitted to proceed? and decided in the negative, yeas 40, nays 108.

Thereupon, Mr. Henry L. Dawes, of Massachusetts, submitted the following resolution:

Resolved, That Fernando Wood, a Member of this House from the State of New York, having this day used in debate, upon the floor of the House, the following words: “A monstrosity, a measure the most infamous of the many infamous acts of this infamous Congress,” deserves therefor the censure of this House, and the Speaker is hereby directed forthwith to pronounce that censure at the bar of the House.

¹First session Thirty-ninth Congress, Journal, p. 695; Globe, p. 2573.

²Second session Fortieth Congress, Journal, pp. 193–195; Globe, p. 542.

³Schuyler Colfax, of Indiana, Speaker.

A motion to lay on the table having been decided in the negative, the resolution was agreed to under the operation of the previous question, yeas 114, nays 39.

Thereupon Mr. Wood appeared at the bar of the House, and the Speaker said:

Mr. Fernando Wood: May's Treatise on the Law, Privileges, and Usages of Parliament, from which we derive the fundamental principles of our parliamentary law, in speaking of occurrences like that which has caused the vote the result of which has just been announced, thus speaks:

"It is obviously unbecoming to permit offensive expressions against the character and conduct of Parliament to be used without rebuke; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed against the other House and passed over without censure, they would appear to implicate one House in discourtesy to the other; if against the House in which the words are spoken, it would be impossible to overlook the disrespect of one of its own Members. Words of this objectionable character are never spoken but in anger; and when called to order the Member must see the error into which he has been misled, and retract or explain his words and make a satisfactory apology. Should he fail to satisfy the House in this manner he will be punished by a reprimand or commitment."

Having violated this universally recognized rule of parliamentary law in all deliberative bodies, the House has ordered its censure to be pronounced upon you by its presiding officer. This duty having been performed, you will resume your seat.

1248. A Member having used words insulting to the Speaker, the House, on a subsequent day and after other business had intervened, censured the offender.

An insult to the Speaker has been held to raise a question of privilege not governed by the ordinary rule about taking down disorderly words as soon as uttered.

When the House was considering a resolution censuring a Member for an alleged insult to the Speaker, the Speaker called another Member to the chair.

On July 9, 1832,¹ during debate on a question of order, Mr. William Stanbery, of Ohio, in criticizing a ruling of the Chair, said:

I defy any gentleman to point me to a single decision to the contrary, until you presided over this body. And let me say that I have heard the remark frequently made, that the eyes of the Speaker are too frequently turned from the chair you occupy toward the White House.

Mr. Stanbery being called to order by Mr. Franklin E. Plummer, of Mississippi, sat down; and the debate proceeded.

The pending question being disposed of, Mr. Thomas F. Foster, of Georgia, moved that the rules be suspended in order to enable the House to consider² the following resolution:

Resolved, That the insinuations made in debate this morning by the honorable William Stanbery, a Member of this House from Ohio, charging the Speaker of House with shaping his course, as this presiding officer of the House, with the view to the obtainment of office from the President of the United States, was an indignity to the Speaker and the House, and merits the decided censure of this House.

The vote being taken, there were yeas 95, nays 62; so the House refused to suspend the rules.

¹First session Twenty-second Congress, Journal, p. 1113; Debates, pp. 3876, 3877, 3887.

²The pressure of business had at this date become such as not to permit the regular order to be interrupted except by unanimous consent or by a vote to suspend the rules; but the system had not been instituted yet of admitting such resolutions as matters of privilege—or at least not in cases of this kind.

On July 10,¹ when the States were called for the presentation of resolutions,² Mr. James Bates, of Maine, presented the resolution again, with the slight modification of "words spoken" instead of "insinuations made."

Mr. Charles F. Mercer, of Virginia, made the point of order against the resolution that the words of the gentleman from Ohio, were not taken down at the time they were spoken, nor at the close of the speech of the Member; because other business had occurred since the imputed insinuations were made; and because a day had elapsed since the words were used, without any action or proceeding of the House in relation thereto. Jefferson's Manual was quoted in support of this contention.³

The Speaker pro tempore⁴ decided that the resolution was in order. This was a question concerning the privileges of the House; therefore the rules of ordinary debate did not apply.

Mr. Mercer appealed; but pending the discussion the hour expired, and although Mr. George McDuffie, of South Carolina, insisted that the pending question had precedence, because it related to the dignity and privileges of the House, the House voted to proceed to the orders of the day. On the next day, however, when the question arose again, the Speaker pro tempore corrected his decision of the day before, and decided that a question of order involving the privileges of the House took precedence of all other business.

On July 11⁵ debate on the appeal of Mr. Mercer was resumed. Mr. John Quincy Adams, of Massachusetts, said that this seemed to be a case of punishment for disorderly words spoken in debate. But in such a proceeding the words should be taken down, which had not been done in this case, although the Manual specifically provided such a course of procedure. That course was founded in reason and justice, and was, as expressly declared, "for the common security of all."

The decision of the Chair, on Mr. Mercer's appeal, was finally sustained, yeas 82, nays 48.

The question recurring on agreeing to the resolution of censure, Mr. Stanbery justified what he said as parliamentary by quoting Lord Chatham's words, which had passed without a call to order in open Parliament, "the eyes of the Speaker of that House were too often turned toward St. James's."

Mr. Samuel F. Vinton, of Ohio, raised a question as to whether or not interrogatories should not be propounded by the Chair to the Member about to be censured, to ascertain whether he admitted or denied the fact charged in the resolution; but the Speaker declined to do so.

The question being taken,⁶ the resolution of censure was agreed to, yeas 93, nays 44.

¹ Journal, p. 1118; Debates, pp. 388S-3891.

² In the order of business at that time an hour was devoted to the presentation of resolutions, etc., before passing to the Speaker's table and the orders of the day.

³ See Chapter XVII of Jefferson's Manual.

⁴ Clement C. Clay, of Alabama, Speaker pro tempore. Mr. Speaker Stevenson had left the chair from motives of delicacy. Debates, p. 3898.

⁵ Journal, pp. 1134, 1135; Debates, pp. 3899-3903.

⁶ Journal, p. 1141; Debates, p. 3907.

Several Members asked to be excused from voting, on the ground that they had not heard the words spoken by Mr. Stanbery, but the House declined to excuse them. Mr. Adams, however, refused to vote.

1249. A Member in debate having declared the words of another Member "a base lie," the Speaker declared the words out of order and the House inflicted censure on the offender.

The Speaker having, by order of the House, censured a Member, the words of censure were spread on the Journal.

On January 26, 1867,¹ during debate on the bill (H. R. 543) for restoring to the States lately in insurrection their full political rights, Mr. John W. Hunter, of New York, was called to order by Mr. Ralph Hill, of Indiana, for the use of the following words: "I say that, so far as I am concerned, it is a base lie," referring to a statement by Mr. James M. Ashley, of Ohio.

The Speaker² decided the words out of order.

Thereupon Mr. Hill submitted the following resolution:

Resolved, That the gentleman from New York, Hon. Mr. Hunter, in declaring during debate in the House, in reference to the assertions of the gentleman from Ohio, Hon. Mr. Ashley, "I say that, so far as I am concerned, it is a base lie," has transgressed the rules of this body, and that he be censured for the same by the Speaker.

The resolution having been agreed to—yeas 77, nays 33—Mr. Hunter appeared at the bar of the House and the Speaker administered the censure. This censure by the Speaker appears in full in the Journal.

1250. A Member having explained that by disorderly words which had been taken down he had intended no disrespect to the House, a resolution of censure was withdrawn.—On June 1, 1860,³ on the request of Mr. John Sherman, of Ohio, the following words spoken in debate were taken down:

By Mr. CHARLES R. TRAIN, of Massachusetts: "I am not in the habit of troubling the House much, and I never insist upon speaking when I am clearly out of order. I should consider myself guilty of gross impropriety, not only as a Member of the House, but as a gentleman, if I insisted upon addressing the Chair, and interpolating my remarks when I had no right to the floor."

By Mr. GEORGE S. HOUSTON, of Alabama: "I wish to know if the gentleman from Massachusetts applied that remark to me?"

By Mr. TRAIN: "I mean exactly what I did say, and I stand by what I said."

By Mr. HOUSTON: "I mean to say that if he applied that remark to me, he is a disgraced liar and scoundrel."⁴

Mr. Sherman submitted this resolution:

Resolved, That the gentleman from Alabama, Mr. Houston, be censured for disorderly words spoken in debate.

During the discussion of the resolution the point of order was made that the gentleman from Ohio did not call the gentleman from Alabama to order before asking that the words be taken down.

The Speaker overruled the point of order.

¹ Second session Thirty-ninth Congress, Journal, pp. 271–273; Globe, pp. 785–787.

² Schuyler Colfax, of Indiana, Speaker.

³ First session Thirty-sixth Congress, Journal, pp. 972–981; Globe, pp. 2546, 2548, 2564.

⁴ These words appear in full in the Journal as taken down.

⁵ William Pennington, of New Jersey, Speaker.

A motion was then made to amend the resolution by including the name of Mr. Train. Finally, after motions to lay the resolution on the table had been decided in the negative, and after the previous question had been ordered on the resolution and amendment, Mr. Sherman withdrew his resolution by permission of the House, and Mr. Houston made an explanation that he had intended no disrespect to the House.

1251. After abandoning a proposition to expel, the House arrested and censured a Member for gross personalities aimed at another Member, and for deception of the Speaker when the latter had proposed to prevent the utterances.—On February 4, 1875,¹ the House was considering the motion of Mr. Benjamin F. Butler, of Massachusetts, to recommit the bill (H. R. 7196) to protect all persons in their civil and political rights.

Pending the debate, Mr. John Young Brown, of Kentucky, was called to order for words used in debate, and the following were taken down:²

Now again that accusation has come from one—I speak not of men but of language, and within the rules of the House—that accusation against that people has come from one who is outlawed in his own home from respectable society; whose name is synonymous with falsehood; who is the champion, and has been on all occasions, of fraud; who is the apologist of thieves; who is such a prodigy of vice and meannesses that to describe him would sicken imagination and exhaust invective.

In Scotland years ago there was a man whose trade was murder, and who earned a livelihood by selling the bodies of his victims for gold. He linked his name to his crime, and to-day throughout the world it is known as “Burking.”

The SPEAKER. Does the Chair understand the gentleman to be referring in this language to a Member of the House?

Mr. BROWN. No, sir; I am describing an individual who is in my mind’s eye.

The SPEAKER. The Chair understood the gentleman to refer to a Member of the House.

Mr. BROWN. No, sir; I call no names.

This man’s name was linked to his crime, and to-day throughout the world it is known as “Burking.” If I wished to describe all that was pusillanimous in war, inhuman in peace, forbidden in morals, and infamous in politics, I should call it “Butlerism.”

Mr. Robert S. Hale, of New York, then offered the following:

Resolved, That the Member from Kentucky, Mr. John Young Brown, in the language used by him upon the floor and taken down at the Clerk’s desk, as well as in the prevarication to the Speaker, by which he was enabled to complete the utterance of the language, has been guilty of the violation of the privileges of this House and merits the severe censure of the House for the same.

Resolved, That the said John Young Brown be now brought to the bar of the House in the custody of the Sergeant-at-Arms, and be there publicly censured by the Speaker in the name of the House.

Mr. Henry L. Dawes, of Massachusetts, moved to amend by substituting a resolution of expulsion, but after debate withdrew it, saying it was evident that it could not receive a two-thirds vote.

Thereupon, after debate, the resolution of censure was agreed to, yeas 161, nays 79.

Thereupon the Sergeant-at-Arms appeared at the bar having in custody Mr. Brown, and the Speaker pronounced the censure of the House.³ He was then discharged from custody.

¹ Second session Forty-third Congress, Journal, pp. 392–394; Record, pp. 986–992.

² The Journal does not have the words taken down (p. 392), but simply says, “the words having been reduced to writing.”

³ The Journal (p. 394) gives the remarks of the Speaker in full.

1252. It has been held in order to censure a Member for words alleged to be treasonable, even though they were not taken down at the time they were uttered.—On April 12, 1864,¹ the House was considering a preamble and resolution reciting that Alexander Long, a Representative from Ohio, had in Committee of the Whole declared himself in favor of recognizing the independence of the so-called Confederacy, thereby violating the oath required of all Members of the House, and providing for his expulsion from the House.

To this Mr. John M. Broomall, of Pennsylvania, offered an amendment in the nature of a substitute, declaring that the said Long had by declarations in the national capitol and by publications in New York, shown himself disloyal and negligent of his oath by favoring the recognition of the so-called Confederacy, and then resolving as follows:

Resolved, That the said Alexander Long, a Representative from the Second district of Ohio, be, and he is hereby, declared to be an unworthy Member of the House of Representatives.

Resolved, That the Speaker shall read these resolutions to the said Alexander Long during the session of the House.

Mr. Charles A. Eldridge, of Wisconsin, made the point of order that the amendment was out of order, on the ground that the words spoken by Mr. Long were not taken down in writing at the time of their utterance, nor was exception taken to them either in Committee of the Whole or in the House until after another Member had spoken and other business had intervened.

The Speaker pro tempore² overruled the point of order and decided that the amendment proposed was in order.

Mr. Eldridge having appealed, the decision of the Chair was sustained on the succeeding day, yeas 79, nays 66.

1253. After considering the question of expulsion, the House censured a Member for words alleged to be treasonable.

A Member, against whom a resolution of censure was pending, addressed the House without permission being asked or given.

Calling a Member to the Chair, Mr. Speaker Colfax offered from the floor a resolution for the expulsion of a Member.

On April 9, 1864,³ Mr. Edward H. Rollins, of New Hampshire, was called to the chair, and the Speaker⁴ as a question of privilege, submitted the following preamble and resolution:

Whereas on the 8th of April, 1864, when the House of Representatives was in Committee of the Whole on the state of the Union, Alexander Long, a Representative from the Second district of Ohio, declared himself in favor of recognizing the independence and nationality of the so-called Confederacy, now in arms against the Union; and whereas the said so-called Confederacy thus sought to be recognized and established on the ruins of a dissolved or destroyed Union has as its chief officers, civil and military, those who have added perjury to their treason, and who seek to obtain success for their parhomicidal efforts by the killing of the loyal soldiers of the nation, who are seeking to save it from destruction; and whereas the oath required of all Members, and taken by the said Alexander Long on the first day

¹ First session Thirty-eighth Congress, Journal, pp. 518, 519, 520; Globe, p. 1593.

² Edward H. Rollins, of New Hampshire, Speaker pro tempore.

³ First session Thirty-eighth Congress, Journal, pp. 505, 520, 522, 523; Globe, pp. 1505, 1533, 1577, 1618, 1626, 1634.

⁴ Schuyler Colfax, of Indiana, Speaker.

of the present Congress, declares “that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility to the United States,”¹ thereby declaring that such conduct is regarded as inconsistent with membership in the Congress of the United States: Therefore,

Resolved, That Alexander Long, a Representative from the Second district of Ohio, having, on the 8th of April, 1864, declared himself in favor of recognizing the independence and nationality of the so-called Confederacy, now in arms against the Union, and thereby “giving aid, countenance, and encouragement to persons engaged in armed hostility to the United States,” is hereby expelled.

The resolution and preamble were debated at length, it being urged against them that the words actually spoken did not bear the interpretation put upon them, and that the expulsion of a Member for speech on the floor of the House was against the Constitution and the spirit of the institutions of the country. On the other hand, it was urged that the whole tenor of the speech had been such as to give encouragement to the enemies of the Government and make its author unworthy to sit in the House.

On April 14, on the suggestion of Mr. John M. Broomall, of Pennsylvania, who had proposed an amendment to the same effect, Mr. Colfax modified the resolution, as follows:

Whereas Alexander Long, a Representative from the Second district of Ohio, by his open declarations in the National Capitol and publications in the city of New York, has shown himself to be in favor of a recognition of the so-called Confederacy now trying to establish itself upon the ruins of our country, thereby giving aid and comfort to the enemy in that destructive purpose—aid to armed traitors in erecting an illegal government within our borders—comfort to them by assurances of their success and affirmations of the justice of their cause; and whereas such conduct is at the same time evidence of disloyalty and inconsistent with his oath of office and his duty as a Member of this body: Therefore,

Resolved, That the said Alexander Long, a Representative from the Second district of Ohio, be, and he is hereby, declared to be an unworthy Member of the House of Representatives.

Resolved, That the Speaker shall read these resolutions to the said Alexander Long during the session of the House.

The debate continuing, Mr. Long addressed the House, rising in his place as a matter of course, and obtaining no permission to be heard.

A motion to lay the preamble and resolution on the table was decided in the negative, yeas 70, nays 80.

The first resolution was then agreed to, yeas 80, nays 70.

Then, by a vote of yeas 71, nays 70, the House agreed to the motion of Mr. William S. Holman, of Indiana, that the second resolution be laid on the table.

The preamble was then agreed to, yeas 78, nays 63.

1254. For words alleged to be treasonable, the House censured a Member after a motion to expel him had failed.

A proposition for the punishment of a Member is presented as a question of privilege.

On April 9, 1864,² Mr. Elihu B. Washburne, of Illinois, as a question of privilege, submitted the following preamble and resolution:

Whereas the Hon. Benjamin G. Harris, a Member of the House of Representatives of the United States from the State of Maryland, has, upon this day used the following language, to wit: “The South asked you to let them live in peace. But no; you said you would bring them into subjection. That

¹This oath was specially adopted for the years of the war and the years immediately succeeding. It has since been repealed.

²First session Thirty-eighth Congress, Journal, pp. 506–509; Globe, pp. 518, 519.

is not done yet; and God Almighty grant that it never may be. I hope that you will never subjugate the South;" and whereas such language is treasonable and a gross contempt of this House: Therefore, be it

Resolved, That the said Benjamin G. Harris be expelled from this House.

The vote being taken, there appeared, yeas 84, nays 58; and so, two-thirds not concurring, the resolution was not agreed to.

Thereupon Mr. Robert C. Schenck, of Ohio, as a question of privilege, submitted the following:

Resolved, That Benjamin G. Harris, a Representative from the Fifth district of the State of Maryland, having spoken words this day in debate manifestly tending and designed to encourage the existing rebellion and the public enemies of this nation, is declared to be an unworthy Member of this House and is hereby severely censured.

After the disposal of several intervening motions, the question recurred on the resolution, which was agreed to, yeas 98, nays 20.

1255. An attempt to censure a Member for presenting a petition alleged to be treasonable failed after long debate.

Discussion as to whether or not the principles of the procedure of the courts should be followed in action for censure.

An instance wherein a Member against whom a resolution of censure was pending was allowed to insert in the Journal his demand for a constitutional trial.

It is not the duty of the Speaker to construe the Constitution as affecting proposed legislation.

On January 24, 1842,¹ Mr. John Quincy Adams, of Massachusetts, presented a petition of 46 citizens of Haverhill, in the State of Massachusetts, praying Congress immediately to adopt measures peaceably to dissolve the Union of these States, for three reasons, which were set forth in the petition. Mr. Adams moved that the petition be referred to a select committee, with instructions to the committee to report to the House the reasons why the prayer thereof should not be granted.

Pending proceedings on the reception of this petition Mr. Thomas W. Gilmer, of Virginia, as a question of privilege, presented the following:

Resolved, That in presenting for the consideration of the House a petition for the dissolution of the Union, the Member from Massachusetts (Mr. Adams) has justly incurred the censure of this House.

In the course of the consideration of this resolution, and on January 25,² Mr. Thomas F. Marshall, of Kentucky, proposed to amend the pending resolution by substituting the following preamble and resolution:

Whereas the Federal Constitution is a permanent form of government, and of perpetual obligation until altered or modified in the mode pointed out by that instrument, and the Members of this House deriving their political character and powers from the same are sworn to support it, and the dissolution of the Union necessarily implies the destruction of that instrument, the overthrow of the American Republic, and the extinction of our national existence, a proposition, therefore, to the Representatives of the people to dissolve the organic law framed by their constituents, and to support which they are commanded by those constituents to be sworn before they can enter upon the execution of the political powers created by it and intrusted to them, is a high breach of privilege, a con-

¹Second session Twenty-seventh Congress, Journal, pp. 272, 273; Globe, p. 68.

²Journal, p. 278; Globe, p. 169.

tempt offered to this House, a direct proposition to the legislature, and each Member of it, to commit perjury, and involves necessarily, in its execution and its consequences, the destruction of our country and the crime of high treason:

Resolved, therefore, That the Hon. John Q. Adams, Member from Massachusetts, in presenting, for the consideration of the House of Representatives of the United States a petition praying for the dissolution of the Union, has offered the deepest indignity to the House of which he is a Member, an insult to the people of the United States, of which that House is the legislative organ, and will, if this outrage be permitted to pass unrebuked and unpunished, have disgraced his country, through their Representatives, in the eyes of the whole world.

Resolved, further, That the aforesaid John Q. Adams, for this insult, the first of the kind ever offered to the Government, and for the wound which he has permitted to be aimed, through his instrumentality, at the Constitution and existence of his country, the peace, the security, and liberty of the people of these States, might well be held to merit expulsion from the national councils; and the House deem it an act of grace and mercy when they only inflict upon him the severest censure for conduct so utterly unworthy of his past relations to the State and his present position. This they hereby do for the maintenance of their own purity and dignity, for the rest, they turn him over to his own conscience and the indignation of all true American citizens.

Motions to lay the subject on the table having been decided in the negative, and the debate having proceeded, on January 26¹ Mr. Adams raised the following question of order:

Has the House the right to entertain the resolution, because it charges him with crimes of which the House has no jurisdiction; and if the House entertain the jurisdiction, they deprive him of rights secured to him by the Constitution of the United States?

The Speaker² declined to decide the point submitted, it being a question which it was the peculiar province of the House to decide.

Mr. Marshall, in support of his proposition, referred to the precedent of John Smith in the Senate in 1807.

The question of consideration was put to determine whether the House would consider the matter, and it was decided in the affirmative, yeas 118, nays 75.

Mr. Adams then demanded the benefit of the sixth article of the amendments to the Constitution of the United States, and required that his demand be entered on the Journal. Without any vote being taken, the article was entered and appears on the journal as follows:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

After further debate, and a further refusal of the House to lay the subject on the table, on February 2³ Mr. Adams, as a part of his defense, presented four resolutions calling on heads of departments and the President to furnish certain specified information on subjects relating to slavery and the rule of the House excluding petitions for the abolition of slavery.

Mr. Gilmer objected to the reception of the resolutions as contrary to the regular order of business.

¹ Second session Twenty-seventh Congress, Journal, pp. 280, 283; Globe, pp. 180, 184.

² John White, of Kentucky, Speaker.

³ Journal, pp. 298–306; Globe, pp. 200–203.

The Speaker decided to receive them, as connected with the subject before the House.

The first resolution was agreed to, yeas 97, nays 96, the second, yeas 95, nays 84; but the third and fourth, relating to action of the President of the United States with regard to the rule relating to petitions, were laid on the table, yeas 111, nays 64, although Mr. Adams declared the information which they called for most important for his defense.

The debate then continued, Mr. Adams contending that as he was to be tried for crime he should have time and means to make his defense, and Mr. Marshall urging that the House had a right to censure, irrespective of the relations of the offense to the courts of justice.

On this day also Mr. George W. Summers, of Virginia, proposed the following proposition:

That a select committee be appointed to take into consideration the contempt and breach of privilege alleged to have been committed by John Quincy Adams, a Member of this House, in presenting a petition on the 24th day of January last purporting to be signed by certain citizens of Massachusetts praying that Congress should take suitable measures for the peaceable dissolution of the Union, and that it be the duty of said committee to consider and report whether any, and, if any, what further proceedings should be taken by the House in the matter of said alleged contempt and breach of privilege; and if the said committee shall be of opinion that any action on the part of the House in relation to the presentation of said petition by the said John Quincy Adams be proper and expedient, then that the said committee do further report what, in their opinion, will be the best and most appropriate mode of conducting the proceedings of the House in relation thereto, having respect to the powers and duty of the House, the precedents of parliamentary usage, and the rights of the Member accused.

The debate proceeded, Mr. Adams contending that, although he admitted the force of the precedent in the case of John Smith and realized the discretionary power of the House to try him on a question of privilege, the House should either send him before a court of justice or try him themselves, before proceeding to pass judgment upon him.

Finally, on February 7,¹ on motion of Mr. John M. Botts, of Virginia, who said that the House and the country were anxious to get rid of the subject, the whole matter was laid on the table, by a vote of 106 yeas, 93 nays.

1256. The House censured Joshua R. Giddings for presentation of a paper deemed incendiary and without hearing him in defense.

Instance wherein a Member resigned his seat, sought reelection, and appeared again to be sworn in during the same Congress.

The previous question applies to a question of privilege as to any other question.

On March 21, 1842,² Mr. John B. Weller, of Ohio, moved the following:

Whereas the honorable Joshua R. Giddings, the Member from the Sixteenth Congressional district of the State of Ohio, has this day presented to this House a series of resolutions touching the most important interests connected with a large portion of the Union, now a subject of negotiation between the United States and Great Britain of the most delicate nature, the result of which may eventually involve these two nations, and perhaps the whole civilized world, in war; and

¹ Journal, pp. 313–315; Globe, p. 214.

² Second session Twenty-seventh Congress, Journal, pp. 573, 576; Cong. Globe, pp. 343, 345.

Whereas it is the duty of every good citizen, and particularly the duty of every selected agent and representative of the people, to discountenance all efforts to create excitement, dissatisfaction, and division among the people of the United States at such a time and under such circumstances, which is the only effect to be accomplished by the introduction of sentiments before the legislative body of the country hostile to the grounds assumed by the high functionary having in charge this important and delicate trust; and

Whereas mutiny and murder are therein justified and approved in terms shocking to all sense of law, order, and humanity: Therefore

Resolved, That this House hold the conduct of said Member as altogether unwarranted and unwarrantable, and deserving the severe condemnation of the people of this country, and of this body in particular.

Mr. Weller asked for the previous question, pending which Mr. Giddings inquired of the Chair whether the effect of that question, if sustained, would be to preclude him from giving his reasons why the resolution should not pass.

The Speaker decided that if Mr. Giddings desired to be heard in his defense, and claimed it as a matter of privilege, he would not entertain the previous question at this time, as it would cut him off from his right of defense.

Mr. Giddings then moved that the further consideration of the subject be postponed until Thursday week next, to the end that he might prepare for his defense.

Debate arising on this motion, Mr. Millard Fillmore, of New York, submitted that debate was not in order, and that the motion for the previous question should be now entertained by the Speaker.

The Speaker¹ then decided that, in his judgment, the matter before the House was a question of privilege, and that on a question involving the privileges of a Member of the House the previous question could not be applied, and consequently that the motion for postponement was open to debate.

From this decision Mr. Fillmore appealed, and the House overruled the Speaker, 118 nays to 64 yeas.²

On March 22 the preamble and resolution were agreed to, the resolution by a vote of 125 yeas to 69 nays; the preamble by a vote of yeas 119, nays 66.³

On March 23 Mr. Giddings resigned his seat in the House, and on May 5 again appeared, having been elected his own successor, and was qualified and took his seat.⁴

1257. Unparliamentary words spoken in Committee of the Whole are taken down and read, whereupon the committee rises and reports them to the House.

Members who had indulged in unparliamentary language in Committee of the Whole escaped the censure of the House by making apologies.

On June 14, 1882,⁵ in the Committee of the Whole House on the state of the Union, the following words between Messrs. William D. Kelley, of Pennsylvania,

¹ John White, of Kentucky, Speaker.

² The previous question under the present rules is not so drastic. Forty minutes are allowed for debate after the previous question is ordered, if there has not previously been debate. (See sec. 5495 of Vol. V of this work.)

³ Journal, pp. 578, 579; Globe, pp. 345, 346.

⁴ Journal, pp. 586, 784; Globe, pp. 349, 479.

⁵ First session Forty-seventh Congress, Journal, p. 1471; Record, pp. 4903–4905.

and John D. White, of Kentucky, were taken down on demand of Mr. William S. Holman, of Indiana:

Mr. WHITE. It is merely a question of veracity. I heard him make the statement myself.

Mr. KELLEY. And I denounce the statement as the ravings of a maniac or a deliberate lie.

Mr. WHITE. The gentleman may be scoundrel enough to make that statement.

The Chairman¹ directed the words to be read to the committee as taken down, and then under the rule caused the committee to rise and reported the words to the House.

The report having been made to the House, Mr. William M. Springer, of Illinois, offered a preamble reciting the words taken down, and continuing:

And whereas such language is disorderly and destructive of the dignity and honor of the House: Therefore,

Resolved, That it is the sense of this House that the Speaker do reprimand said Members for using said disorderly words in derogation of the good order and decorum of the House.

Thereupon, during debate, both Messrs. Kelley and White made explanations and apologies to the House, and the resolution and preamble were withdrawn.

1258. On March 1, 1883,² in Committee of the Whole House on the state of the Union, during consideration of the river and harbor appropriation bill, Mr. John Van Voorhis, of New York, criticized a certain item as one that no one would have ever heard of if the chairman of the committee reporting the bill were not from a certain portion of the country, and said:

It is so outrageous, so damnable, that nobody but a gambler or cutthroat would have thought of tacking such a thing as that to such a bill as this.

The words were taken down, on motion of a Member, and the committee rose and reported them to the House.

Thereupon Mr. Robert M. McLane, of Maryland, proposed a preamble reciting the words reported and this resolution:

Therefore resolved, That for the use of said language said Van Voorhis is expelled from this House.

Pending debate Mr. Van Voorhis, on motion of Mr. McLane and on vote of the House, was allowed to explain. Mr. Van Voorhis then said that he did not mean to apply the words to the chairman of the committee, and that he regretted that exception should be taken to them, or that he should be under the necessity of withdrawing them. He did in fact ask leave to withdraw the words.

Mr. McLane thereupon withdrew the preamble and resolution.

Mr. Hilary A. Herbert, of Alabama, however, offered the following:

Resolved, That the Member from New York, Mr. John Van Voorhis, in the language used by him upon the floor and taken down by the Clerk's desk, has been guilty of a violation of the privileges of this House and merits the severe censure of the House for the same.

Resolved, That the said John Van Voorhis be now brought to the bar of the House by the Sergeant-at-Arms and be there publicly censured by the Speaker in the name of the House.

Mr. Van Voorhis stated that he apologized to the House for the use of the language.

¹ George D. Robinson, of Massachusetts, chairman.

² Second session Forty-seventh Congress, Journal, p. 533; Record, pp. 3540–3543.

Thereupon a motion to lay the resolutions on the table was decided in the negative, and then, on the question of agreeing to them, there were ayes 66, noes 78. So the resolutions were not agreed to.

1259. For unparliamentary language in Committee of the Whole, William D. Bynum was censured by the House.

Unparliamentary language used in Committee of the Whole was taken down and read at the Clerk's desk, and thereupon the committee voted to rise and report it to the House.

The Committee of the Whole having reported language alleged to be unparliamentary, a resolution of censure was held to be in order without a prior decision of the Speaker that the words were, in fact, out of order.

The House having agreed to a resolution of censure, and the Member being brought to the bar by the Sergeant-at-Arms to be censured, it was held that he might not then be heard.

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

On May 17, 1890,¹ during the consideration of the tariff bill (H. R. 9416) in Committee of the Whole House on the state of the Union, Mr. William D. Bynum, of Indiana, used these words:

I desire simply to say that I did the other day, knowing full well the meaning of the words and that I was responsible for them, denounce Mr. Campbell as a liar and a perjurer. I want to say that I accept and am willing to believe that I have as great confidence in the character of Mr. Campbell as I have in the character of the gentleman who makes this attack upon me.

On the request of Mr. Byron M. Cutcheon, of Michigan, the chairman² directed the words to be taken down and read at the Clerk's desk.

Thereupon, on motion of Mr. Cutcheon, the committee rose, and the chairman reported that the Committee of the Whole House on the state of the Union had directed him to report to the House the following language, used by Hon. William D. Bynum in the course of debate, etc.

The Speaker³ directed the Clerk to read sections 4 and 5 of Rule XIV,⁴ which was done.

Thereupon Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that "a Member can not be put on his defense except under the circumstances stated in the rule; that the record does not show that the words were spoken just before the committee rose, or at any particular time named in the record; so that the Speaker is assuming as a matter of fact that which the record does not show."

The Speaker overruled the point of order on the ground that the Chair can only pass upon the matter as reported to him by the chairman of the Committee of the Whole, and the presumption is that it is properly reported.

Mr. Breckinridge, of Kentucky, appealed from the decision of the Chair. Pending which Mr. Isaac S. Struble, of Iowa, moved to lay the appeal on the table; and

¹ First session Fifty-first Congress, Journal, pp. 623-625; Record, pp. 4861, 4862, 4868, 4876.

² Charles H. Grosvenor, of Ohio, chairman.

³ Thomas B. Reed, of Maine, Speaker.

⁴ See sections 5175-5202 of Vol. V of this work.

the question being put, Shall the said appeal lie on the table? it was decided in the affirmative, yeas 126, nays 101. So the appeal was laid on the table.

And then Mr. Cutcheon submitted the following resolution:

Resolved, That the Member from Indiana, Mr. William D. Bynum, in the language used by him in Committee of the Whole House and taken down and reported to the House and read at the Clerk's desk, has been guilty of a violation of the rules and privileges of the House, and merits the censure of the House for the same.

Resolved, That said William D. Bynum be now brought to the bar of the House by the Sergeant-at-Arms, and there the censure of the House be administered by the Speaker.

And the House having proceeded to their consideration, Mr. Cutcheon demanded the previous question.

Pending this, Mr. William M. Springer, of Illinois, made the point of order against the resolutions on the ground that "no one has suggested that this language is out of order; and further, that the Speaker has not decided it to be unparliamentary language, and that the House has not been permitted to pass upon the naked question; and after the House shall pass upon it that it is the privilege of the Member to withdraw the language used or to make any explanation he desires before the House can proceed to pass such a resolution."

After debate, the Speaker overruled the point of order, making use of the following language:

The House will perceive at once from what has been stated how impossible it is for the Chair in such a case as this to pass upon the question of fact. The House can pass upon the question of fact in its vote upon the resolution; and the argument of the gentleman from Alabama will be very properly addressed to the House and to its discretion on the question of the passage of the resolution.

As to the point of order made by the gentleman from Illinois [Mr. Springer], the Chair finds not merely the precedent which has been cited by the gentleman from Michigan [Mr. Cutcheon], but also the following, on page 390 of the Journal of the House of Representatives of February 4, 1875, Forty-third Congress, second session:

"Pending the debate thereon, Mr. John Young Brown was called to order for words used in debate. The words having been reduced to writing, Mr. Robert S. Hale submitted the following resolution," which was a resolution of similar character to that proposed in the House to-day, and thereupon it was voted on.

The Chair therefore overrules the point of order made by the gentleman from Illinois.

Mr. Springer made a further point of order, that the language used by the gentleman from Indiana was not unparliamentary and not out of order.

The Speaker decided that the point could not be made at this time and overruled the point of order.

Mr. Springer having appealed, the appeal was laid on the table, 121 yeas to 98 nays.

Then, motions to adjourn and to lay on the table being negatived, the question recurred on Mr. Cutcheon's demand for the previous question.

Pending that, Mr. Springer moved that the resolutions be referred to the Committee on Rules, with instruction to inquire whether or not the language used was out of order and also whether there was not such provocation therefor as justified its use under all the circumstances.

Mr. David B. Henderson, of Iowa, made the point of order that it was not for the Committee of the Whole House or the Committee on Rules to pass upon the

question at issue, but for the House itself to decide; and the further point that the motion of Mr. Springer was in the nature of a proposition to correct the record made in Committee of the Whole House on the state of the Union, and that, the Speaker having held that the report made from that committee was presumed to be in all respects regular and in accordance with the rules of the House and the appeal from that decision having been sustained by the House, that question had been absolutely settled by the House.

The Speaker ruled that the resolution was not in order.

Mr. Springer appealed from the decision of the Chair, and on motion of Mr. Frederick T. Greenhalge, of Massachusetts, the appeal was laid on the table, yeas 114, nays 78.

The resolutions having been agreed to by the House, Mr. Bynum appeared at the bar with the Sergeant-at-Arms, and by direction of the Speaker the resolutions were read.

Mr. Bynum inquired if he might be heard.

The Speaker held that he could not.

Thereupon the Speaker pronounced the censure of the House:

Mr. William D. Bynum, you are arraigned at the bar of the House under its formal resolution for having transgressed its rules in your remarks. For this offense the House has directed that you shall be censured at this bar. In the name of the House, therefore, I pronounce upon you its censure. The Sergeant-at-Arms will discharge Mr. Bynum from custody.

1260. Prior rights of the House when a Member is accused of treason, felony, or breach of the peace.

A Member indicted for felony remains of the House until convicted.

Section III of Jefferson's Manual, on the subject of privilege, provides:

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in Parliament a Member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege; otherwise it would be in the power of other branches of the Government, and even of every private man, under pretenses of treason, etc., to take any man from his service in the House, and so, as many, one after another, as would make the House what he pleaseth. (Dec'l of the Com. on the King's declaring Sir John Hotham a traitor. 4 Rushw., 586.) So, when a Member stood indicted for felony, it was adjudged that he ought to remain of the House till conviction;¹ for it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime. (23 El., 1580; D'Ewes, 283, col. 1; Lex Parl., 133.)

1261. Two Members were expelled for treason, and the House ordered the governors of their respective States to be notified.—On December 2, 1861,² Mr. Francis P. Blair, jr., of Missouri, offered this resolution, which was agreed to by a two-thirds vote:

Resolved, That John W. Reid, a Member of the House of Representatives from the Fifth district of the State of Missouri, having taken up arms against the Government of the United States, is hereby expelled from the House, and the Speaker of the House is required to notify the Governor of the State of Missouri of the fact.

¹In the Fifty-ninth Congress a Member of the Senate and a Member of the House were indicted and convicted, but appealed. The Senate took action which precipitated the Senator's resignation, but the House did not act pending the Member's appeal.

²Second session Thirty-seventh Congress, Journal, p. 8; Globe, p. 5.

On December 3, 1861,¹ Mr. W. McKee Dunn, of Indiana, offered the following preamble and resolutions, which were agreed to by a two-thirds vote:

Whereas Henry C. Burnett, a Member of this House from the State of Kentucky, is in open rebellion against the Government of the United States; therefore,

Resolved, That said Burnett be, and he is hereby, expelled from this House, and that the governor of the State of Kentucky be notified of his expulsion.

Resolved, That the Sergeant-at-Arms of this House be directed not to pay to said Burnett his salary accrued since the close of the extra session of this Congress.

1262. A Member-elect, who had not taken the oath, was expelled from the House for treason.—On July 13, 1861,² Mr. Francis P. Blair, jr., of Missouri, as a question of privilege, submitted the following preamble and resolution:

Whereas John B. Clark was elected a Representative in the Thirty-seventh Congress from the Third Congressional district of the State of Missouri on the first Monday of August in the year 1860; and whereas since that time the said John B. Clark has taken up arms against the Government of the United States and holds a commission in what is known as the State guard of Missouri, under the rebel governor of that State, and took part in the engagement at Booneville against the United States forces; therefore,

Resolved, That John B. Clark has forfeited all right to sit as a Representative in the Thirty-seventh Congress, and is hereby expelled and declared to be no longer a Member of this House.

The debate was very brief, being limited by the previous question. Mr. Blair, upon his responsibility as a Member, affirmed that the allegation of the preamble was true. There was some objection that the case should be considered by a committee; but no one raised the point, which is apparent from the Journal, that Mr. Clark was a Member-elect merely, not having appeared and taken the oath.³

The resolution of expulsion was agreed to by a two-thirds vote, yeas 94, nays 45.

1263. William Blount, for a high misdemeanor inconsistent with his public trust and duty, was expelled from the Senate.

The Senate ordered a Senator to attend in his place when a report relating to charges against him was to be presented.

A committee having recommended the expulsion of a Senator, the Senate allowed him to be heard by counsel at the bar of the Senate before action on the report.

A Senator, impeached by the House of Representatives, was arrested by order of the Senate and released only on surety.

Impeachment proceedings against a Senator were continued after his expulsion.

The President of the United States transmitted to the Senate a letter impeaching the conduct of a Senator.

On July 3, 1797,⁴ the Senate received a letter from the President of the United States, transmitting a letter purporting to have been written by William Blount, a

¹ Second session Thirty-seventh Congress, Journal, pp. 26, 27; Globe, p. 7.

² First session Thirty-seventh Congress, Journal, pp. 75, 76; Globe, pp. 116, 117.

³ This session began July 4, 1861. Mr. Clark did not appear with the other Missouri Members at the time of organization, nor is his presence recorded subsequently.

⁴ First session Fifth Congress, Senate Journal, p. 383; Annals, p. 34.

Senator of the United States, for the purpose of laying plans for the cooperation of certain Indians of the South with British agents in an enterprise inimical to the interests of the United States and Spain. This letter was addressed to one Carey, an employee of the United States in the Indian country.

The message and papers having been read, the letter was again read to Mr. Blount, who was absent when it was read a first time. Being requested to declare whether he was the author of the letter or not, Mr. Blount observed that he wrote a letter to Carey, but was unable to say whether the copy was a correct one or not without recurrence to his papers. Therefore he desired a postponement until the next day, which was agreed to.

On July 4,¹ a letter was laid before the Senate from Mr. Blount, requesting further time. Thereupon the letter and message were referred to a select committee to consider and report what it was proper for the Senate to do thereon.

On July 5,² on report from this committee, it was—

Ordered, That the Vice-President notify William Blount, a Senator from the State of Tennessee, by letter, to attend the Senate.

On July 6,³ a further report being made by the committee, Mr. Blount read in his place a declaration, purporting that he should attend in his seat from time to time to answer any allegation that might be brought against him.

Then it was—

Resolved, That Mr. Blount be heard by counsel, not exceeding two, to-morrow morning at 11 o'clock.

It was further—

Ordered, That the Secretary furnish Mr. Blount with attested copies of such papers as he may point out respecting the subject this day reported on by the committee.

On July 7,⁴ the subject being again before the Senate, Mr. Blount notified the Senate that Jared Ingersoll and Alexander J. Dallas were the counsel he had employed agreeably to the vote of the Senate.

The President requested Mr. Blount to declare whether or not he was the author of the letter in question. Mr. Blount declined to answer.

At this point a message was received from the House of Representatives presenting the impeachment of William Blount for high crimes and misdemeanors. Thereupon, in accordance with the request of the House, the said William Blount was sequestered from his seat and taken into custody. Subsequently he furnished sureties.

On July 8,⁵ Mr. Blount was heard by his counsel, and then the question was taken on the report of the committee, which was as follows:

That Mr. Blount, having declined an acknowledgment or denial of the letter imputed to him, and having failed to appear to give any satisfactory explanation respecting it, your committee sent for the original letter, which accompanies this report, and it is in the following words: (Here follows the letter, the purport of which is given above.)

Two Senators now present in the Senate have declared to the committee that they are well acquainted with the handwriting of Mr. Blount, and have no doubt that this letter was written by him.

¹ Journal, p. 383; Annals, p. 34.

² Journal, p. 385; Annals, p. 35.

³ Journal, p. 387; Annals, p. 38.

⁴ Journal, p. 388; Annals, p. 38.

⁵ Journal, pp. 390–392; Annals, pp. 40–44.

Your committee have examined many letters from Mr. Blount to the Secretary of War, a number of which are herewith submitted, as well as a letter addressed by Mr. Blount to Mr. Cocke, his colleague in the Senate, and to this committee, respecting the business now under consideration, and find them all to be of the same handwriting with the letter in question. Mr. Blount has never denied this letter, but, on the other hand, when the copy transmitted to the Senate was read in his presence, on the 3d instant, he acknowledged in his place that he had written a letter to Carey, of which he had preserved a copy, but could not then decide whether the copy read was a true one. Your committee are therefore fully persuaded that the original letter now produced was written and sent to Carey by Mr. Blount. They also find that this man Carey to whom it was addressed is, to the knowledge of Mr. Blount, in the pay and employment of the United States, as their interpreter to the Cherokee Nation of Indians, and an assistant in the public factory at Tellico Blockhouse. That Hawkins, who is so often mentioned in this letter as a person who must be brought into suspicion among the Creeks, and if possible driven from his nation, is the superintendent of Indian affairs for the United States among the southern Indians, Dinsmore is agent for the United States for the Cherokee nation, and Dyer one of the agents in the public factory at Tellico Blockhouse.

The plan hinted at in this extraordinary letter, to be executed under the auspices of the British, is so capable of different constructions and conjectures that your committee at present forbear giving any decided opinion respecting it, except that to Mr. Blount's own mind it appeared to be inconsistent with the interests of the United States and of Spain, and he was therefore anxious to conceal it from both. But, when they consider his attempts to seduce Carey from his duty as a faithful interpreter, and to employ him as an engine to alienate the affections and confidence of the Indians from the public officers of the United States residing among them, the measures he has proposed to excite a temper which must produce the recall or expulsion of our superintendent from the Creek Nation, his insidious advice tending to the advancement of his own popularity and consequence, at the expense and hazard of the good opinion which the Indians entertain of this Government, and of the treaties subsisting between us and them, your committee have no doubt that Mr. Blount's conduct has been inconsistent with his public duty, renders him unworthy of a further continuance of his present public trust in this body, and amounts to a high misdemeanor. They therefore unanimously recommend to the Senate an adoption of the following resolution:

Resolved, That William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States.

The question being taken this report was agreed to, yeas 25, nays 1.¹

The impeachment proceedings against Mr. Blount were proceeded with after the expulsion.

1264. The Senate failed, by one vote, to expel John Smith, charged with participation in a treasonable conspiracy.

A discussion as to whether or not the principles of the procedure of the courts should be followed in action for expulsion.

The Senate allowed a member threatened with expulsion to be heard by counsel, but did not grant his request for a specific statement of charges or compulsory process for witnesses.

The Senate having allowed a member to be heard by counsel, exercised the power of approving his selections.

The written answer of a Senator to charges made against him was returned by the Senate because it contained irrelevant matter.

The Senate ordered a Senator to attend in his place when a report relating to charges against him was to be presented.

¹It is evident from the articles of impeachment that Blount was a Senator at the time of the offense. (Second session Fifth Congress, House Journal, p. 151.)

The Senate did not pursue inquiry as to the charge that Senator John Smith had sworn allegiance to a foreign power, the said oath having been taken before his election as Senator.

Nature and limitations of the constitutional power of expulsion discussed.

Discussion of the decision of the Senate in the matter of charges against Humphrey Marshall, a Senator.

On November 27, 1807,¹ the Senate, after debate, adopted after amendment the following resolution proposed by Mr. Samuel Maclay, of Pennsylvania:

Resolved, That a committee be appointed to inquire whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein; and that the committee do inquire into all the facts regarding the conduct of Mr. Smith as an alleged associate of Aaron Burr, and report the same to the Senate.

The following-named Senators were appointed as the committee: John Quincy Adams, of Massachusetts; Samuel Maclay, of Pennsylvania; Jesse Franklin, of North Carolina; Samuel Smith, of Maryland; John Pope and Buckner Thurston, of Kentucky, and Joseph Anderson, of Tennessee.

On December 31,² Mr. Adams announced that the committee were ready to report, and made the following motion, which was read and agreed to:

Ordered, That John Smith, a Senator from the State of Ohio., be notified by the Vice-President to attend in his place.

The Vice-President accordingly notified Mr. Smith in the words following:

Sir: You are hereby required to attend the Senate in your place without delay.
By order of the Senate.

GEO. CLINTON,
President of the Senate.

JOHN SMITH, Esq.,
Senator from the State of Ohio.

And Mr. Smith attended.

Thereupon Mr. Adams reported as follows:

Your committee are of opinion that the conspiracy of Aaron Burr and his associates against the peace, union, and liberties of these States is of such a character, and that its existence is established by such a mass of concurring and mutually corroborative testimony that it is incompatible not only with the honor and privileges of this House, but with the deepest interests of this nation, that any person engaged in it should be permitted to hold a seat in the Senate of the United States.

Whether the facts, of which the committee submit herewith such evidence as, under the order of the Senate, they have been able to collect, are sufficient to substantiate the participation of Mr. Smith in that conspiracy, or not, will remain for the Senate to decide.

The committee submit also to the consideration of the Senate the correspondence between Mr. Smith and them, through their chairman, in the course of their meetings. The committee have never conceived themselves invested with authority to try Mr. Smith. Their charge was to report an opinion relating to the honor and privileges of the Senate and the facts relating to the conduct of Mr. Smith. Their opinion, indeed, can not be expressed in relation to the privilege of the Senate without relating, at the same time, to Mr. Smith's right of holding a seat in this body; but, in that respect, the authority

¹ First session Tenth Congress, Senate Journal, p. 197; Annals, p. 39.

² Senate Journal, p. 210; Annals, p. 55.

of the committee extends only to proposal, and not to decision. But as he manifested a great solicitude to be heard before them, they obtained permission from the Senate to admit his attendance, communicated to him the evidence in their possession, by which he was inculpated, furnished him, in writing, with the questions arising from it which appeared to them material, and received from him the information and explanations herewith submitted as part of the facts reported. But Mr. Smith has claimed as a right to be heard in his defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the United States. But it is before the Senate itself that your committee conceived it just and proper that Mr. Smith's defense of himself should be heard. Nor have they conceived themselves bound in this inquiry by any other rules than those of natural justice and equity, due to a brother Senator on the one part and to their country on the other.

Mr. Smith represents himself on this inquiry as solitary, friendless, and unskilled, contending for rights which he intimates are denied him; and the defender of senatorial privileges which he seems apprehensive will be refused him by Senators, liable, so long as they hold their offices, to have his case made their own. The committee are not unaware that, in the vicissitudes of human events, no member of this body can be sure that his conduct will never be made a subject of inquiry and decision before the assembly to which he belongs. They are aware that, in the course of proceeding which the Senate may now sanction, its members are marking out a precedent which may hereafter apply to themselves. They are sensible that the principles upon which they have acted ought to have the same operation upon their own claims to privilege as upon those of Mr. Smith; the same relation to the rights of their constituents which they have to those of the legislature which he represents. They have deemed it their duty to advance in the progress of their inquiry with peculiar care and deliberation. They have dealt out to Mr. Smith that measure, which, under the supposition of similar circumstances, they would be content to find imparted to themselves; and they have no hesitation in declaring that, under such imputations, colored by such evidence, they should hold it a sacred obligation to themselves, to their fellow-Senators, and to their country, to meet them by direct, unconditional acknowledgment or denial, without seeking a refuge from the broad face of day in the labyrinth of technical forms.

In examining the question whether these forms of judicial proceedings, or the rules of judicial evidence, ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume, as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents, domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a member must, in its nature, be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

The power of expelling a member for misconduct results, on the principles of common sense, from the interest of the nation, that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man, whom his fellow-citizens have honored with their confidence, on the pledge of a spotless reputation, has degraded himself by the commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison had reached the heart.

The question upon the trial of a criminal cause, before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquittal, and the verdict of not guilty, perhaps, in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence, and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial, and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished is but as one to ten compared with the interest of the party that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public

confidence; it substitutes the sentence of mercy for the doom of justice; and in the eyes of impartial reason, in the great majority of cases, must be considered rather as a pardon than a justification.

But when a member of a legislative body lies under the imputation of aggravated offenses, and the determination upon his cause can operate only to remove him from a station of extensive powers and important trust, this disproportion between the interest of the public and the interest of the individual disappears; if any disproportion exist, it is of an opposite kind. It is not better that ten traitors should be members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But, in the former it would strike at the vitals of the nation; in the latter it might, though deeply to be lamented, only be the calamity of an individual.

By the letter of the Constitution the power of expelling a Member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

The spirit of the Constitution is, perhaps, in no respect more remarkable than in the solicitude which it has manifested to secure the purity of the Legislature by that of the elements of its composition. A qualification of age is made necessary for the Members, to insure the maturity of their judgment; a qualification of long citizenship, to insure a community of interests and affections between them and their country; a qualification of residence, to provide a sympathy between every Member and the portion of the Union from which he is delegated; and to guard, as far as regulation can guard, against every bias of personal interest, and every hazard of interfering duties, it has made every Member of Congress ineligible to office which he contributed to create, and every officer of the Union incapable of holding a seat in Congress. Yet, in the midst of all this anxious providence of legislative virtue, it has not authorized the constituent body to recall in any case its representative. It has not subjected him to removal by impeachment; and when the darling of the people's choice has become their deadliest foe can it enter the imagination of a reasonable man that the sanctuary of their legislation must remain polluted with his presence until a court of common law, with its pace of snail, can ascertain whether his crime was committed on the right or on the left bank of the river; whether a puncture of difference can be found between the words of the charge and the words of the proof; whether the witnesses of his guilt should or should not be heard by his jury; and whether he was punishable, because present at an overt act, or intangible to public justice, because he only contrived and prepared it? Is it conceivable that a traitor to that country which has loaded him with favors, guilty to the common understanding of all mankind, should be suffered to return unquestioned to that post of honor and confidence, where, in the zenith of his good fame, he had been placed by the esteem of his countrymen, and in defiance of their wishes, in mockery of their fears, surrounded by the public indignation, but inaccessible to its bolt, pursue the purposes of treason in the heart of the national councils? Must the assembled rulers of the land listen with calm and indifference, session after session, to the voice of notorious infamy, until the sluggard step of municipal justice can overtake his enormities? Must they tamely see the lives and fortune of millions, the safety of present and future ages, depending upon his vote, recorded with theirs, merely because the abused benignity of general maxims may have remitted to him the forfeiture of his life?

Such, in very supposable cases, would be the unavoidable consequences of a principle which should offer the crutches of judicial tribunals as an apology for crippling the Congressional power of expulsion. Far different, in the opinion of your committee, is the spirit of our Constitution. They believe that the very purpose for which this power was given was to preserve the Legislature from the first approaches of infection. That it was made discretionary because it could not exist under the procrastination of general rules; that its process must be summary, because it would be rendered nugatory by delay.

Passing from the constitutional view of the subject to that which is afforded by the authority of precedent your committee find that, since the establishment of our present National Legislature, there has been but one example of expulsion from the Senate. In that case the Member implicated was called upon, in the first instance, to answer whether he was the author of a letter, the copy of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself, and declining in both cases to answer, the fact of his having written it was established by a comparison of his handwriting, and by the belief of persons who had seen him write, upon inspection of the letter. In all these points the committee perceive the admission of a species of evidence which in courts of criminal jurisdiction would be excluded, and, in the resolution of expulsion, the Senate declared the person inculpated guilty of a high misdemeanor,

although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case.

This event occurred in July, 1797. About fifteen months before that time, upon an application from the legislature of Kentucky, requesting an investigation by the Senate of a charge against one of the Members from that State, of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt, by a majority of 16 votes to 8, the report of a committee, purporting that the Senate had no jurisdiction to try the charge, and that the memorial of the Kentucky legislature should be dismissed. There were, indeed, very sufficient reasons of a different kind assigned in the same report for not pursuing the investigation, in that particular case, any further; and your committee believe that in the reasoning of that report some principles were assumed and some inferences drawn which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which were clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress since the adoption of the Constitution. And the subject, being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because of the sixteen Senators who, in March, 1796, voted for the report dismissing the memorial of the Kentucky legislature, eleven, on the subsequent occasion, in July, 1797, voted also for that report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet, if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offense of Mr. Blount as they had supposed themselves upon the allegation against Mr. Marshall.

Those parts of the fifth and sixth articles, amendatory to the Constitution, upon which the report in the case of Mr. Marshall appears to rely for taking away the jurisdiction of the Senate, your committee suppose, can only be understood as referring to prosecutions at law. To suppose that they were intended as restrictions upon powers expressly granted by the Constitution to the Legislature, or either of its branches, would, in a manner, annihilate the power of impeachment as well as that of expulsion. It would lead to the absurd conclusion that the authority given for the purpose of removing iniquity from the seats of power should be denied its exercise in precisely those cases which most loudly called for its energies. It would present the singular spectacle of a legislature vested with powers of expelling its members, of impeaching, removing, and disqualifying public officers for trivial transgressions beneath the cognizance of the law, yet forbidden to exert them against capital or infamous crimes.

Those two articles were in substance borrowed from similar regulations contained in that justly celebrated statute which for so many ages has been distinguished by the name of the Great Charter of England. Yet in that country, where they are recognized as the most solid foundations of the liberties of the nation, they have never been considered as interfering with the power of expelling a member, exercised at all times by the House of Commons; a power which there, however, rests only upon parliamentary usage, and has never been bestowed, as in the Constitution of the United States, by any act of supreme legislation. From a number of precedents which have been consulted, it is found that the exercise of this authority there has always been discretionary, and its process always far otherwise than compendious in the prosecutions before the judicial courts. So far, indeed, have they been from supposing a conviction at law necessary to precede a vote of expulsion, that, in one instance, a resolution to demand a prosecution appears immediately after the adoption of the resolution to expel. In numerous cases the Member submits to examination, adduces evidence in his favor, and has evidence produced against him, with or without formal authentication; and the discretion of the House is not even restricted by the necessary concurrence of more than a bare majority of the votes.

The provision in our Constitution which forbids the expulsion of a Member by an ordinary majority, and requires for this act of rigorous and painful duty the assent of two-thirds, your committee consider as a wise and sufficient guard against the possible abuse of this legislative discretion. In times of heat and violent party spirit, the rights of the minority might not always be duly respected, if a majority could expel their Members under no other control than that of their own discretion. The operation of this rule is of great efficacy, both over the proceedings of the whole body and over the conduct of every individual Member. The times when the most violent struggles of contending parties occur—when the conflict of opposite passions is most prone to excess—are precisely the times when the numbers are most

equally divided. When the majority amounts to the proportion of two-thirds, the security in its own strength is of itself a guard against extraordinary stretches of power; when the minority dwindles to the proportions of one-third, its consciousness of weakness dissuades from any attempts to encroach upon the rights of the majority, which might provoke retaliation. But if expulsion were admissible only as a sequel to the issue of a legal prosecution, or upon the same principles and forms of testimony which are established in the criminal courts, your committee can see no possible reason why it should be rendered still more imbecile by the requisition of two-thirds to give it effect.

It is now the duty of your committee to apply the principles which they have here endeavored to settle and elucidate to the particular case upon which the Senate have directed them to report. The bills of indictment found against Mr. Smith at the late session of the circuit court of the United States at Richmond (copies of which are herewith submitted) are precisely similar to those found against Aaron Burr. From the volume of printed evidence communicated by the President of the United States to Congress, relating to the trial of Aaron Burr, it appears that a great part of the testimony which was essential to his conviction, upon the indictment for treason, was withheld from the jury upon an opinion of the court that Aaron Burr, not having been present at the overt act of treason alleged in the indictment, no testimony relative to his conduct or declarations elsewhere, and subsequent to the transactions on Blennerhassett's Island, could be admitted. And in consequence of this suppression of evidence the traverse jury found a verdict "that Aaron Burr was not proved to be guilty, under that indictment, by any evidence submitted to them." It was also an opinion of the court that none of the transactions, of which evidence was given on the trial of Aaron Burr, did amount to an overt act of levying war, and, of course, that they did not amount to treason. These decisions, forming the basis of the issue upon the trials of Burr, anticipated the event which must have awaited the trials of the bills against Mr. Smith, who, from the circumstances of his case, must have been entitled to the benefit of their application; they were the sole inducements upon which the counsel for the United States abandoned the prosecution against him.

Your committee are not disposed now to question the correctness of these decisions on a case of treason before a court of criminal jurisdiction. But whether the transactions proved against Aaron Burr did or did not amount, in technical language, to an overt act of levying war, your committee have not a scruple of doubt on their minds that, but for the vigilance and energy of the Government and of faithful citizens under its directions, in arresting their progress and in crushing his designs, they would in a very short lapse of time have terminated not only in a war, but in a war of the most horrible description, in a war at once foreign and domestic. As little hesitation have your committee in saying that, if the daylight of evidence, combining one vast complicated intention, with overt acts innumerable, be not excluded from the mind by the curtain of artificial rules, the simplest understanding can not but see what the subtlest understanding can not disguise—crimes before which ordinary treason whitens into virtue; crimes of which war is the mildest feature. The debauchment of our Army, the plunder and devastation of our own and foreign territories, the dissolution of our national Union, and the root of interminable civil war, were but the means of individual aggrandizement, the steps to projected usurpation. If the ingenuity of a demon were tasked to weave into one composition all the great moral and political evils which would be inflicted upon the people of these States, it could produce nothing more than a texture of war, dismemberment, and despotism.

Of these designs, a grand jury, composed of characters as respectable as this nation can boast, have, upon the solemnity of their oaths, charged John Smith with being an accomplice. The reasons upon which the trial of this charge has not been submitted to the verdict of a jury have been shown by your committee, and are proved by the letter from the attorney of the United States for the district of Virginia, herewith reported. And your committee are of the opinion that the dereliction of the prosecution on these grounds can not, in the slightest degree, remove the imputation which the accusations of the grand jury have brought to the door of Mr. Smith.

Your committee will not permit themselves to comment upon the testimony which they submit herewith to the Senate, nor upon the answers which Mr. Smith has given as sufficient for his justification. Desirous as the committee have been that this justification might be complete, anxiously as they wished for an opportunity of declaring their belief of his innocence, they can neither control nor dissemble the operation of the evidence upon their minds; and, however painful to their feelings, they find themselves compelled, by a sense of duty, paramount to every other consideration, to submit to the Senate, for their consideration, the following resolution:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States. And that he be therefore, and hereby is, expelled from the Senate of the United States.”

Mr. Adam also submitted a further report, made in response to a supplemental direction of the Senate, in relation to an allegation that John Smith had taken the oath of allegiance to the King of Spain. But as inquiry had shown the oath to have been taken previously to the election of Mr. Smith, no further order was taken on this charge.

Mr. Smith at this time submitted an answer, but as a portion of this answer contained irrelevant charges against Judge Nimmo, the answer was returned in order that those portions might be expunged.

On January 4¹ the President of the Senate communicated the revised answer of Mr. Smith in the form of a letter. This letter was read on the 7th, and represented that all the evidence adduced by the committee, excepting two bills of indictment, was either taken *ex parte* or without allowing Mr. Smith sufficient time to interrogate the witnesses. It asked for the aid of counsel, for time, and for the means of adducing proof in his defense. It admitted that there was no necessity for a legal conviction previous to the expulsion of a Member from the Senate, but contended that proof of the facts charged must be first established in a legal way, and that then the Senate could only exercise its legal right of expulsion.

Mr. Smith thereupon arose and submitted his request in the form of the following motion:

That John Smith be informed specifically of the charges against him; that he be allowed to make a defense against such charges, and have process to compel the attendance of witnesses, and the privilege of being heard by counsel.

After debate on this request, the Senate unanimously agreed to the following resolution:

Resolved, That Mr. Smith be heard by counsel, not exceeding two, to show cause why the report of the committee should not be adopted.

The other requests were not allowed, the debate showing the opinion on the part of Senators that they were not in accordance with the dignity of the Senate and the propriety of proceeding.

On January 13² Mr. Smith informed the Senate that he had engaged Luther Martin and Francis S. Key as his counsel. A question being taken on agreeing to these as counsel, Mr. Key was accepted by the Senate and Mr. Martin was rejected. Subsequently Mr. R. G. Harper was admitted as counsel.

Mr. Smith then by his counsel offered an affidavit setting forth the facts which he claimed he could prove in exculpation, and also submitted a request for an extension of time in which to obtain testimony.

Time was allowed and the case continued, with the presentation of testimony and affidavits, until April 5 and 6,³ when the case was argued before the Senate by

¹ Senate Journal, pp. 211, 213; Annals, pp. 66–78.

² Senate Journal, p. 217; Annals, p. 82.

³ Senate Journal, pp. 260, 261; Annals, pp. 186–234.

counsel. Thereafter the case was debated at length until April 9,¹ when the vote was taken on the resolution proposed by the committee. And there were yeas 19, nays 10, not the required two-thirds, and the resolution was not agreed to.

1265. In the early days of the secession movement a question arose as to the right to expel a defiant Senator representing a seceding State.—On March 8, 1861,² Mr. Lafayette S. Foster, of Connecticut, proposed the following in the Senate:

Whereas L. T. Wigfall, now a Senator of the United States from the State of Texas, has declared in debate that he is a foreigner; that he owes no allegiance to this Government, but that he belongs to and owes allegiance to another and foreign state and government; Therefore

Resolved, That the said L. T. Wigfall be, and he hereby is, expelled from this body.

Mr. Thomas L. Clingman, of North Carolina, moved to amend the resolution by striking out all after the word “whereas” and in lieu thereof inserting:

It is understood that the State of Texas has seceded from the Union and is no longer one of the United States: Therefore

Resolved, That she is not entitled to be represented in this body.

A debate arose over the question, it being contended by Mr. Clingman and others that expulsion was punitive and that it was improper to expel a Senator for words spoken in debate; that if Mr. Wigfall actually was a foreigner it was a question going to qualifications and should be dealt with by another process.

Finally, by a vote of yeas 28, nays 16, the Senate proceeded to executive business.

1266. By a single resolution the Senate expelled several Senators for a treasonable conspiracy against the Government.—On July 10, 1861,³ Mr. Daniel Clark, of New Hampshire, proposed the following in the Senate:

Whereas a conspiracy has been formed against the peace, union, and liberties of the people and Government of the United States, and in furtherance of such conspiracy a portion of the people of the States of Virginia, North Carolina, South Carolina, Tennessee, Arkansas, and Texas have attempted to withdraw those States from the Union, and are now in arms against the Government; and

Whereas James M. Mason and Robert M. T. Hunter, Senators from Virginia; Thomas L. Clingman and Thomas Bragg, Senators from North Carolina; James Chestnut, jr., a Senator from South Carolina; A. O. P. Nicholson, a Senator from Tennessee; William K. Sebastian and Charles B. Mitchel, Senators from Arkansas, and John Hemphill and Louis T. Wigfall, Senators from Texas, have failed to appear in their seats in the Senate, and to aid the Government in this important crises, and it is apparent to the Senate that said Senators are engaged in said conspiracy for the destruction of the Union and Government, or with full knowledge of such conspiracy have failed to advise the Government of its progress or aid in its suppression: Therefore

Resolved, That the said Mason, Hunter, Clingman, Bragg, Chestnut, Nicholson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby are, each and all of them, expelled from the Senate of the United States.

On July 11 the resolution was debated, and Mr. Milton S. Latham, of California, moved to amend the resolution by inserting before the word “said,” in the second line, the words “names of,” and by striking out the words “expelled from the

¹ Senate Journal, p. 263; Annals, pp. 238–323.

² Globe, second session Thirty-sixth Congress, pp. 1446–1451; Election Cases, Senate Document 11, special session Fifty-eighth Congress, p. 954.

³ First session Thirty-seventh Congress, Globe, pp. 40, 62–64; Election Cases, Senate Document 11, special session Fifty-eighth Congress, p. 957.

Senate of the United States,” and inserting “stricken from the roll, and their seats declared vacant,” so that the resolution will read:

Therefore resolved, That the names of said Mason, Hunter, Clingmam, Bragg, Chestnut, Nicholson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby are, each and all of them, stricken from the roll, and their seats declared vacant.

This amendment was disagreed to, yeas 11, nays 32.

Then the resolution as originally presented was agreed to, yeas 32, nays 10.

1267. For bearing arms against the Government John C. Breckinridge was summarily expelled from the Senate.—On December 4, 1861,¹ Mr. Zachariah Chandler, of Michigan, in the Senate, submitted the following resolution for consideration:

Resolved, That John C. Breckinridge be, and he hereby is, expelled from the Senate.

The Senate proceeded, by unanimous consent, to consider the resolution; and the same having been amended, on the motion of Mr. Trumbull, to read as follows:

Whereas John C. Breckinridge, a Member of this body from the State of Kentucky, has joined the enemies of his country, and is now in arms against the Government he has sworn to support: Therefore

Resolved, That said John C. Breckinridge, the traitor, be, and he hereby is, expelled from the Senate.

On the question to agree to the resolution as amended it was determined in the affirmative, yeas 37, nays none.

1268. “For sympathy with and participation in the rebellion” a Senator was expelled, after examination of his case by a committee.—On December 10, 1861,² Mr. Solomon Foote, of Vermont, presented the following resolution, which on the subsequent day was referred to the Committee on the Judiciary, with instructions to inquire into the facts:

Resolved, That Waldo P. Johnson, a Senator from the State of Missouri, by his sympathy with and participation in the rebellion against the Government of the United States has been guilty of conduct incompatible with his duty and station as a Senator; and that he be therefor, and hereby is, expelled from the Senate of the United States.

On January 9, 1862, Mr. Lyman Trumbull, of Illinois, presented the following report:

The Committee on the Judiciary, to whom was referred a resolution for the expulsion from the Senate of Waldo P. Johnson, a Senator from the State of Missouri, submit the following report:

Previous to his election to the Senate Mr. Johnson was known in Missouri as entertaining secession proclivities, and to sympathize and cooperate with the prominent citizens of that State who are now in open rebellion against the Government. He was elected to the Senate by a legislature which has since sought to array the State against the Union. Since his election he is reported to have made a speech evincing a spirit hostile to the Government, which speech was extensively published in the State of Missouri without public contradiction from him. He has not appeared in his seat in the Senate since the session began; and though the resolution for his expulsion was proposed in the Senate on the 10th day of December and referred to this committee on the 12th day of December, 1861, and has been

¹ Second session Thirty-seventh Congress; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 959.

² Second session Thirty-seventh Congress; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 962.

extensively published in Missouri and other parts of the Union, the said Johnson has wholly failed to furnish any reason for his absence, or explanation of the charges of disloyalty urged against him.

The failure of said Johnson for so long a period to appear in his place to discharge the high duties incumbent upon him for the preservation of the Republic in this time of rebellion against its authority, and his silence under the imputations upon his loyalty which, from their publicity, could not have escaped his notice if within a loyal portion of the Union, of themselves furnish strong presumptive grounds against his fidelity to the Government.

His whereabouts at this time the committee have been unable, with actual certainty, to ascertain. They are satisfied that, had he been so disposed, there was nothing to prevent his attendance on the Senate at its commencement; and when last heard from he was reported to have gone voluntarily within the lines of rebels in arms against the Government.

Under these circumstances, the committee are of the opinion that he ought to be expelled from the body, and they accordingly report the resolution back to the Senate with a recommendation that it do pass.

The resolution was agreed to by the Senate, yeas 35, nays 0.

1269. For a letter implying friendship with the foes of the Government Jesse D. Bright was expelled from the Senate.

The nature and method of exercise of the power of expulsion discussed by the Senate.

A Senator was present during consideration of a resolution for his own expulsion, and participated in the debate.

On December 16, 1861,¹ Mr. Morton S. Wilkinson, of Minnesota, presented the following in the Senate:

Whereas the Hon. Jesse D. Bright heretofore, on the 1st day of March, 1861, wrote a letter, of which the following is a copy:

“WASHINGTON, *March 1, 1861.*”

“MY DEAR SIR: Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards a great improvement in firearms. I commend him to your favorable consideration as a gentleman of the first respectability, and reliable in every respect.

“Very truly, yours,

“JESSE D. BRIGHT.”

“To His Excellency JEFFERSON DAVIS,

“President of the Confederation of States.””

And whereas we believe the said letter is evidence of disloyalty to the United States, and is calculated to give aid and comfort to the public enemies: Therefore,

Resolved, That the said Jesse D. Bright be expelled from his seat in the Senate of the United States.

At the same time another letter of Air. Bright, explanatory of his opposition to coercive measures by the Government, and declaring his support of the Union, was presented, and, with the resolution, was referred to the Committee on the Judiciary.

On January 13, 1862,² Mr. Edgar Cowan, of Pennsylvania, submitted the following report:

The Committee on the Judiciary, to whom was referred a resolution to expel the Hon. Jesse D. Bright from his seat in the United States Senate, respectfully report:

That they are of opinion that the facts charged against Mr. Bright are not sufficient to warrant his expulsion from the Senate; and they therefore recommend that the resolution do not pass.

¹Second session Thirty-seventh Congress, Globe, p. 89; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 964.

²Globe, P. 287.

The committee, however, were not unanimous. Mr. Lyman Trumbull, of Illinois, chairman, stated in debate¹ that the letter seemed to imply, not an expression of opinion, but a distinct act of hostility to the Government in time of war.

Speaking on January 21,² Mr. Charles Sumner, of Massachusetts, cited the cases of Blount and Smith in support of his contention that in a case of expulsion the Senate was not governed by judicial rules, and was at liberty to exercise a discretion unknown to judicial bodies.

Speaking on January 25,³ Mr. Garrett Davis, of Kentucky, said:

Whenever a Member of this House forms opinions, and in his official character and acts carries out those opinions, positively or negatively, in such a manner as to render him an unfit and unsafe member of the Senate, he becomes a proper subject of removal from the body. * * * There is no common law, no statutory law, there is no parliamentary law that binds the Senate to any particular definition of crime or offense in acting in this or any other case of the kind.

Mr. Davis, acting in harmony with these principles, proposed the expulsion fully as much because Mr. Bright opposed the conduct of the Administration as for the writing of the letter. Those opposing expulsion, notably Mr. Edgar Cowan, of Pennsylvania,⁴ urged that the issue should be confined strictly to the letter, and that it should be interpreted in view of the state of affairs existing when it was written. Mr. Sumner had conceived that Jefferson Davis and his associates were public, open, unequivocal traitors at the time the letter was written, and that the letter was intended to aid the treason. Mr. Cowan conceived that it was a mere letter of introduction given without treasonable intent.

Mr. James A. Bayard, of Delaware, speaking on February 5,⁵ while admitting that by the terms of the Constitution the power of expulsion was absolute in two-thirds of the members, held that it was none the less a judicial action, and the great leading principles of evidence could not be abandoned. Difference of opinion would not justify expulsion. In the case of Smith and Blount they were charged with distinct and specific acts of criminal misconduct. They were also defended by counsel. In this case Mr. Bayard conceived that there was no treasonable intent or act.

The debate on the report extended through January 20–31, and February 4 and 5.⁶ Mr. Bright had no counsel, but was present during the debate and participated in it freely.

On March 5 the question was taken on agreeing to the resolution proposed by Mr. Wilkinson, and it was agreed to, yeas 32, nays 14. So Mr. Bright was expelled.

The following was then agreed to:

Ordered, That the Vice-President be requested to transmit to the executive of the State of Indiana a copy of the resolution expelling Jesse D. Bright from the Senate, attested by the Secretary of the Senate.

¹ Globe, p. 396.

² Globe, p. 413.

³ Globe, pp. 434, 435.

⁴ Globe, p. 471.

⁵ Globe, pp. 647, 648.

⁶ Globe, pp. 391–398, 412–419, 431–435, 447–454, 470, 539, 545, 559–564, 582–592, 622–629, 644–655; Appendix, pp. 37–42.

1270. For expressions hostile to the Government, absence from his seat, and presence within the lines of the enemy, Trusten Polk was expelled from the Senate.

A Member of the Senate being expelled, the Senate notified the governor of his State.

On December 18, 1861,¹ in the Senate, Mr. Charles Sumner, of Massachusetts, submitted the following resolution, which was referred to the Committee on the Judiciary:

Resolved, That Trusten Polk, of Missouri, now a traitor to the United States, be expelled, and he hereby is, expelled, from the Senate.

On January 9, 1862, Mr. John C. Ten Eyck, of New Jersey, presented, from the Committee on the Judiciary, the following report:

The Committee on the Judiciary, to whom was referred the resolution of the Senate for the expulsion of Trusten Polk, a Senator from the State of Missouri report:

That it appears to the satisfaction of the committee that Trusten Polk recently, and since the commencement of the present rebellion, in a letter transmitting pecuniary means to aid in the publication of a secession newspaper in southwestern Missouri, among other disloyal and treasonable expressions used the following: "Dissolution is now a fact; not only a fact accomplished, but thrice repeated. Everything here looks like inevitable and final dissolution. Will Missouri hesitate a moment to go with her Southern sisters? I hope not. Please let me hear from you. I would be glad to keep posted as to the condition of things in southwest Missouri. I like Governor Jackson's position. It looks like adherence to the 'Jackson resolutions.'"

That a copy of this letter was published in full in the Congressional Globe of the 19th of December last, the day after the resolution of expulsion in this case was introduced in the Senate, and has also, both before and since that time, been published and referred to in several other newspapers in Missouri and elsewhere and widely circulated throughout the country, which publication could hardly have failed to come to the notice of Senator Polk; and yet neither he nor any other person in his behalf has appeared before the committee to deny the authenticity of the letter referred to, or attempted in any other way to deny or explain it, so far as the committee are aware; a course of conduct deemed to be wholly incompatible with the idea of his innocence; since an innocent man in his position, according to the first impulses of a true and loyal heart, would not have suffered a moment to elapse without flying to his place to deny, if false, so grave and foul a charge.

That besides this he has not only failed to appear in his seat during the whole time of the continuance of the present session, now a period of six weeks, to perform his duty to his State and to the Union on an occasion of the greatest possible urgency, when the votes as well as counsel of every true and loyal Senator were eminently needed in providing for the public welfare and in putting down a fierce rebellion threatening the very existence of the Union, but, on the contrary, as the committee are fully satisfied on information derived from reliable official and other sources in Missouri, has left his home in St. Louis and gone clandestinely within the lines of the enemy, now in open armed rebellion against the United States, whose Constitution he, as Senator, has solemnly sworn to support.

The committee, under this state of facts, are of opinion that justice to the Senate, to rid its roll of his name as well as the Chamber of his presence; justice to the State of Missouri, whose high commission he has dishonored, and justice to the Union, which he has sought to betray, all require that he should no longer continue a member of this body.

They therefore respectfully report the resolution for the expulsion of Trusten Polk, a Senator from Missouri, back to the Senate, with the unanimous recommendation that the same do pass.

On agreeing to the resolution, there appeared—yeas 36, nays 0.

¹Second session Thirty-seventh Congress; Election Cases, Senate Document No. 11, special session, p. 960.

Thereupon, on motion of Mr. Lyman Trumbull, of Illinois—

Ordered, That the Vice-President be requested to transmit to the governor of the State of Missouri copies of the resolutions expelling Waldo P. Johnson and Trusten Polk from the Senate, attested by the Secretary of the Senate.

1271. The Senate did not consider Lazarus W. Powell worthy of expulsion because he had formerly counseled his State to be neutral between the Government and its enemies.—On February 20, 1862,¹ in the Senate, Mr. Morton S. Wilkinson, of Minnesota, proposed the following, which was referred to the Committee on the Judiciary:

Whereas Lazarus W. Powell, a Senator from the State of Kentucky, after 11 States had published their ordinances of secession by which to sever themselves from the Government of the United States, had formed a confederation and provisional government, and made war upon the United States, did, on the 20th day of June last, at the city of Henderson, in the State of Kentucky, attend a large Southern States' rights convention, over which he was called to and did preside; and, on taking his seat as president thereof, made a speech, in which he stated the object of said convention, and then appointed a committee, which reported to said convention a long series of resolutions that were unanimously adopted by it. Among those resolutions are the following:

"2. That the war being now waged by the Federal Administration against the Southern States is in violation of the Constitution and laws, and has already been attended with such stupendous usurpations as to amaze the world and endanger every safeguard of constitutional liberty.

* * * * *

"That the recall of the invading armies and the recognition of the separate independence of the Confederate States is the true policy to restore peace and preserve the relations of fraternal love and amity between the States.

* * * * *

"6. That we heartily approve the refusal of Governor Magoffin to furnish Kentucky troops to subjugate the South; and we cordially indorse his recent proclamation defining the position of Kentucky, in accordance with the sentiment of her people, and forbidding the invasion of Kentucky by Federal or Confederate troops.

"7. That, although Kentucky has determined that her proper position at present is that of strict neutrality between the belligerent sections, yet, if either of them invade her soil against her will, she ought to resent and repel it by necessary force."

The pith of Governor Magoffin's proclamation, which that convention so cordially approved, is embodied in this paragraph: "I hereby notify and warn all other States, separate or united, especially the United and Confederate States, that I solemnly forbid any movement upon Kentucky soil, or occupation of any part or place therein, for any purpose whatever, until authorized by invitation or permission of the legislative and executive authorities. I especially forbid all citizens of Kentucky, whether in the State guard or otherwise, from making any hostile demonstration against any of the aforesaid sovereignties; to be obedient to the orders of lawful authorities; to remain quietly and peaceably at home when off of military duty, and refrain from all words and acts likely to provoke a collision, and so otherwise to conduct themselves that the deplorable calamity of invasion may be averted; but, in the meantime, to make prompt and efficient preparation to assume the paramount and supreme law of self-defense, and strictly of self-defense alone."

The closing speech of this convention was made by Senator Powell, and the resolutions passed by it and a summary statement of its proceedings were signed by him as its president.

On the 10th of September last, whilst the legislature of Kentucky was in session in the town of Frankfort, and after her territory had been invaded at two distant points by the Confederate armies, and whilst Humphrey Marshall was employed in organizing and drilling an aimed body of rebels in

¹Second session Thirty-seventh Congress, Globe, p. 891; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 891.

the contiguous county of Owen, a large Southern States' rights convention assembled and held its sessions in Frankfort for the apparent purpose of overawing the legislature, controlling its deliberations, and deterring it from passing measures to support the Union and the Government of the United States, Lazarus W. Powell was a delegate to that convention from the county of Henderson, and was appointed on its committee of resolutions. Among other resolutions, that committee reported these:

Resolved, That every material interest of Kentucky, as well as the highest dictates of patriotism, demand that peace should be maintained within her borders, and this convention solemnly pledges the honor of its members to do all in their power to promote this end.

"2. That it is the deliberate sense of this convention, and it is believed of an overwhelming majority of the people of Kentucky, that the best and perhaps the only mode of effecting this great object is by adhering strictly, rigidly, and impartially to her chosen and often declared position of neutrality during the existence of the deplorable war now raging between the sections, taking sides neither with the Government nor with the seceding States, and declaring her soil must be preserved inviolate from the armed occupation of either.

* * * * *

"9. That we consider it incompatible with the neutrality avowed by Kentucky to vote money for the prosecution of the civil war, or to tax the people of the State, or augment its debt for a purpose so unwise and for a cause so hopeless as the military subjugation of the Confederate States."

This was a convention of most intense secessionists, and was attended by John C. Breckinridge and many of the leaders of that party from generally over the State. William Preston and R. W. Wooley, esqs., made speeches to it fraught with the rankest treason and denouncing the fiercest war against the United States. Its resolutions were unanimously adopted, and its business closed with the following one, offered by Senator Powell:

Resolved, That Col. William Preston, George W. Johnson, esq., General Lucius Desha, Capt. Richard Hawes, and Thomas P. Porter, esq., be, and they are hereby, appointed a committee of organization, in order to carry out the purposes of this convention, and full powers are conferred upon them for that object."

Those men were thus commissioned in the cause of conspiracy, treason, and rebellion. By the warrant given them, on the motion of Senator Powell, they went forth and organized or advised and assisted in the organization of armed bands of traitors, and soon thereafter led them into the Confederate camps, where they are yet struggling to consummate the disruption of the Union and the overthrow of the Constitution and laws of the United States. From the beginning of this great rebellion to the present time Senator Powell has neither done nor said anything in Congress or out of Congress to strengthen or sustain the United States in this mighty struggle for national life. Whilst the true and loyal men of his own State were engaged in an arduous and protracted struggle to bring her to perform her duty to the Nation and its government, he not only withheld from them all assistance and sympathy, but gave to the rebels the moral force of his disloyal position and opinions, and all the aid and comfort which he could render them short of the commission of technical treason. His purposes, if not his acts, have been treasonable. Being an ex-governor of the State of Kentucky and one of her Senators in Congress, his example and counsel have doubtless been potential with her people and of mischievous tendency in other States. Under the false and delusive cry of neutrality and peace, and the absurd purpose to protect the soil of the State against invasion from the military force of the United States, he has doubtless assisted to seduce hundreds and hundreds from loyalty and duty into rebellion and treason. He has not supported the Constitution of the United States, but he has sounded the charge to his recruits, and they have made the overt attack upon it. Wherefore—

Be it resolved, That the said Lazarus W. Powell be, and he is hereby, expelled from the Senate.

March 7¹ there was reference to the subject in debate, and on March 12 Mr. Lyman Trumbull, of Illinois, chairman of the committee, reported back the resolution with the recommendation that it do not pass. On March 14,² at the conclusion of the debate, Mr. Trumbull gave the reasons for the report:

I consider it due to the committee, whose organ I was in reporting adversely to the passage of this resolution, simply to state, not by way of argument, or of provoking reply, the ground upon which the committee reported adversely to the passage of this resolution. It was not because the committee

¹ Globe, p. 1112.

² Globe, p. 1234.

approved of the doctrine of neutrality in Kentucky. In my judgment that was a most mischievous position and one wholly untenable, either in April, or June, or September; but it is known that the people of Kentucky very generally assumed that ground, and the Government of the United States, if they did not recognize the neutrality of Kentucky, we may at least say paid some respect to it. The resolutions that were adopted, in which they declared that the United States had no right to pass its troops over the soil of Kentucky, were, in my judgment, preposterous. It was downright opposition to the constituted authorities of the Government; wholly unjustifiable. I have no excuse for it. I think it is without excuse. But, sir, such was the position of the great body of the people of that State; and many persons now believe that it was owing to this position of neutrality which was then assumed that Kentucky has at last arrayed herself on the side of the Union. I do not think so, but good Union men doubtless did take that position.

Well, sir, the time came when, notwithstanding Kentucky had assumed this false attitude, it was necessary that her people should take sides either with the Government or against those arrayed for its protection. Some men who got upon this neutrality platform left it sooner than others; some in June, if you please; some earlier; some stood on it till September; but when the time came that Kentuckians had to meet this thing face to face, go with the Government or against it, fight for one or the other, then, sir, the traitors arrayed themselves, and undertook to get up a provisional government in the State of Kentucky. Breckinridge and the traitors alluded to by the Senator on my right [Mr. Davis] went into the organization; they joined the rebels; the Senator from Kentucky, whose case is under consideration, came here—came to the Government of the United States to discharge his duties here. He does not agree with me in sentiment; his opinions are not my opinions; I do not agree with the views that he has so often announced here; but he is entitled to his own opinions, and no man is to be expelled from this body because he disagrees with others in opinion. Since Kentucky assumed this position and took sides with the Union nothing has been shown to satisfy the committee, at least, that the Senator from Kentucky has had any communication or done anything to favor the cause of the rebellion. I think neutrality did favor it; but, sir, that is over now.

On March 13 and 14¹ Mr. Garrett Davis, of Kentucky, urged the expulsion. He began by showing that the legislature of Kentucky had requested Mr. Powell to resign and urged that he had ceased to represent the will of the loyal people of that State. He also charged that he was against coercing the seceding States and in favor of their recognition. He then proceeded to review his record in view of the events of the war.

On March 14² the resolution of expulsion was disagreed to, yeas 11, nays 28.

1272. A Senator having used words which might incite treason, a resolution of expulsion was proposed, but withdrawn after explanation.—In January, 1864,³ a proposition was made in the Senate to expel Mr. Garrett Davis, of Kentucky, for introducing in the Senate a resolution containing a sentence as follows:

The people North ought to revolt against their war leaders and take this great matter into their own hands.

Mr. Davis explained that he did not mean thereby to incite insurrection. The resolution of expulsion was withdrawn.

1273. The attempt to expel and the censure of B. F. Whittmore in the Forty-first Congress.

The House provided that a Member whom it was proposed to expel should be heard in his own defense.

¹ Globe, pp. 1208–1216, 1230–1234.

² Globe, p. 1234.

³ First session Thirty-eighth Congress, Globe, pp. 389–394.

A Member whose expulsion was proposed was permitted to present a written defense, but not to depute another Member to speak in his behalf.

The Speaker, being officially notified that a Member who was addressing the House had resigned, caused him to cease, and declined to recognize him further.

A Member may resign without the consent of the House.

A Member threatened with expulsion having resigned, the House ceased the proceedings of expulsion and censured him.

On February 21, 1870,¹ Mr. John A. Logan, of Illinois, from the Committee on Military Affairs, who were instructed to inquire into the alleged sale of appointments to the Military and Naval Academies by Members of Congress, submitted a report,² in writing, accompanied by the following resolution, vi:

Resolved, That B. F. Whittemore, a Representative in Congress from the First Congressional district of South Carolina, be, and is hereby, expelled from his seat as a Member of the House of Representatives in the Forty-first Congress.

The same having been read, together with the testimony accompanying the report, Mr. Benjamin F. Butler submitted the following resolution, which was read, considered, and, under the operation of the previous question, agreed to, viz:

Resolved, That B. F. Whittemore, a Member of this House, be permitted to appear at the bar of the House, on Wednesday next, at 2 o'clock p.m., to be heard in his defense, and show cause, if any he have, why sentence of expulsion should not be passed against him, as recommended by the Committee on Military Affairs.

On February 23 the Speaker³ ruled that Mr. Whittemore might, under the resolution, be heard either orally or in writing. So his affidavit was presented and read, in denial of the charge. After it had been read, Mr. Benjamin F. Butler, of Massachusetts, desired to be heard in behalf of the accused Member, having been deputed by him to make his defense.

The Speaker ruled that Mr. Whittemore in person was entitled to the floor for one hour, but that he could not depute the gentleman from Massachusetts [Mr. Butler] to act for him. Should the member of the committee give such a direction to the matter as to open discussion, the gentleman from Massachusetts might be recognized in his own right. But to allow any gentleman to appear and address the House on the ground that he had been deputed by the gentleman from South Carolina would take the matter out of the line of parliamentary proceeding. If one Member might be so deputed, fifty might be. The matter was entirely within control of the House, which, by refusing the previous question, could throw the matter open.

The Chair recognized the right of Mr. Whittemore to speak in person as superior to that of the gentleman from Illinois [Mr. Logan], who reported the matter from the committee, this superior right being given by the resolution.

¹ Second session Forty-first Congress, Journal, p. 373.

² The Congressional Globe, p. 1469, shows that Mr. Logan submitted the report as a question of privilege.

³ James G. Blaine, of Maine, Speaker.

⁴ Congressional Globe, p. 1523.

Mr. Whittemore then arose and yielded to Mr. Butler to represent him, which the latter proceeded to do, making the argument.

The point was raised that Mr. Whittemore, being in the position of one accused, was not bound by the hour rule of debate. The Speaker overruled this point, however.

On February 24, as the House was considering the resolution of expulsion, the Speaker laid before the House a communication from B. F. Whittemore, informing the House that he had transmitted to the governor of South Carolina his resignation of his seat in Congress. The same having been read, Mr. Whittemore was about to address the House, when the Speaker decided that, in view of the communication just read to the House, he could not recognize him as any longer a Member of the House or entitled to address the same.

Mr. Whittemore's notice to the Speaker that he had resigned did not reach the desk until after the speech had begun.¹ The Speaker, as soon as he read the notice of resignation, caused Mr. Whittemore to suspend his remarks, and ruled that it was not within the power of the Chair to recognize anyone not a Member of the House. Therefore he ruled that Mr. Whittemore might proceed only by unanimous consent of the House.

Question then arose as to the adoption of the resolution of expulsion. The precedents in the cases of Messrs. Gilbert and Matteson² were cited, in both of which the resolutions of expulsion were not passed after the resignations were tendered. It was stated by Mr. Logan as a precedent that in the case of Mr. Matteson the Speaker of the House refused to decide that the resignation was accepted and submitted the question to the House. Finally it was decided that the Member had resigned, and the resolution of expulsion was laid on the table. But resolutions condemning the conduct of the Member were adopted.

It was urged³ that a member of a parliamentary body could not resign without the consent of that body, since the contrary doctrine would menace the very existence of the body.

The Speaker said:

The uniform practice of the House of Representatives from the foundation of the Government has been that when the resignation of a Member has been handed in at the Clerk's desk the Chair must then cease to recognize him as a Member. * * * As this case may be cited as a precedent hereafter the Chair begs to make one further remark with regard to the decision as to Mr. Whittemore. It is that during the Thirty-sixth Congress, when there were the highest reasons of State, reasons of national importance against accepting resignations, when the Members from the States then going into rebellion resigned, their right to resign was in no instance questioned.

Mr. John F. Farnsworth, of Illinois, appealed from the decision that Mr. Whittemore should not be recognized as a Member of the House after the tender of his resignation. The appeal was laid on the table.⁴

The resolution of expulsion having been laid on the table, Mr. Logan then

¹ Globe, pp. 1544-1546.

² Who resigned February 27, 1857. See Section 1275 of this chapter.

³ By Messrs. N. P. Banks and H. L. Dawes.

⁴ On March 7, 1880, during consideration of another matter, this decision was commented on by Mr. Henry L. Dawes, of Massachusetts, who believed that the House should have the right to pass on a resignation. Second session Forty-first Congress, Globe, p. 1741.

reported from the Committee on Military Affairs, as a question of privilege, the following resolution, which was adopted by a vote of 187 yeas to 0 nays, 34 not voting.

Resolved, That B. F. Whittemore, late Member from the first district of South Carolina, did make appointments to the Military Academy at West Point and the Naval Academy at Annapolis in violation of law; and that such appointments were influenced by pecuniary considerations; and that his conduct in the premises has been such as to show him unworthy of a seat in the House of Representatives, and is therefore condemned as conduct unworthy of a representative of the people.

1274. The House refused to expel but censured a Member who had accepted money for appointing a cadet at the Military Academy.

A report of a committee is not necessarily signed by all those concurring in it.

An amendment proposing expulsion of a Member was agreed to by a majority vote, but on the proposition as amended a two-thirds vote was required.

The change of a single word in the text of a proposition is sufficient to prevent the Speaker ruling it out of order as one already disposed of by the House.

On March 16, 1870,¹ Mr. William L. Stoughton, of Michigan, as a question of privilege, submitted a report of the Committee on Military Affairs, recommending the adoption of the following resolution:

Resolved, That the House declares its condemnation of the action of Hon. Roderick R. Butler, Representative from the First district of Tennessee, in nominating Augustus C. Tyler, who was not an actual resident of his district, as a cadet at the Military Academy at West Point, and in subsequently receiving money from the father of said cadet for political purposes in Tennessee, as an unauthorized and dangerous practice.

This report was signed by 4 members only, but it was explained that 6 members had concurred in the vote on it, thus making it the report of the majority of the committee.

The minority also presented views, signed by 4 Members, recommending the adoption of this resolution as a substitute:

Resolved, That Roderick R. Butler, a Representative in Congress from the First Congressional district of Tennessee, be, and he is hereby, expelled from his seat as a Member of this House.

When the resolution recommended by the majority came up for consideration, Mr. John A. Logan, of Illinois, moved to amend by substituting the minority resolution. This amendment was agreed to, yeas 101, nays 68—a majority vote.

The amendment having been agreed to, the question recurred on agreeing to the resolution as amended, which had thereby become a resolution of expulsion. The Speaker stated that under the Constitution a two-thirds vote would be required.

There were yeas 102, nays 68—not a two-thirds vote—and the resolution was rejected.

Mr. Stoughton then offered a resolution which was the resolution originally reported by the majority of the committee, with the addition of these words: and he is hereby censured therefor.

¹Second session Forty-first Congress, Journal, pp. 481, 485, 487, 498; Globe, pp. 2002, 2031–2037.

Mr. Thomas W. Ferry, of Michigan, made the point of order that the House, upon the proposition of censuring the Member or expelling him, both ideas being separately before the House, had by a majority vote chosen expulsion and rejected censure, failing to finally carry the former by a two-thirds vote. This resolution was therefore not substantially a different proposition.

The Speaker¹ said:

The Chair overrules the point of order. The gentleman might not be able to offer the resolution in precisely the same words, but this is a different resolution, differently worded, and it is a question of privilege, and is in order at any time. * * * The difference of a single word would bring it within the rule of the House.

The resolution of censure was then agreed to, yeas 158, nays 0.

1275. Published charges of corruption sustained by declaration of a Member caused the House to investigate its membership.

A committee selected to investigate charges against Members generally did not ask special authority to proceed against one who was found to be implicated.

Members indicted by the report of a committee were allowed to file written statements to be printed with the reports.

Form of resolution for investigating charges of corruption among Members.

Instance wherein the Member proposing a committee of investigation was appointed chairman.

In proceedings for expulsion the House declined to give the Members a trial at the bar.

A Member against whom was pending a resolution of expulsion was permitted to address the House by unanimous consent.

The written protest of a Member against his proposed expulsion does not go onto the Journal except by order of the House.

Members accused of corruption having resigned, proceedings to expel them were discontinued.

A Member threatened with expulsion having resigned, the House nevertheless adopted resolutions censuring his conduct.

Whether or not it was proper to censure a Member who had resigned was held to be a question for the House and not the Chair.

On January 9, 1857,² Mr. William H. Kelsey, of New York, as a question of privilege, presented this resolution, which was agreed to:

Whereas certain statements have been published charging that Members of this House have entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures now pending before Congress; and

Whereas a Member of this House has stated that the article referred to "is not wanting in truth:"
Therefore,

Resolved, That a committee, consisting of 5 Members, be appointed by the Speaker, with power to send for persons and papers, to investigate said charges; and that said committee report the evidence taken, and what action, in their judgment, is necessary on the part of the House, without any unnecessary delay.

¹James G. Blaine, of Maine, Speaker.

²Third session Thirty-fourth Congress, Journal, p. 201; Globe, pp. 274-276.

The Speaker appointed on this committee Mr. Kelsey, and Messrs. James L. Orr, of South Carolina; H. Winter Davis, of Maryland; David Ritchie, of Pennsylvania, and Hiram Warner, of Georgia.

On February 19, 1857, the committee made several reports¹ affecting severally the following Members: William A. Gilbert, of New York; William W. Welch, of Connecticut; Francis S. Edwards, of New York, and Orsamus B. Matteson, of New York. Each report was accompanied by resolutions for the expulsion of the Member.

Mr. Kelsey submitted a minority report,² in which he dissented from the several reports on the ground that, according to the rules of the House and parliamentary law, the committee had no power to institute proceedings against any Member of the body under the resolution by which the committee was appointed. He quoted the rule of Jefferson's Manual:³

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him, but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him.

In their replies⁴ the accused Members insisted on this rule, quoting the opinions expressed at the time of the investigation of the Graves-Cilley duel. They also insisted that, as they had not been present when the testimony against them was given, they had been deprived of the proper opportunities for confronting their accusers. When the case of Mr. Gilbert was taken up in the House, on February 25, these objections of the accused were considered at length.⁵ It was urged by Mr. Schuyler Colfax, of Indiana, among others, that the accused should not be expelled without a public trial at the bar of the House.

Mr. Samuel A. Purviance, of Pennsylvania, moved this resolution⁶ as an amendment to the resolutions of expulsion:

Resolved, That this House will forthwith proceed with the trial of Hon. W. A. Gilbert, and that the Sergeant-at-Arms be directed to summon F. F. C. Triplett, James R. Sweeney, and other witnesses to the bar of the House; and that the said Gilbert be heard by himself or counsel.

Mr. Henry Winter Davis spoke at length in defense of the procedure of the committee, and cited as a controlling precedent the action of the Senate in the case of John Smith in 1807, quoting the entire report of Mr. John Quincy Adams in that case.⁷ He also quoted the precedents in the Brooks case in the House.

Mr. Purviance's resolution was disagreed to on February 27 by a vote of 110 nays to 82 yeas. The resolutions of expulsion were then considered, and Mr. Gilbert, by unanimous consent, addressed the House,⁸ and concluded his remarks by sending to the Clerk's desk to be read a paper in which he protested against the action of the

¹ House Report No. 243, third session Thirty-fourth Congress.

² Page 27 of House Report No. 243.

³ Jefferson's Manual, Sec. XI.

⁴ See replies, Appendix Report House of Representatives No. 243, third session Thirty-fourth Congress.

⁵ Third session Thirty-fourth Congress, Globe, pp. 883-900.

⁶ Globe, p. 901.

⁷ Globe, pp. 902-907.

⁸ Journal, p. 553; Globe, p. 925.

House, impeached the proceedings, and finally announced that he resigned his seat in the House.¹

Mr. James L. Seward, of Georgia, protested against the putting of the paper in the Journal.

The Speaker² said:

The paper will not go upon the Journal unless by direct order of the House. The only thing that will appear on the Journal will be the fact stated by the Member from New York, in his place, that he resigned his seat as a Member of this House.

Mr. Gilbert having resigned, the resolutions of expulsion, which recited also the charges, were laid on the table.

Mr. Edwards also resigned, and the resolutions of expulsion were laid on the table.³

In the case of Mr. Welch the resolutions of expulsion were amended by, the following substitute, offered by Mr. William Smith, of Maryland:

Resolved, That there has been no sufficient evidence elicited by the committee having charge of this subject and reported to this House in the case of William W. Welch, a Member thereof, and that no further proceeding should be had against said Member.

The case of Mr. Welch was debated at length,⁴ both as to the evidence and the propriety of the course of procedure. The opinion of John Quincy Adams, given in a similar case,⁵ was quoted:

It is the privilege of every Member to be heard and tried by the House itself.

Mr. Welch was also heard at length in his own behalf. The substitute was adopted by a vote of 119 yeas to 42 nays.

The resolutions in the case of Mr. Matteson were as follows:

Resolved, That Orsamus B. Matteson, a Member of this House from the State of New York, did incite parties deeply interested in the passage of a joint resolution for construing the Des Moines grant to have here and to use a large sum of money and other valuable considerations corruptly for the purpose of procuring the passage of said joint resolution through this House.

Resolved, That Orsamus B. Matteson, in declaring that a large number of the Members of this House had associated themselves together and pledged themselves each to the other not to vote for any law or resolution granting money or lands unless they were paid for it, has falsely and willfully assailed and defamed the character of this House and has proved himself unworthy to be a Member thereof.

Resolved, That Orsamus B. Matteson, a Member of this House from the State of New York, be, and is hereby, expelled therefrom.

Before the consideration of these resolutions⁶ had begun, a communication was presented announcing the resignation of Mr. Matteson from the House.

¹ On February 20 Mr. Thomas L. Clingman proposed as a question of privilege that "such Members of this House as are implicated by the special report of the select committee, submitted yesterday, have leave to file with the Clerk written answers to the allegations contained in said reports, which shall be printed with the said reports, provided that the printing of the reports shall not be delayed thereby."

The Speaker said that this should be submitted to the decision of the House, and the question being put, the proposition was agreed to. (Journal, p. 478; Globe, p. 785.)

² Nathaniel P. Banks, of Massachusetts, Speaker.

³ Journal, p. 566; Globe, p. 952.

⁴ Journal, p. 563; Globe, pp. 933-951.

⁵ Globe, vol. 6, No. 21, p. 323.

⁶ Journal, pp. 555-560; Globe, pp. 927-932.

A motion to lay the resolutions on the table having failed, the Speaker stated that the question recurred upon the resolutions.

Mr. Henry Bennett, of New York, made the point of order that it was not competent for the House to take any further action on the resolutions, on account of the resignation of Mr. Matteson.

The Speaker said:

The gentleman from New York raises the question of order that the resolutions can not be further considered by the House because the gentleman to whom they refer is no longer a Member of the House. The Chair admits the fact stated by the gentleman from New York, but states that he has no authority to determine that the House has no power to proceed further in the matter. That is a question which the House must determine for itself.

After debate on the appeal, it was laid on the table; and so the decision of the Chair was sustained.¹

The question next recurred on the resolutions, and the first resolution was agreed to, yeas 145, nays 17. The second resolution was also agreed to, without division. The third resolution was then laid on the table, without division. In the debate the position was taken that as Mr. Matteson was no longer a Member of the House there was nothing to be acted on; but it was urged, on the other hand, that the House might, by acting on the first two resolutions, express its opinion as to whether or not the facts reported by the committee were true.

1276. An investigating committee of the House having taken testimony affecting a Member of the Senate, the House transmitted the same to the Senate.

A Senator's term having expired before a pending resolution of expulsion was agreed to, the Senate discontinued the proceedings.

A citizen who, while a Member of the Senate, had been subjected to investigation, was allowed to submit a paper to be filed and printed with the report.

The Senate declined to permit an ex-Member to print in the Journal or Record a defense of his conduct.

On February 4, 1873,² in the Senate, the presiding officer laid before that body the following message:

IN THE HOUSE OF REPRESENTATIVES, *February 4, 1873.*

Mr. Poland, from the select investigating committee, etc., submitted the following, which was agreed to:

"Whereas the evidence taken by a select committee of this House appointed December 2, 1872, for the purpose of examining into charges of bribery of Members of this House, contains matter affecting Members of the Senate: Therefore

Resolved, That the Clerk of the House be directed to transmit to the Senate a copy of all the evidence thus far reported to the House by said committee, together with a copy of this resolution."

Attest:

EDW. MCPHERSON, *Clerk.*

¹Journal, p. 556; Globe, pp. 928, 929.

²Third session Forty-second Congress, Globe, p. 1076; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 973.

Thereupon Mr. James W. Patterson, of New Hampshire, who was named in the message, proposed this resolution, which was agreed to:

Resolved, That a select committee, consisting of 5 Senators, be appointed by the presiding officer, to whom shall be referred the communication this day received from the House of Representatives in relation to matter affecting Members of the Senate, together with a copy of the evidence accompanying the same, and that the said committee have power to send for persons and papers and to employ a clerk.

On February 5¹ the Chair appointed the committee, Mr. Lot M. Morrill, of Maine, being chairman.

On February 6² Messrs. John W. Stevenson, of Kentucky, and John P. Stockton, of New Jersey, severally asked to be relieved from service on the committee, and the Senate by vote in each case refused to excuse them.

On February 27³ Mr. Morrill, of Maine, from the select committee to whom was referred the communication of the House of Representatives of the 4th instant, in relation to certain matter affecting Members of the Senate, together with a copy of the evidence accompanying the same, submitted a report (No. 519) accompanied by the following resolution:

Resolved, That James W. Patterson be, and he is hereby, expelled from his seat as a Member of the Senate.

On March 1 and 3³ the propriety of taking up the report was debated, but the Congress expired without action, and Mr. Patterson's term expired.

On March 14, 1873,⁴ at the special session of the Senate in the next Congress, Mr. Henry B. Anthony, of Rhode Island, submitted the following:

Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain Members of the Senate, "that James W. Patterson be, and he is hereby, expelled from his seat as a Member of the Senate;" and

Whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and

Whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a Member of the body: Therefore,

Resolved, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

Resolved further, That Mr. Patterson have leave to make a statement, which shall be entered upon the Journal of the Senate and published in the Congressional Record.

On March 25⁵ Mr. Anthony modified the resolution by striking out the portion relating to the Journal, but there was opposition to allowing the privilege of publication in the Record to a private individual, and on March 23⁶ the resolution was amended to read as follows, and as amended was adopted:

Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain Members of the Senate, "that James W. Patterson be, and he is hereby, expelled from his seat as a Member of the Senate;" and

Whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and

¹ Globe, p. 1099.

⁴ Forty-third Congress, Record, p. 77.

² Globe, pp. 1136, 1137.

⁵ Record, pp. 193–197.

³ Globe, pp. 2068, 2069, 2184, 2185.

⁶ Record, p. 204.

Whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a Member of the body: Therefore,

Resolved, That the pamphlet entitled "Observations on the report of the committee of the Senate of the United States respecting the Credit Mobilier of America," submitted by Mr. Patterson, be received, filed, and printed with the report of said committee.

1277. A Member being charged with the crime of manslaughter, the House declined to determine whether or not a question of privilege was raised and did not investigate.

It being claimed that a charge of crime against a Member involved a question of privilege, the Speaker submitted the question to the House.

The House has laid on the table a question submitted by the Speaker as to whether or not a question of privilege was involved in a pending proposition.

On May 15, 1856,¹ Mr. Ebenezer Knowlton, of Maine, submitted the following resolution and preamble, claiming the same to be a matter of privilege:

Whereas a difficulty occurred at Willard's Hotel, in this city, on the 8th instant, between Hon. Philemon T. Herbert, a Member of this House from the State of California, and Thomas Keating, a waiter at said hotel, which resulted in the death of said Keating from a pistol shot fired by said Herbert; and whereas upon the examination of said case before Justices Smith and Birch, of the District of Columbia, the said justices were divided in their opinion as to the propriety of allowing said Herbert to obtain bail; and whereas said Herbert was then taken, on a writ of habeas corpus, before Thomas H. Crawford, judge of the criminal court of the District of Columbia, and the decision of said judge was as follows: "That the prisoner enter into a recognizance, with one or more good surety or sureties, in the sum of \$10,000, conditioned for his appearance at the next term of the criminal court of the District of Columbia, to be holden on the third Monday of June next, to answer to the charge of manslaughter on Thomas Keating, and not to depart the jurisdiction of the court without the leave thereof;" and whereas the Constitution provides "that each House of Congress shall be the judge of the qualifications of its own Members, and may punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member" Therefore,

Resolved, That the Committee on the Judiciary of this House be, and they are hereby, instructed to take the case of the above-named Philemon T. Herbert into consideration; that they have the power to send for persons and papers, and report to this body at their earliest convenience what action the House shall take in the premises.

Mr. Howell Cobb, of Georgia, raised the question of order that a question of privilege was not involved in the said preamble and resolution.

The Speaker² said:

It is not for the Chair to determine whether the facts assumed are true, or whether it be a question of privilege or not. But if it be claimed by the gentleman from Maine that it involves a question of privilege, the Chair will submit the question to the House whether it will entertain the resolution as a question of privilege.

"Is a question of privilege involved therein?" was then submitted to the House, whereupon, on motion of Mr. Alexander H. Stephens, of Georgia, and by a vote of yeas 79, nays 70, the question was laid on the table.³

¹ First session Thirty-fourth Congress, Journal, pp. 975, 976; Globe, p. 1228.

² Nathaniel P. Banks, jr., of Massachusetts, Speaker.

³ On February 24, IS57, on petition of citizens of California, the matter was considered, but the House determined not to investigate the subject. (Third session Thirty-fourth Congress, Journal, p. 531; Globe, p. 843.)

1278. A Senator being indicted for fraud made a personal explanation and withdrew from the Senate pending the trial.—On January 17, 1905,¹ in the Senate, Mr. John H. Mitchell, of Oregon, rising to a question of privilege, said:

Mr. President and Senators, recent events, with which you are all familiar, make it incumbent on me to come into your presence at this time and make answer to charges made against me in the public press and by a grand jury, and which charges, if true, unfit me to occupy this seat longer.

The charges, as spread broadcast through the public press, throughout the length and breadth of the United States—and this is in substance and effect the indictment reported—we to the effect that in January, 1902, in the State of Oregon, I entered into a conspiracy with Binger Hermann, then Commissioner of the General Land Office, and with one S. A. D. Puter, Horace G. McKinley, D. W. Tarpley, Emma L. Watson, Salmon B. Ormsby, Clark E. Loomis, William H. Davis, and others to defraud the United States out of a portion of its public lands, situated in township 11 south, of range 7 east, Walamette Meridian, in the State of Oregon, by means of false and forged applications, affidavits, and proofs of homestead entries and settlement; and, further, it is charged, that in furtherance of said alleged conspiracy, and to effect the objects thereof, said S. A. D. Puter did on the 9th day of March, 1902, pay and deliver to me the sum of \$2,000 in money of the United States, the same being paid to me, as asserted by Puter, in two bills of the denomination of \$1,000 each, to induce me to use my influence as a Senator with the said Binger Hermann, Commissioner of the General Land Office, to induce him, as such Commissioner of the General Land Office to pass to patent 12 homestead entries, then pending before the General Land Office, covering lands in the State of Oregon, and each and all of which entries, it is alleged, were based upon false and forged homestead applications, affidavits, and proofs, and that in pursuance of such corrupt conspiracy, it is alleged, I did use my influence with said Binger Hermann, Commissioner of the General Land Office, to induce him to pass to patent said 12 homestead entries, knowing they were fraudulent.

These are the charges made against me, and which I am called upon to answer. My answer is as follows:

Having given his answer, Mr. Mitchell concluded:

In conclusion, permit me to declare that the representatives of any government who will tolerate or permit this, much less sanction it, are unworthy of the exalted positions they occupy.

As for myself, I defy them here and now to produce any evidence, worth a moment's consideration, which will connect me in any wrongful manner whatever with any land frauds in Oregon or elsewhere.

Now, having said this much in explanation of and in answer to the charges against me, and thanking you all sincerely for your courteous attention, I will not further intrude on your presence.²

1279. The Senate election case of Alexander Caldwell, from Kansas, in the Forty-second Congress.

The election of a Senator being thoroughly tainted with bribery, the Senate was proceeding to unseat him when he resigned.

Discussion of the effect of the participation of the candidate himself in bribery and its relation to the amount and the proven effect.

A Senator having resigned, the Senate desisted from proceedings to declare his seat vacant or to expel him.

On February 17, 1873.³ Mr. Oliver P. Morton, of Indiana, in the Senate submitted the following report:

On the 11th day of May, 1872, the Senate adopted the following resolution:

Resolved, That the Committee on Privileges and Elections be authorized to investigate the election of Senator S. C. Pomeroy by the legislature of Kansas in 1867, and the election of Senator Alex-

¹Third session Fifty-eighth Congress, Record, pp. 959–963.

²Mr. Mitchell died before his case assumed such a phase as to call for action by the Senate.

³Third session Forty-second Congress, Senate Report No. 451; Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 429.

ander Caldwell in 1871; that the committee have power to send for persons and papers; that the chairman or acting chairman of said committee or any subcommittee thereof have power to administer oaths; and that the committee be authorized to sit in Washington or elsewhere during the session of Congress and in vacation.”

In obedience to this resolution the Committee on Privileges and Elections have had under consideration the election of Alexander Caldwell to the Senate of the United States in January, 1871, have taken testimony, and beg leave to submit the following report:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. Caldwell, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. Caldwell, Mr. Caldwell should pay him the sum of \$15,000, for which amount notes were given and afterwards paid, at the same time taking from Mr. Carney a written instrument in which he pledged himself in the most solemn manner not to be a candidate for the office of Senator in the approaching election.

This instrument is in the words following:

“I hereby agree that I will not under any condition of circumstances be a candidate for the United States Senate in the year 1871 without the written consent of A. Caldwell, and in case I do to forfeit my word of honor hereby pledged. I further agree and bind myself to forfeit the sum of \$15,000, and authorize the publication of this agreement.

“THOS. CARNEY.

“TOPEKA, *January 18, 1871.*”

Mr. Smith’s testimony is fully corroborated by that of Mr. Carney, who admits the execution of the paper, the making of the arrangement, the taking of the notes, and the subsequent receipt of the money. The notes for the money were signed by Mr. Smith, but paid by Mr. Caldwell; and one of them, for \$5,000, was made contingent upon Mr. Caldwell’s election. The substance of the whole agreement, only a part of which was expressed in the writing, was that Mr. Carney should not be a candidate for the Senate against Mr. Caldwell; that he should use his influence for Mr. Caldwell, go to Topeka, meet the legislature, and do all he could to secure his election.

The first question to be considered is: Was this arrangement corrupt? Was it the use of corrupt means on the part of Mr. Caldwell to procure his election? The committee are of opinion that it was corrupt; was against public policy; was demoralizing in its character; directly contributed to destroy the purity and freedom of election, and not to be tolerated by the Senate of the United States as a means of procuring a seat in that body.

To understand the full nature of the transaction we must consider the character and position of Mr. Carney. He had been a governor of Kansas; he had once been elected a Senator of the United States by the legislature of that State, but the election was premature, being at the wrong session; he had been a candidate for the Senate at another time, and had come within 10 votes of being elected. He was well known throughout the State, had a large body of active friends, many of whom were warmly devoted to his political fortunes. His being a candidate would greatly endanger the success of Mr. Caldwell, if not certain to result in his defeat. He was from the same city with Mr. Caldwell, and his candidacy would be the more dangerous on that account. When Mr. Caldwell agreed to give him \$15,000 under this arrangement it was an attempt to purchase the votes of the friends of Mr. Carney. He doubtless expected that Mr. Carney, through his influence over his friends, could bring them over to his support. They would naturally become friends to the man with whom Mr. Carney was friendly. It was, at least, a tacit part of this arrangement that Mr. Carney should conceal the mercenary part of the transaction, and place his withdrawal from the canvass and his support of Mr. Caldwell upon personal and political considerations that were honorable to himself and would be attractive to his friends; and this he did. Mr. Carney went to Topeka before the Senatorial election and remained there until it was over, working industriously for Mr. Caldwell, and exerting all his personal and political influence to secure his election. Looking at the transaction in its real character it was a sale upon the part of Mr. Carney of the votes of his personal and political friends in the legislature, to be delivered by him to Mr. Caldwell as far as possible. If it were legitimate for Mr. Caldwell to buy off Mr. Carney as a candidate, it was equally legitimate to buy off all the other candidates and have the field to himself, by which he would exert a quasi-coercion upon the members of the legislature to vote for him, having

no other candidate to vote for. It was an attempt to buy the votes of members of the legislature, not by bribing them directly, but through the manipulations of another. The purchase money was not to go to them but to Mr. Carney, who was to sell and deliver them without their knowledge. That Mr. Caldwell did procure the votes of members of the legislature, friends of Mr. Carney, ignorant of the fact that Mr. Carney was making merchandise of his political character and influence, and of their friendship for him, for which he was to receive a large sum of money, the evidence leaves no reasonable doubt.

Buying off opposing candidates, and in that way securing the votes of all or the most of their friends, is in effect buying the office. It recognizes candidacy for office as a merchantable commodity, a thing having a money value, and is as destructive to the purity and freedom of elections as the direct bribery of members of the legislature.

A candidate for the Senate without strength or merit may by purchasing the influence and support of all or a part of his competitors and withdrawing them from the canvass succeed in an election, thus not only committing a fraud upon the friends of the candidates who were purchased off, but a greater fraud upon the people of the State, who may be thus saddled with a representative in the Senate of the United States about whom they know little, for whom they care nothing, and who possesses little ability to represent their interests.

Mr. Smith, the friend of Mr. Caldwell, testifies that he paid Mr. Carney the further sum of \$7,000 while at Topeka and just before the Senatorial election to meet Mr. Carney's alleged expenses while there, and through fear that Mr. Carney would after all withdraw from the arrangement and become a candidate.

Upon the check for this sum the money was drawn from the bank at Topeka in the evening by one T. J. Anderson, who testified that he gave it to Mr. Carney, and that he was ignorant of the consideration for which it was paid. Other testimony impeaches that of Mr. Anderson and raises a strong presumption that he was engaged in the purchase of votes for Mr. Caldwell, and for which this \$7,000 was used, and that for his services he afterwards received the sum of \$5,000 from Mr. Caldwell. Mr. Carney swears positively that he did not receive this \$7,000 or any part of it, but he indorsed the check at the request of Mr. Smith to enable him to procure the money from the bank; that the money was to be used in procuring votes for Mr. Caldwell, and that a package containing this money, as he believes, was placed by Mr. Anderson on a table in Mr. Carney's room, where it could be and was conveniently carried off by the parties for whom it was intended.

Taking all the testimony together, the probability is that Mr. Carney did not get the \$7,000, as no good reason was presented by Mr. Smith why, when Mr. Caldwell was holding Governor Carney's written promise not to be a candidate and Mr. Carney holding notes to be paid by Mr. Caldwell for \$15,000, a new arrangement should be made by which Mr. Smith should pay Mr. Carney \$7,000 more, making \$22,000 in all.

We now come to the consideration of the transaction with Mr. Sidney Clarke. He had been a Member of Congress, had been a candidate for the United States Senate during the preceding canvass before the people, and many members of the legislature were elected upon personal pledges to vote for him for Senator. When the first vote was taken in the separate houses Mr. Clarke received 27 votes, the largest number given for any candidate but one; but the votes satisfied him and his friends that he could not be elected. An arrangement was concluded between Mr. Caldwell and a Mr. Stevens, a friend of Mr. Clarke, at a late hour in the night before the joint convention of the two houses, by which Mr. Caldwell was to pay Mr. Clarke's expenses in the canvass, estimated at from \$12,000 to \$15,000, and Mr. Clarke was to withdraw in favor of Mr. Caldwell. At a caucus of the friends of Mr. Clarke, held at 9 o'clock on the morning of the joint convention when Mr. Caldwell was elected, Mr. Clarke made a speech and urged them to vote for Mr. Caldwell, and in joint convention his name was withdrawn and all his friends but one voted for Mr. Caldwell. Subsequently in this city Mr. Clarke had several conferences with Mr. Caldwell, in which the latter promised to comply with his engagement with Mr. Stevens and pay Mr. Clarke's expenses, estimated at from \$12,000 to \$15,000, but never did. Mr. Clarke was unwilling to admit that he had made an agreement to transfer his friends to Mr. Caldwell in consideration of the latter's promise to pay this money, but taking all the testimony together the committee have no doubt that the transaction between him and Mr. Clarke was as has been stated. Mr. Caldwell's subsequent refusal to pay the money to Mr. Clarke does not relieve the character of the transaction, and very probably resulted in the exposure of Mr. Caldwell and the institution of this examination.

There was nothing in the evidence to show that Mr. Clarke's expenses in the Senatorial canvass or in the preceding canvass before the people amounted to half the sum which Mr. Caldwell was to pay him.

Mr. Carney and Mr. Clarke each testifies that Mr. Caldwell told them after the election that his election had cost him \$60,000. Mr. Anthony, the mayor of the city of Leavenworth, testified that Mr. Caldwell admitted to him that the election had cost him over \$60,000. Mr. Burke, editor of the Leavenworth Herald, and a supporter of Mr. Caldwell in his canvass, testifies that after the election Mr. Caldwell told him that the money he had paid Mr. Carney was not more than 10 per cent of the whole amount which the election had cost him, and on another occasion that the election had cost him more than twice his entire salary.

The committee have had much difficulty in tracing the money transactions; but the evidence shows that various sums, amounting to over \$50,000, were drawn under circumstances that make it probable they were used to procure Mr. Caldwell's election. The sum of \$15,000, paid to Mr. Carney, has already been stated. The second sum of \$7,000, which Mr. Len. T. Smith swears was paid to Mr. Carney, and which Mr. Carney denies receiving, and testifies to circumstances showing it was used for the bribery of members of the legislature, has also been referred to. It is further shown that three or four days before the election took place Mr. Caldwell's agent went into the banking house of Scott & Co., at Leavenworth, and drew the sum of \$10,000 upon Mr. Caldwell's check for the a vowed purpose of taking the money to Topeka by the train that morning, which was given as the reason for presenting the check before bank hours. Mr. Jacob Smith, banker at Topeka, testified that at 9 o'clock in the evening before the election took place Doctor Morris, of Leavenworth, a very active friend of Mr. Caldwell, drew \$5,000 from his bank, and that Judge Crozier, of Leavenworth, an influential supporter of Mr. Caldwell, and then at Topeka laboring for his election, drew \$1,200 from the bank after banking hours at the request of Mr. Smith, which was handed over to Mr. Smith. The testimony left no doubt upon the minds of the committee that the bankers who honored these different checks at Topeka after banking hours understood that the money was to be used for political purposes. The evidence further shows that Mr. T. J. Anderson subsequently received from Mr. Caldwell the sum of \$5,000 for his services in the election. A draft for \$10,000, drawn by the solicitor of the Kansas Pacific Railroad Company upon the treasurer of that company, was presented at the Kansas Valley Bank, of Topeka, by Mr. T. J. Anderson on the 23d of January, the day before the election, and the money drawn upon it under circumstances which, taken in connection with other testimony, make it probable that the money was used for Mr. Caldwell's election. The committee have no reason to believe that they have traced all the money that was used, and in the foregoing statement have taken no account of several small sums shown to have been paid by Mr. Caldwell for the expenses of his friends while at Topeka.

Mr. William Spriggs, a former treasurer of Kansas, testified in regard to a self-constituted committee of six of Mr. Caldwell's leading friends who met from time to time at Topeka during the day and evening for five or six days before the election to confer and report progress in electioneering for Mr. Caldwell; that during the meetings of this committee it was reported by Mr. Smith what members of the legislature had been secured to vote for Mr. Caldwell, how much was offered to others, and how much was asked by others. We quote from his testimony:

"We usually met at 10 o'clock in the morning. We had a roll of the senate and of the house and kept them, and we would compare notes, and then such a member of the committee would be sent that day or at such a time to see such members of the house and such another one to see somebody else—whoever we thought would be the best man for that particular place; and then we would meet again at such another hour and report what we had done and what success we had had, and in some quite a number of times—I do not know how many. In making the report and comparing notes there was one member of the committee would report; in calling over the names he would come to such and such a man and he would say, "We had better not count that man yet; that is under negotiation and he is a little too high; I think I can bring him down some."

This witness testified to several interviews with Mr. Caldwell, and we quote from his testimony: "I will just tell you what Mr. Caldwell said to me about it. He asked me if I knew any members of the legislature that could be influenced by the use of money for their votes, and I told him that I knew two members I believed that had the reputation of having been influenced in their votes on former occasions."

And further on:

“He said if I found any members that wanted a little money for votes to send them to him and to Len. Smith.

“Mr. Caldwell said there was another class of high-toned gentlemen there in the legislature that would not sell their votes, but they put it in this way: That they had been to a pretty heavy expense in carrying their election and they would want their expenses paid, and if I met with any of that class to send them to him or to Len.”

The testimony of Mr. Spriggs is very full and shows that the canvass of Mr. Caldwell was thoroughly corrupt and that money was the chief argument relied upon. Among many other things, he stated that T. J. Anderson told him that he had paid Mr. Crocker, a member of the house, \$1,000 for his vote; that Mr. Crocker afterwards backed out and handed the money over to a Mr. Carson to be returned to Mr. Anderson; that Carson got on the cars, went home, and kept the money. Carson was afterwards called by the committee and corroborated the statement, admitting that he had received the \$1,000 back from Mr. Crocker to be returned to Mr. Anderson, but that he had kept the money himself for his services to Mr. Caldwell. Mr. Carney testifies that in an interview with Mr. Caldwell after the election, in which he was urging him to procure an appointment for one of Mr. Carney's friends who had voted for him, Mr. Caldwell took from his pocket a memorandum book and appeared to run over a list of names, and coming to the man referred to said, “That man has been paid;” and Mr. Carney understood from his manner that he had in this memorandum book a list of members, with the sums paid to each; that Mr. Caldwell told him upon another occasion that he had paid Mr. Bayers the sum of \$2,500 for his vote and Mr. James F. Legate the sum of \$1,000 for his vote. Mr. Anthony also swears that in a conversation with Mr. Caldwell that gentleman admitted to him that he had paid \$2,500 for the vote of Mr. Bayers. There is much testimony showing that Len. T. Smith, Frank Drenning, James L. McDowell, George A. Smith, and T. J. Anderson, among the most active friends of Mr. Caldwell during the canvass, admitted at different times that they had offered money to members of the legislature to vote for Mr. Caldwell, in some cases specifying the members to whom it was offered and paid and in other cases that offers had been made that had not been accepted, and that negotiations were on hand with others which had not been completed. These men have denied before the committee all conversations and admissions of this character and all payment of money to members or offers to pay them, and several members of the legislature who were implicated have expressly denied that they received the money or that offers were made them.

Mr. Caldwell offered testimony showing that Mr. Carney had made threats to have him ousted from the Senate; that Mr. Anthony was hostile to him; that Mr. Burke had a lawsuit with him growing out of money furnished to Mr. Burke about the time of the election; and to contradict several statements of Mr. Clarke. The most important contradictions of the testimony produced against Mr. Caldwell are made by members of the legislature who were themselves implicated or by the agents of Mr. Caldwell who were directly charged with taking a part in these corrupt practices, and there are some contradictions made by witnesses against whom there is no cause of suspicion. But taking the testimony altogether, the committee can not doubt that money was paid to some members of the legislature for their votes and money promised to others which was not paid and offered to others who did not accept it.

By the Constitution each House of Congress is made the judge of elections, returns, and qualifications of its Members.

If a person elected to the Senate has not the constitutional qualifications, or if the election is invalid by reason of fraud or corruption, the jurisdiction to examine and determine is expressly vested in the Senate.

Another clause of the Constitution authorizes the Senate to expel a Member by a two-thirds vote. The causes for which a Senator may be expelled are not limited or defined, but rest in the sound discretion of the Senate.

It has been a subject of discussion in the committee whether the offenses of which they believe Mr. Caldwell to have been guilty should be punished by expulsion or go to the validity of his election, and a majority are of the opinion that they go to the validity of his election and had the effect to make it void. Wherefore the committee recommend to the Senate the adoption of the following resolution:

Resolved, That Alexander Caldwell was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas.

This report was the subject of a long and learned debate, extending from March 10 to 22, 1873.¹ At first the theory of the report in regard to the common law of England was assailed, and it was denied that, even were the English law as stated, it was of effect in a case like this. The doctrine that participation of the candidate in bribery voided the election even though the amount of bribery proven was not sufficient to change the result was strongly antagonized. It was pointed out that Mr. Caldwell had a majority of 25 votes, and that only a few of these at most could be impeached. It was further urged that the Senate might not inquire into the qualifications of the members of the legislature, and one Senator even took the ground that if every legislator had been bribed, their act of electing a Senator would yet be unassailable. On March 13² Mr. James L. Alcorn, of Mississippi, proposed for action at a future time this resolution:

Resolved, That the Senate, acting as the judge of the election, returns, and qualifications of its own Members, has the power under the Constitution to reject Senators-elect whose election shall have been proved to the satisfaction of the Senate to have been tainted by bribery, fraud, or intimidation.

On March 21³ Mr. Orris S. Ferry, of Connecticut, moved—

to amend the resolution by striking out the following words, “was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas,” and in lieu thereof inserting “be, and he hereby is, expelled from the Senate of the United States.”

The debate continued until March 24,⁴ when the Vice-President laid before the Senate a letter from Mr. Caldwell, showing that he had resigned his seat in the Senate.

Thereupon Mr. Morton said:

It is hardly competent for the Senate to expel a man who is not a Member, or to declare a seat vacant that is already vacant by resignation.

Therefore he ceased to press the question.

1280. Instances of expulsion proposed in the Senate but not effected.

On February 27, 1873,⁵ a special committee of the Senate who had investigated charges against Senator James W. Patterson, of New Hampshire, reported a resolution for his expulsion. The resolution was not acted on.

1281. In 1862⁶ the Senate considered the case of James F. Simmons, Senator from Rhode Island.

July, 2, 1862, near the end of Mr. Simmons's second term in the Senate, a resolution was submitted that he be expelled from the Senate. The preamble stated that it appeared from a report of the Secretary of War that Mr. Simmons had exercised his official influence over certain of the heads of the Departments in procuring an order authorizing a certain person to manufacture rifles in behalf of the Government for the Army and Navy, and that Mr. Simmons had agreed to receive as a compensation for such services the sum of \$50,000, and that he had already received two

¹ Special session Forty-third. Congress, Record, pp. 30–38, 41–47, 48–62, 66–77, 80–89, 90–102, 104–113, 118–125, 126–134, 137–154, 154–164.

² Record, p. 76.

³ Record, p. 137.

⁴ Record, pp. 164, 165.

⁵ Third session Forty-second Congress, Globe, pp. 1872, 1873, 2184.

⁶ Election Cases, Senate Document No. 11, Special Session, 58th Cong., p. 970.

promissory notes amounting to \$10,000. July 8 the resolution was referred to the Committee on the Judiciary by a vote of 31 yeas to 7 nays. July 14 the committee reported that the facts were substantially as above given, and that they were of opinion that "such a practice is entirely indefensible, and that it was highly improper for a Senator of the United States to have acted thus, even when the Government sustained no loss thereby;" that it was manifest that Congress disapproved of such conduct from the fact that they had promptly passed a law making it a penal offense thereafter; but that to visit a severe penalty upon an act which at the time of its commission was not punishable or forbidden by public law would be retroactive in its effect, and render the step liable to that objection to which all post facto laws are justly subject. The committee unanimously reported back the resolution, accompanied by the statement of facts, that the Senate might take such action as they might think fit. No action was taken. Congress adjourned within three days after the report was made, and Mr. Simmons had resigned his seat in the Senate before the next session.

1282. The Senate case of Joseph R. Burton, in the Fifty-ninth Congress.

A Senator convicted in the courts resigned after the Senate had ordered an inquiry.

Summary and discussion of laws regulating the conduct of Representatives and Senators.

The Congress may by law impose certain restrictions on the conduct of Senators and Representatives without conflicting with the fundamental idea of the Constitution.

There is no necessary connection between the conviction of a Senator under Sec. 1782, R. S., and the right of the Senate to punish one of its Members.

A final judgment of conviction under section 1782, R. S., does not operate ipso facto to vacate the seat of a convicted Senator or compel the Senate to expel him.

Senators can not properly be said to hold their places "under the Government of the United States."

The Senate took steps looking to punishment of a convicted Senator, although an application for rehearing of an appeal was pending.

Instance wherein the Senate was informed by the governor of a State that one of the Senators of that State had resigned.

On May 22, 1906,¹ in the Senate, Mr. Eugene Hale, of Maine, offered the following resolution, which was agreed to:

Resolved, That the Committee on Privileges and Elections be, and are hereby, directed to examine into the legal effect of the late decision of the Supreme Court in the case of Joseph R. Burton, a Senator from the State of Kansas, and, as soon as may be, to report their recommendation as to what action, if any, shall be taken by the Senate.

Mr. Burton had been convicted under sections 3929, 4041, and 1782 of the Revised Statutes, which provide against the use of the mails for fraudulent purposes and forbid Senators or Representatives from receiving compensation for services

¹First session Fifty-ninth Congress, Record, p. 7211.

rendered before any department, etc., of the United States Government. He had been twice convicted, and this decision was rendered on Mr. Burton's appeal from the second conviction. The Supreme Court refused to reverse the judgment of the circuit court.

The opinion of the court, rendered May 21, 1906,¹ by Mr. Justice Harlan, among other features, examined section 1782, which is as follows:

Sec. 1782. 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 ten thousand dollars, 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.²

1. The first question to be considered is whether section 1782 is repugnant to the Constitution of the United States. This question has been the subject of extended discussion by counsel. But we can not doubt the authority of Congress by legislation to make it an offense against the United States for a Senator, after his election and during his continuance in office, to agree to receive or to receive compensation for services to be rendered or rendered to any person, before a Department of the Government, in relation to a proceeding, matter, or thing in which the United States is a party or directly or indirectly interested.

The principle that underlies section 1782 is not wholly new in our legislative history. For instance, by the act of March 3, 1863,³ it was declared that Members of Congress shall not practice in the Court of Claims. Later Congress by statute declared that no Member of or Delegate to Congress shall directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States by any officer or person authorized to make contracts on behalf of the United States; and every person violating this section was to be deemed guilty of a misdemeanor and fined \$3,000.⁴

Counsel for the accused insists that section 1782 is in conflict with the fundamental idea of the Federal system, namely, that the Government is one of "limited powers, with duties and restrictions imposed, and no authority is lodged anywhere to change those duties or restrictions, except the power reserved by the people." The proposition here stated is certainly not to be disputed; for it is settled doctrine, as declared by Chief Justice Marshall and often repeated by this court, that "the Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."⁵ We do not, however, perceive that there has been in the statute before us any departure from that salutary doctrine.

It is said that the statute interferes, or by its necessary operation will interfere, with the legitimate authority of the Senate over its members, in that a judgment of conviction under it may exclude a Senator from the Senate before his constitutional term expires; whereas, under the Constitution, a Senator is elected to serve a specified number of years, and the Senate is made by that instrument the sole judge of the qualifications of its members, and, with the concurrence of two-thirds, may expel a Senator from that body. In our judgment there is no necessary connection between the conviction of a Senator of a public offense prescribed by statute and the authority of the Senate in the particulars named. While the framers of the Constitution intended that each Department should keep within its appointed sphere of publication, it was never contemplated that the authority of the Senate to admit

¹This was the second decision of the court in Senator Burton's case.

²13 Stat., 123, c. 119.

³12 Stat., 765, c. 92; R. S., 1058.

⁴R. S., 3739.

⁵*Martin v. Hunter, Lessee*, 1 Wheat., 304, 343.

to a seat in its body one who had been duly elected as a Senator, or its power to expel him after being admitted, should in any degree limit or restrict the authority of Congress to enact such statutes, not forbidden by the Constitution, as the public interests required for carrying into effect the powers granted to it. In order to promote the efficiency of the public service and enforce integrity in the conduct of such public affairs as are committed to the several Departments, Congress, having a choice of means, may prescribe such regulations to those ends as its wisdom may suggest, if they be not forbidden by the fundamental law. It possesses the entire legislative authority of the United States. By the provision in the Constitution that "all legislative powers herein granted shall be vested in a Congress of the United States," it is meant that Congress, keeping within the limits of its powers and observing the restrictions imposed by the Constitution, may, in its discretion, enact any statute appropriate to accomplish the objects for which the National Government was established. A statute like the one before us has direct relation to those objects, and can be executed without in any degree impinging upon the rightful authority of the Senate over its members or interfering with the discharge of the legitimate duties of a Senator. The proper discharge of those duties does not require a Senator to appear before an Executive Department in order to enforce his particular views or the views of others in respect of matters committed to that Department for determination. He may often do so without impropriety, and, so far as existing law is concerned, may do so whenever he chooses, provided he neither agrees to receive nor receives compensation for such services. Congress, when passing this statute, knew, as, indeed, everybody may know, that executive officers are apt, and not unnaturally, to attach great, sometimes perhaps undue, weight to the wishes of Senators. Evidently the statute has for its main object to secure the integrity of executive action against undue influence upon the part of members of that branch of the Government whose favor may have much to do with the appointment to or retention in public position of those whose official action it is sought to control or direct. The evils attending such a situation are apparent and are increased when those seeking to influence executive officers are spurred to action by hopes of pecuniary reward. There can be no reason why the Government may not, by legislation, protect each Department against such evils—indeed, against everything, from whatever source it proceeds, that tends or may tend to corruption or inefficiency in the management of public affairs. A Senator can not claim immunity from legislation directed to that end, simply because he is a member of a body which does not owe its existence to Congress, and with whose constitutional functions there can be no interference. If that which is enacted in the form of a statute is within the general sphere of legitimate legislative, as distinguished from executive, and judicial, action, and not forbidden by the Constitution, it is the supreme law of the land—supreme over all in public stations, as well as over all the people. "No man in this country," this court has said, "is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it."¹ Nothing in the relations existing between a Senator, Representative, or Delegate in Congress and the public matters with which, under the Constitution, they are respectively connected from time to time, can exempt them from the rule of conduct prescribed by section 1782. The enforcement of that rule will not impair or disturb those relations or cripple the power of Senators, Representatives, or Delegates to meet all rightful or appropriate demands made upon them as public servants.

Allusion has been made to that part of the judgment declaring that the accused, by his conviction, "is rendered forever hereafter incapable of holding any office of honor, trust, or profit under the Government of the United States." That judgment, it is argued, is inconsistent with the constitutional right of a Senator to hold his place for the full term for which he was elected and operates, of its own force, to exclude a convicted Senator from the Senate, although that body alone has the power to expel its Members. We answer that the above words, in the concluding part of the judgment of conviction, do nothing more than declare or recite what, in the opinion of the trial court, is the legal effect attending or following a conviction under the statute. They might well have been omitted from the judgment. By its own force, without the aid of such words in the judgment, the statute makes one convicted under it incapable forever thereafter of holding any office of honor, trust, or profit under the Government of the United States. But the final judgment of conviction did not operate, ipso facto, to vacate the seat of the convicted Senator nor compel the Senate to expel him or to regard him as expelled by force alone of the judgment. The seat into which he was originally inducted as a Senator from Kansas could

¹United States v. Lee, 106 U. S., 196, 220.

only become vacant by his death or by expiration of his term of office or by some direct action on the part of the Senate in the exercise of its constitutional powers. This must be so for the further reason that the declaration in section 1782 that any one convicted under its provisions shall be incapable of holding any office of honor, trust, or profit "under the Government of the United States" refers only to offices created by or existing under the direct authority of the National Government as organized under the Constitution and not to offices the appointments to which are made by the States acting separately, albeit proceeding, in respect of such appointments, under the sanction of that instrument. While the Senate, as a branch of the legislative department, owes its existence to the Constitution and participates in passing laws that concern the entire country, its members are chosen by State legislatures and can not properly be said to hold their places "under the Government of the United States."

We are of opinion that section 1782 does not by its necessary operation impinge upon the authority or powers of the Senate of the United States nor interfere with the legitimate functions, privileges, or rights of Senators.

Mr. Justice Brewer made a dissenting opinion, in which Messrs. Justices White and Peckham concurred; but this dissent did not deal with this feature of the case.

Mr. Burton appealed for a rehearing, which could not be heard and decided before the probable termination of the session of Congress at which Mr. Hale offered the resolution directing the investigation. This appeal had been made at the time Mr. Hale's resolution was agreed to.

On June 5, 1906,¹ the Vice-President laid before the Senate the following telegram,² which was read and ordered to lie on the table:

TOPEKA, KANS., *June 4, 1906.*

HON. CHARLES W. FAIRBANKS,

Vice-President of the United States, Washington, D. C.:

Hon. J. R. Burton has this day tendered his resignation as United States Senator from Kansas, and I have accepted the same.

E. W. HOCH, *Governor of Kansas.*

1283. The case of King and Schumaker, in the Forty-fourth Congress.

The majority of the Judiciary Committee concluded that a Member might not be tried or punished by the House for an offense alleged to have been committed against a preceding Congress.

In the Forty-third Congress the Committee on Ways and Means made an investigation of the charges that a large sum of money was used to secure the passage through Congress of an increased annual appropriation to the Pacific Mail Steamship Company in the nature of a subsidy. They ascertained from the evidence that about \$900,000 was disbursed upon the allegation that it was used in aid of the passage of the act. About \$565,000 of this was found to have been paid to the use of persons having no official connection with such legislation. The remaining sum remained in doubt because of the "refusal of William S. King to testify to the truth and to the failure or refusal of John G. Shumaker to present all the facts which the committee believe it was in his power to give." The committee recommended that the evidence taken be transmitted to the Clerk of the House, to be by him laid before the Forty-fourth Congress, and also that a copy be sent to the United States district attorney, to be by him presented to the grand

¹Record, p. 7821.

²Although a motion for a rehearing was before the court and would not probably be acted on before the termination of the existing session of Congress, there had been proceedings in the Committee on Privileges and Elections which suggested that steps looking to expulsion might be taken at once.

jury of the District. These recommendations were carried out, and when the Forty-fourth Congress took the case up for consideration the subject was before the United States court.

Messrs. King and Schumaker were Members of the Forty-fourth Congress, and the Judiciary Committee inquired "what action should be taken by the House in reference to the persons now Members of this House charged with complicity in the alleged corrupt use of money to procure the passage of an act providing for an additional subsidy in the China mail service during the Forty-second Congress and with giving false testimony in relation thereto before the Committee on Ways and Means of the Forty-third Congress. The report¹ of the committee finds as follows:

Your committee are of the opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is a purely legislative body and entirely unsuited for the trial of crimes. The fifth section of the first article of the Constitution authorizes "each House to determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." This power is evidently given to enable each House to exercise its constitutional function of legislation unobstructed. It can not vest in Congress a jurisdiction to try a Member for an offense committed before his election. For such offense a Member, like any other citizen, is amenable to the courts alone. Within four years after the adoption of the first ten amendments to the Constitution, Humphrey Marshall, a Senator of the United States from Kentucky, was charged by the legislature of his State with the crime of perjury, and the memorial was transmitted by the governor to the Senate for its action. The committee to whom it was referred reported against the jurisdiction of the Senate, and say:

"That in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State or district wherein the crime shall have been committed. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And they are also of opinion that, as the Constitution does not give jurisdiction to the Senate, the consent of the party can not give it, and that therefore the said memorial ought to be dismissed."

This report was adopted by a vote of 16 to 7. This is the construction given to said section in the first case presented to either House after its adoption by the statesmen who framed the Constitution, and we think it an authority which should control the case before the committee. We know of no public interest which will be promoted by further investigation. Your committee therefore recommend that the House leave these charges where they now are, in court, to be finally adjudicated and disposed of without any interposition or further action of the House.

Messrs. Scott Lord, William Lawrence, George F. Hoar, and B. G. Caulfield submitted views of the minority, denying that the case of Marshall was parallel to the present cases, where the crimes were not alleged to have been committed in a State court, but related directly to the attempted corruption of Members of Congress of the United States, which crime or crimes, wherever originated, were consummated, as alleged, in the District of Columbia or within the halls of the Capitol. In the State of New York, in the case of George G. Barnard, one of the justices of the supreme court, he was held liable to impeachment for offenses committed by him before he was elected to the term of office which he then held. The senate of that State has asserted the same principle. The Senate of the United States had recently held jurisdiction in a case in which the alleged limitation, if any, forbidding it, is found in the words of the Constitution. The fact that the questions involved as to the guilt of the accused Members had been referred to the courts of the District of Columbia did

¹ House Report No. 815, first session Forty-fourth Congress.

not and could not affect the question of jurisdiction, nor in any manner release the House from its duty in the premises, as had been held in the cases of Kilbourn and Belknap.

George W. McCrary also expressed the opinion in a supplemental report that the House might properly assume jurisdiction in a case where a Member had received money to be used in corrupting legislation in Congress for which offense no indictment had been found, even though the offenses were charged prior to his election.

1284. In 1799 the House declined to expel Matthew Lyon for an offense committed while a Member but before his reelection to the then existing House.—On February 20, 1799,¹ Mr. James A. Bayard, of Delaware, proposed this resolution:

Resolved, That Matthew Lyon, a Member of this House, having been convicted of being a notorious and seditious person, and of a depraved mind, and wicked and diabolical disposition; and of wickedly, deceitfully, and maliciously, contriving to defame the Government of the United States; and of having with intent and design to defame the Government of the United States, and John Adams, the President of the United States, and to bring the said Government and President into contempt and disrepute, and with intent and design to excite against the said Government and President the hatred of the good people of the United States, and to stir up sedition in the United States—wickedly, knowingly, and maliciously, written and published certain scandalous and seditious writings or libels, be therefore expelled from this House.

On February 22 the House considered the resolution. Mr. Bayard contended that the House had unlimited power of expulsion, and could expel a Member for any crime or any cause which, in their discretion, they conceived had rendered him unfit to remain a Member of the body. It was a fallacious doctrine that the House could not take notice of acts done by its Members out of the House.

It appeared from the debate that Mr. Lyon, a Member from Vermont, had been convicted in that State under the recently enacted sedition law. It was urged by Mr. John Nicholas, of Virginia, that Mr. Lyon's constituents, with a full knowledge of his prosecution, had reelected him. Mr. Lyon addressed the House in his own behalf,² no special permission being given by the House. The discussion developed into a discussion of the sedition laws.

The question being taken there were yeas 49, nays 45. So two-thirds of the Members present not concurring, the resolution was not agreed to.

1285. After a discussion of the subject of qualifications and expulsion the House laid on the table a question as to the conduct of a Member in the preceding Congress.—On January 15, 1858,³ Mr. Thomas L. Harris, of Illinois, rising to a question of privilege, presented this resolution:

Resolved, That Orsamus B. Matteson, a Member of this House from the State of New York, be, and is hereby, expelled from this House.

¹Third session Fifth Congress, Annals, pp. 2954, 2959–2974; Journal, p. 487.

²Mr. Lyon was a Member of the House at the time he was fined and imprisoned. On November 13, 1811, a memorial was presented to the House asking that the fine be repaid. Annals, first session Twelfth Congress, p. 345.

³First session Thirty-fifth Congress, Globe, pp. 311, 878–889, 1389–1392; Journal, p. 559.

The preamble of this resolution recited that in the preceding Congress the conduct of Mr. Matteson had been investigated and he had resigned to escape expulsion.¹

On February 25, the resolution introduced by Mr. Harris was considered at length. It was urged by Mr. Harris that the act of expulsion was proper, not as a punishment but as a purification of the House. The Senate had, in the case of Mr. Blount, of Tennessee, shown that it considered itself competent to expel for an offense committed before the offender had been sworn in as a Member of the body. In the case of Senator John Smith, of Tennessee, the report,² made by John Quincy Adams had taken the ground that—

by the letter of the Constitution, the power of expelling a Member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

In opposition it was contended that the power of expulsion was limited. Mr. Miles Taylor, of Louisiana, held that the House could expel only for disorderly conduct in violation of the rules of order. It was held by others that the House had no right to expel for an offense committed before the Member took his seat, the Wilkes case being cited in support.

By a vote of 93 yeas to 87 nays the House referred the subject to a special committee, which reported on March 22.³ Messrs. James L. Seward, of Georgia, Galusha A. Grow, of Pennsylvania, and John Huyler, of New Jersey, signed the majority report, which was embodied in this resolution:

Resolved, That it is inexpedient for this House to take any further action in regard to the resolutions proposing to expel O. B. Matteson.

The committee in their report took the ground that the proceedings in the previous Congress constituted no disqualification, and that in Mr. Matteson's case there was no constitutional or legal hindrance to his being elected, and no personal disqualification excluding him either permanently or temporarily from being a Representative. The legislative power to punish Members could not be used in regard to matters having no legal recognition. According to Cushing's Law and Practice of Legislative Assemblies, "Expulsion from a former or from the same legislative assembly can not be regarded as a personal disqualification, unless specially provided by law." The Wilkes case was cited in support of this authority. The power of the House of Representatives in each Congress was ample and complete to punish its Members for disorderly behavior or misconduct. The House of the last Congress had tried Mr. Matteson; but what offense had he committed against this House? With what act of disorderly behavior was he charged? The fact that he had been elected to the Thirty-fifth Congress before the resolutions of censure were passed in the Thirty-fourth Congress, if material, did not, in the committee's opinion, change the case, since the charges against Mr. Matteson were known to the people of his district before they reelected him. With the judgment pronounced by

¹ See section 1275 of this chapter for proceedings at that time.

² This report is quoted at length. Globe, p. 886.

³ First session Thirty-fifth Congress, House Report No. 179.

the House in the Thirty-fourth Congress, its power ended. Mr. Matteson was thenceforth amenable only to the people of his district.

The views of the minority, signed by Mr. Samuel R. Curtis, of Iowa, expressed the opinion that the House had the inherent power to protect itself against external and internal corruption; and that, under the Constitution, the House might expel for whatever reasons might seem necessary to guard against blight, decay, or destruction. The power was plenary; restrained by the two-thirds vote in order to prevent tyrannical exercise. The power to expel was not merely the power to inflict punishment. It was the power to remove an obstacle to the progress of legitimate business and secure a wholesome exercise of the House's function.

The report of the committee was considered on March 27, and during consideration of the resolution recommended by the majority the whole subject was laid on the table, yeas 96, nays 69.

1286. Members being charged with bribery committed several years before the election of the then existing House, the House preferred censure to expulsion, but declined to express doubt as to the power to expel.

Discussion of the power of expulsion in its relations to offenses committed before the Member's election; and in relation to the power of impeachment.

A Member against whom a resolution of expulsion was pending was permitted to address the House as a matter of right.

Charges having been made against the Speaker, he called another Member to the chair and from the floor moved a committee of investigation.

The Speaker being implicated by certain charges, a Speaker pro tempore selected from the minority party was empowered to appoint a committee of investigation.

On December 2, 1872,¹ the Speaker² called Mr. Samuel S. Cox, of New York, a member of the minority party on the floor, to the chair, and having taken the floor on a question of privilege³ addressed the House on the subject of certain charges, made against himself and other Members of the House, in connection with the Credit Mobilier corporation and the Union Pacific Railroad Company. He concluded his remarks by moving a resolution that a special investigating committee of five members be appointed by the Speaker pro tempore to ascertain whether any Members had been bribed.

The Speaker pro tempore⁴ named the following committee: Luke P. Poland, of Vermont; Nathaniel P. Banks, of Massachusetts; James B. Beck, of Kentucky; William E. Niblack, of Indiana; and George W. McCrary, of Iowa. On December 3, Mr. Beck asked to be excused, and the question being put the House excused him from service. The Speaker thereupon called Mr. Cox to the chair again, and the latter appointed Mr. William M. Merrick, of Maryland, to the vacancy.

¹Third session Forty-second Congress, Globe, pp. 11, 15; Journal, pp. 8, 30.

²James G. Blaine, of Maine, Speaker.

³The language of the Journal (p. 8) is: "Mr. Blaine, by unanimous consent (Mr. Cox occupying the chair), submitted," etc. As the matter was evidently privileged the unanimous consent was apparently asked to enable the Speaker to participate in debate. See sections 1367-1376 of this volume.

⁴Samuel S. Cox, of New York, Speaker pro tempore.

The committee made its report on February 18, 1873, embodying its findings of fact and recommendations in the following resolutions: ¹

1. Whereas Mr. Oakes Ames, a Representative in this House from the State of Massachusetts, has been guilty of selling to Members of Congress shares of stock in the Credit Mobilier of America for prices much below the true value of such stock, with intent thereby to influence the votes and decisions of such Members in matters to be brought before Congress for action: Therefore,

Resolved, That Mr. Oakes Ames be, and he is hereby, expelled from his seat as a Member of this House.

2. Whereas Mr. James Brooks, a Representative in this House from the State of New York, did procure the Credit Mobilier Company to issue and deliver to Charles H. Neilson, for the use and benefit of said Brooks, 50 shares of the stock of said company at a price much below its real value, well knowing that the same was so issued and delivered with intent to influence the votes and decisions of said Brooks as a Member of the House in matters to be brought before Congress for action, and also to influence the action of said Brooks as a Government director in the Union Pacific Railroad Company: Therefore,

Resolved, That Mr. James Brooks be, and he is hereby, expelled from his seat as a Member of this House.

The statement of facts in the report shows that these transactions occurred before Messrs. Brooks and Ames were elected to the Forty-second Congress. The report says:

In considering what action we ought to recommend to the House upon these facts, the committee encounters a question which has been much debated: Has this House power and jurisdiction to inquire concerning offenses committed by its Members prior to their election, and to punish them by censure or expulsion? The committee are unanimous upon the right of jurisdiction of this House over the cases of Mr. Ames and Mr. Brooks, upon the facts found in regard to them. Upon the question of jurisdiction the committee present the following views:

The Constitution in the fifth section of the first article, defines the power of either House as follows: "Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds expel a Member."

It will be observed that there is no qualification of the power, but there is an important qualification of the manner of its exercise—it must be done "with the concurrence of two-thirds."

The close analogy between this power and the power of impeachment is deserving of consideration.

The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not its principal object. Members of Congress are not subject to be impeached, but may be expelled, and the principal purpose of expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body, and whose presence in it tends to bring the body into contempt and disgrace.

In both cases it is a power of purgation and purification to be exercised for the public safety, and, in the case of expulsion, for the protection and character of the House. The Constitution defines the causes of impeachment, to wit, "treason, bribery, or other high crimes and misdemeanors." The office of the power of expulsion is so much the same as that of the power to impeach that we think it may be safely assumed that whatever would be a good cause of impeachment would also be a good cause of expulsion.

It has never been contended that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such offense before his appointment should not be subject upon detection and exposure to be convicted and removed from office. Every consideration of justice and sound policy would seem to require that the public interests be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution had attached.

If this be so in regard to other civil officers, under institutions which rest upon the intelligence and virtue of the people, can it well be claimed that the law-making Representative may be vile and criminal with impunity, provided the evidences of his corruption are found to antedate his election?

¹Journal, p. 429; Globe, pp. 1462–1468; House Report No. 77, Third session Forty-second Congress.

The committee then discuss the cases of Smith¹ and Marshall in the Senate, of Wilkes in the English Parliament, and of Matteson² in the House of Representatives, and continues:

The committee have no occasion in this report to discuss the question as to the power or duty of the House in a case where a constituency, with a full knowledge of the objectionable character of a man, have selected him to be their representative. It is hardly a case to be supposed that any constituency, with a full knowledge that a man had been guilty of an offense involving moral turpitude, would elect him. The majority of the committee are not prepared to concede such a man could be forced upon the House, and would not consider the expulsion of such a man any violation of the rights of the electors, for while the electors have rights that should be respected, the House as a body has rights also that should be protected and preserved. But that in such case the judgment of the constituency would be entitled to the greatest consideration, and that this should form an important element in its determination, is readily admitted.

It is universally conceded, as we believe, that the House has ample jurisdiction to punish or expel a Member for an offense committed during his term as a Member, though committed during a vacation of Congress and in no way connected with his duties as a Member. Upon what principle is it that such a jurisdiction can be maintained? It must be upon one or both of the following: That the offense shows him to be an unworthy and improper man to be a Member, or that his conduct brings odium and reproach upon the body. But suppose the offense has been committed prior to his election, but comes to light afterwards, is the effect upon his own character, or the reproach and disgrace upon the body, if they allow him to remain a Member, any the less? We can see no difference in principle in the two cases, and to attempt any would be to create a purely technical and arbitrary distinction, having no just foundation. In our judgment the time is not at all material, except it be coupled with the further fact that he was reelected with a knowledge on the part of his constituents of what he had been guilty, and in such event we have given our views of the effect.

It seems to us absurd to say that an election has given a man political absolution for an offense which was unknown to his constituents. If it be urged again, as it has sometimes been, that this view of the power of the House, and the true ground of its proper exercise, may be laid hold of and used improperly, it may be answered that no rule, however narrow and limited, that may be adopted can prevent it. If two-thirds of the House shall see fit to expel a man because they do not like his political or religious principles, or without any reason at all, they have the power, and there is no remedy except by appeal to the people. Such exercise of the power would be wrongful, and violative of the principles of the Constitution, but we see no encouragement of such wrong in the views we hold.

As to this general subject of the jurisdictional power of the House, Messrs. Niblack and McCrary preferred to express no opinion, but the entire committee were united upon the following:

The subject-matter upon which the action of Members was intended to be influenced was of a continuous character, and was as likely to be a subject of Congressional action in future Congresses as in the Fortieth. The influences brought to bear on Members were as likely to be operative on them in the future as in the present, and were so intended. Mr. Ames and Mr. Brooks have both continued Members of the House to the present time, and so have most of the Members upon whom these influences were sought to be exerted. The committee are, therefore, of opinion that the acts of these men may properly be treated as offenses against the present House, and so within its jurisdiction upon the most limited rule.

On February 24, before the resolutions of the investigating committee had been acted on by the House, Mr. Benjamin F. Butler, of Massachusetts, from the Com-

¹For Mr. Adams's report in the Smith case, see *Congressional Globe*, first session Thirty-fifth Congress, p. 886. Also section 1264 of this chapter.

²See section 1275 of this chapter.

mittee on the Judiciary, made a report¹ on the testimony taken by the investigating committee, particularly on the question whether or not it warranted articles of impeachment of any officer of the United States. This report reviewed the argument of the investigating committee on the subjects of impeachment and expulsion, and reached opposite conclusions. The members of the Judiciary Committee who joined with Mr. Butler in this report were Messrs. John A. Bingham, of Ohio; Charles A. Eldredge, of Wisconsin; John A. Peters, of Maine; Lazarus D. Shoemaker, of Pennsylvania, and Daniel W. Voorhees, of Indiana. Mr. Clarkson N. Potter, of New York, dissented from the report; and Mr. Jeremiah M. Wilson, of Indiana, concurred in so much of the report as related to impeachment but expressed no opinion on the subject of expulsion.

The report combats the idea that impeachment and expulsion are similar or analogous proceedings. Impeachment disqualified the impeached from ever after holding office; the expelled Member might be reelected after expulsion. Neither impeachment nor expulsion should be invoked for offenses committed before election. The report continues:

The plain words of the Constitution seem to us clearly to indicate that the power of expulsion is a protective, not a primitive, provision of the Constitution. It is found in section 5 of Article I: "Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." Expel for what? For disorderly behavior, i.e., for that behavior which renders him unfit to do his duties as a Member of the House, or that present condition of mind or body which makes it unsafe or improper for the House to have him in it. We submit, with some confidence, that the House might expel an insane man, because it might not be safe or convenient for the House to have him within the legislative Hall. They can also expel a man for disorderly proceedings in the body, or for such acts outside of the body as render it at the time manifestly improper for him to be in the House. But your committee are constrained to believe that the power of expelling a Member for some alleged crime, committed, it may be, years before his election, is not within the constitutional prerogative of the House.

We do not overlook the argument presented by the learned committee, upon whose report we are observing, by the phrase: "Every consideration of justice and sound policy would seem to require that the public interests be secured and those chosen to be their guardians be free from pollution of high crimes, no matter at what time that pollution had attached." But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of "justice and sound policy" as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constituency of the Member. Every intendment of our form of government would seem to point to that. This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their representatives, whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that "the House of Representatives shall be composed of Members chosen every second year by the people of the States," not by Representatives chosen for them at the will and caprice of Members of Congress from other States according to the notions of the "necessities of self-preservation and self-purification," which might suggest themselves to the reason or the caprice of the Members from other States in any process of purgation or purification which two-thirds of the Members of either House may "deem necessary" to prevent bringing "the body into contempt and disgrace."

Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a representative of the people, so chosen by the people themselves. On this it is solemnly enacted,

¹Third session Forty-second Congress, House Report No. 81.

unchanged during the life of the nation, that "No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Your committee believe that there is no man or body of men who can add or take away one jot or title of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such Members as are left after the process of "purgation and purification" shall have been exercised for the public safety, such as may be "deemed necessary" by any majority of the House. The power itself seems to us too dangerous, the claim of power too exaggerated, to be confided in any body of men; and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

The report then discusses the dangers that might arise from the contrary view, the precedents in the Smith, Marshall, and Wilkes cases, and concludes the argument as follows:

Our opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency, and not that of the Representative, and, so long as he does nothing which is disorderly or renders him unfit to be in the House while a Member thereof, that, except for the safety of the House, or the Members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the Member. We see no constitutional warrant for his expulsion upon any other ground, and especially not upon the ground of purgation and purification as set forth in the report of the learned committee, against which your committee most earnestly and respectfully protest.

Your committee do not feel called upon to discuss in this connection the legal consequences following from the doctrine of continuation of the offense in a man once receiving a bribe, because, if it may be laid with a *continuando* at all, the offense must continue to affect him ever after, and therefore, having once taken a bribe, he is always deemed to be under the effect of it, for the reason that we are inclined to believe that at some time the effect of the bribe might have spent its force, and it would hardly be a safe rule of legal action to undertake to determine whether that would not happen in five years and might happen in ten. Certainly such considerations would not apply to one who had given a bribe, because the virtue thereof all went out of him when he parted with his money, and there was nothing left in him save the loss of it.

For the reasons so hastily stated, and many more which might be adduced, your committee conclude that both the impeaching power bestowed upon the two Houses by the Constitution and the power of expulsion are remedial only, and not punitive, so as to extend to all crimes at all times, and are not to be used in any constitutional sense or right for the purpose of punishing any man for a crime committed before he became a Member of the House, or in case of a civil officer, as just cause of impeachment; but we agree the analogy stated by the learned committee on *Credit Mobilier* is in so far perfect. Both are alike remedial, neither punitive.

On February 25, 1873,¹ the consideration of the report began in the House. On that day the Speaker said:

The gentleman from Massachusetts, Mr. Ames, affected by this report, desires to be heard. The gentleman is entitled to the floor.

Mr. Ames thereupon sent his remarks to the desk to be read.²

On February 26 Mr. Aaron A. Sargent, of California, offered a substitute for the resolutions, which, after modification, was as follows:

Whereas by the report of the special committee herein it appears that the acts charged as offenses against Members of this House in connection with the *Credit Mobilier* occurred more than five years ago, and long before the election of such persons to this Congress, two elections by the people having intervened; and whereas grave doubts exist as to the rightful exercise by this House of its power to expel a

¹Third session Forty-second Congress, Journal, pp. 429, 490, 497–499; Globe, pp. 1717, 1723, 1727, 1732, 1816, 1824, 1826, 1830–1833.

²Globe, p. 1723.

Member for offenses committed by such Member long before his election thereto, and not connected with such election: Therefore

Resolved, That the special committee be discharged from the further consideration of this subject.

Resolved, That the House absolutely condemns the conduct of Oakes Ames, a Member of this House from Massachusetts, in seeking to procure Congressional attention to the affairs of a corporation in which he was interested, and whose interest directly depended upon the legislation of Congress, by inducing Members of Congress to invest in the stocks of said corporation.

Resolved, That this House absolutely condemns the conduct of James Brooks, a Member of this House from New York, for the use of his position of Government director of the Union Pacific Railroad and of Member of this House to procure the assignment to himself or family of stock in the Credit Mobilier of America, a corporation having a contract with the Union Pacific Railroad, and whose interests depended directly upon the legislation of Congress.

A motion to lay the whole subject on the table was negatived on February 27 by a vote of yeas 58, nays 165.

The question then recurred on the adoption of the substitute, which was agreed to, yeas 115, nays 110.

Thereupon voting began on the original resolutions as amended by the substitute, the first vote being taken on the resolution condemning Oakes Ames. This was adopted, yeas 182, nays 36. Then the resolution condemning James Brooks was agreed to, yeas 174, nays 32.

The resolution discharging the committee having been disagreed to, yeas 104, nays 114, the question recurred on the preamble. Mr. Charles A. Eldredge, of Wisconsin, called for a separate vote on the two propositions of the preamble.

The Speaker ruled that the preamble was not divisible.

The question recurring on the adoption of the preamble, a motion to lay on the table was disagreed to, yeas 78, nays 134. Then the preamble was disagreed to, yeas 98, nays 113.¹

1287. The Speaker has questioned the right of a Member to discuss as privileged charges relating to his conduct at a period before he became a Member.—On May 23, 1884,² Mr. William Pitt Kellogg, of Louisiana, claiming the floor for a question of privilege, after remarks submitted the following:

Whereas in the investigation as to the prosecution of the star route cases before the Committee on Expenditures in the Department of Justice evidence has been given which reflects upon the character of William Pitt Kellogg, a Member of this House: Therefore,

Resolved, That said committee be directed to investigate the subject of said Kellogg's alleged connection with the "star route" service, and whether he received money for services rendered in a matter pending before one of the Departments of the Government, or whether he paid money to any officer of the Government on account of or in connection with said service; and that said committee be authorized to send for persons and papers, etc.

Mr. William R. Morrison, of Illinois, made the point of order, as Mr. Kellogg proceeded with his remarks, that no question of privilege was involved.

The Speaker³ called attention to the fact that the transactions occurred in 1879, and said:

The Chair has intimated heretofore that this House has no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected as a Member of the

¹ For long and careful debate on the expulsion of Members in connection with this case see *Globe*, third session Forty-second Congress, pp. 137, 159, 164, 176, 188, 195.

² First session Forty-eighth Congress, *Journal*, p. 1304; *Record*, pp. 4432-4439,

³ John G. Carlisle, of Kentucky, Speaker.

House. That has been so frequently decided in the House that it is no longer a matter of dispute. The resolution which the gentleman sends up directs the committee to investigate certain charges made against the Member from Louisiana, but does not state the time when the alleged offense was committed, if at all, so that the resolution may be entirely in order, but the gentleman from Louisiana is discussing matters which he admits occurred several years ago and before his election. He can not proceed to discuss such matters without unanimous consent, as was decided in the Forty-sixth Congress in the case of Mr. Chalmers, of Mississippi.

Mr. Nathaniel J. Hammond, of Georgia, urged that the House should not investigate the conduct of a Member at a time prior to his election to the House. On the other hand, it was urged that the report in the Credit Mobilier cases, as well as in the case of Blount, in the Senate, justified such an investigation. Finally, on motion of Mr. Hammond, by a vote of ayes 82, noes 49, the resolution was referred to the Committee on the Judiciary.

No report appears to have been made.¹

1288. In the case of Humphrey Marshall, accused of committing a crime before his election, the Senate declined to proceed in the absence of prosecuting action from the constituency.

The Senate held, in 1796, that for a crime alleged to have been committed before his election, but for which the courts had not held him to answer, a Senator should not be tried by the Senate.

On February 26, 1796,² the Vice-President laid before the Senate a letter from the governor of Kentucky, with a memorial, making serious charges against the character of Humphrey Marshall, a Senator from Kentucky. On February 29 these papers were, on motion of Mr. Marshall, referred to a select committee, consisting of Messrs. Samuel Livermore, of New Hampshire; James Ross, of Pennsylvania; Rufus King, of New York; John Rutherford, of New Jersey, and Caleb Strong, of Massachusetts.

On March 17 the committee submitted a report, which, after being amended by the Senate in slight particulars where personal questions might be raised, stood as follows:

The committee to whom was referred the letter of the governor and the memorial of the representatives of Kentucky, with the papers accompanying them, report:

That the representatives of the freemen of Kentucky state in their memorial that in February, 1795, a pamphlet was published by George Muter and Benjamin Sebastian (who were two judges of the court of appeals), in which they say that Humphrey Marshall had a suit in chancery in the said court of appeals, in which it appearing manifest from the oath of the complainant, from disinterested testimony, from records, from documents furnished by himself, and from the contradictions contained in his own answer, that he had committed a gross fraud, the court gave a decree against him; and that in the course of the investigation he was publicly charged with perjury. That Mr. Marshall, in a publication in the Kentucky Gazette, called for a specification of the charge; to which the said George Muter and Benjamin Sebastian, in a like publication, replied that he was guilty of perjury in his answer to the bill in chancery exhibited against him by James Wilkinson, and that they would plead justification to any suit brought against them therefor. That no such suit, as the said representatives could learn, had been brought. The said representatives further say that they do not mean to give an opinion on the justice of the said charge, but request that an investigation may immediately take place relative thereto.

¹ See also Section 466 of Volume I of this work.

² Election Cases, Senate Document No. 11, special session Fifty-eighth Congress, p. 168.

Your committee observe that the said suit was tried eighteen months before Mr. Marshall was chosen a Member of the Senate, and that previous to his election mutual accusations had taken place between him and the judges of the said court relating to the same suit.

The representatives of Kentucky have not furnished any copy of Mr. Marshall's answer on oath, nor have they stated any part of the testimony, or produced any of the said records or documents, or the copy of any paper in the cause, nor have they intimated a design to bring forward those or any other proofs.

Your committee are informed by the other Senator and the two Representatives in Congress from Kentucky that they have not been requested by the legislature of that State to prosecute this inquiry, and that they are not possessed of any evidence in the case, and that they believe no person is authorized to appear on behalf of the legislature.

Mr. Marshall is solicitous that a full investigation of the subject shall take place in the Senate, and urges the principle that consent takes away error, as applying, on this occasion, to give the Senate jurisdiction; but, as no person appears to prosecute, and there is no evidence adduced to the Senate, nor even a specific charge, the committee think any further inquiry by the Senate would be improper. If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained. They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And the committee are compelled, by a sense of justice, to declare that in their opinion the presumption in favor of Mr. Marshall is not diminished by the recriminating publications which manifest strong resentment against him.

And they are also of opinion that as the Constitution does not give jurisdiction to the Senate the consent of the party can not give it; and that therefore the said memorial ought to be dismissed.

Resolved, That the Vice-President of the United States be requested to transmit a copy of the foregoing report to the governor of Kentucky.

A motion to expunge the last clause was disagreed to, yeas 7, nays 16.

On the question to expunge these words "If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained," it passed in the negative.

On the question to expunge the following words: "They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If in the present case the party has been guilty in the manner suggested, no reason has been alleged why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent"—it passed in the negative.

Also by a vote of yeas 7, nays 17, the Senate decided in the negative a motion to postpone the report of the committee to whom was referred the letter from the governor and the memorial of the Representatives of the State of Kentucky, with the papers accompanying them, together with the motions of amendment made thereon, in order to consider the following resolution:

Whereas the honorable legislature of the State of Kentucky have, by their memorial, transmitted by the governor of the said State, informed the Senate that Humphrey Marshall, a Senator from the said State, had been publicly charged with the crime of perjury, and requested that an inquiry might be

thereupon instituted, in which request the said Humphrey Marshall has united; and it being highly interesting, as well to the honor of the said State as to that of the Senate, and an act of justice due to the character of the said Humphrey Marshall that such inquiry should be had, therefore

Resolved, That the Senate will proceed to the examination of the said charge on the _____ day of the next session of Congress; that, in the opinion of the Senate, a conviction or acquittal in the ordinary courts of justice of the said State would be the most satisfactory evidence on this occasion; but that, if this should not be attainable, by reason of any act of limitation or other legal impediment, such other evidence will be received as the nature of the case may admit and require.

Resolved, That the Vice-President be requested to transmit a copy of the foregoing resolution to the governor of the said State.

On March 22, the Senate by a vote of yeas 16, nays 8, agreed to the report in the form given above.

1289. In the case of William N. Roach, charged with a crime alleged to have been committed before his election, the Senate discussed its power in such a case but took no action.—In 1893¹ the Senate discussed the case of William N. Roach, Senator from North Dakota.

On the 28th day of March, 1893, Mr. Hoar submitted a resolution providing for an investigation of certain allegations charging Mr. Roach with the offense of criminal embezzlement. On the 10th day of April, 1893 a substitute for this resolution was introduced by Mr. Hoar, and on the 14th day of April, 1893, a substitute for the resolutions then pending in said matter was introduced by Mr. Gorman. The resolution and the substitutes were the subject of debate in the Senate, but no action was had or taken thereon.

It appears from the debates that the case presented the question as to the right of the Senate to take cognizance of an accusation against a Senator of an offense committed before his election to the Senate.²

¹ Election cases, Senate Doc. No. 11, special session Fifty-eighth Congress, p. 809.

² First session Fifty-third Congress, Record, pp. 37, 111, 137, 140, 155, 160.