

Chapter LVII.

INQUIRIES OF THE EXECUTIVE.

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1856. Committees are required to report resolutions of inquiry back to the House within one week of the reference.

As to the use of the words “request” and “direct” in resolutions of inquiry addressed to the Executive.

Form and history of section 5 of Rule XXII.

Section 5 of Rule XXII provides:

All resolutions of inquiry addressed to the heads of Executive Departments shall be reported to the House within one week after presentation.

From its earliest days the House has exercised the right to call on the President and heads of Departments for information.³ On December 12, 1820,⁴ a rule was proposed that—

a proposition requesting information from the President of the United States, or directing⁵ it to be furnished by the head of either of the Executive Departments or by the Postmaster-General, shall lie on the table one day.

¹Resolutions of inquiry in early days taken to the President by a committee. Section 1726 of this volume.

²In some cases the President has refused to transmit documents relating to treaties (secs. 1509, 1518, Vol. II) and in others has responded to the inquiry (secs. 1510, 1512, Vol. II).

³Second session Fourth Congress, Journal, p. 634; second session Ninth Congress, Journal, pp. 533–536; Annals, pp. 334–459.

⁴Second session Sixteenth Congress, Journal, pp. 67, 70.

⁵The use of the words “request” and “direct” in this form of the rule simply embodied the prior practice of the House. For Cabinet officers the House used the words “be directed to” or “be required to.” See instances in 1815. (First session Fourteenth Congress, Journal, pp. 92, 201, 206, 262.) But in resolutions of inquiry to the President the words “be requested” were usually employed, and sometimes the words “if, in his opinion, it will not be inconsistent with the public welfare” were added. (See Journal of first session Fourteenth Congress, pp. 122, 227, 310, etc.; also Mr. Daniel Webster’s resolutions, first session Thirteenth Congress, Annals, pp. 150, 170, 302–311.)

The object of this was to cause greater care and deliberation in making demands. This proposition was adopted, and on January 22, 1822,¹ the rule was amended to give them consideration after reports of committees, and providing that the Clerk should cause the same to be delivered. Before this time the House had appointed a committee to present resolutions of inquiry to the President.²

The rule of 1820³ with reference to resolutions of inquiry existed until May 1, 1879, when Mr. Samuel J. Randall, of Pennsylvania, from the Committee on Rules, presented a resolution providing that in the call for resolutions every Monday⁴ resolutions of inquiry might be introduced and referred, and that the committee should be privileged to report them at any time. Mr. John H. Baker, of Indiana, proposed an amendment providing that the committee should report on the resolution within one week. With this amendment, the resolution was agreed to. Mr. Randall stated that the new rule was intended to give greater facility to Members who had, under the old arrangement, been forced to seek unanimous consent to get resolutions adopted. The reference to a committee would prevent abuse of the privilege. Mr. Alexander H. Stephens, of Georgia, recalled that when he entered Congress, in 1843, such resolutions were introduced in large numbers and sometimes, without information, the House imposed great labors on the Executive Departments. The reference to committee would obviate that. When the rules were revised in 1880,⁵ this rule, which was Rule No. 130 in the old system, became section 1 of Rule XXIV. Section 1 then referred to the call of the States and Territories each Monday for the introduction of bills and resolutions, and when that call was abolished, in 1890,⁶ the portion relating to resolutions of inquiry became a new section of Rule XXII, which is the present form.

1857. A resolution of inquiry is not privileged for consideration until it has been referred to a committee, and then only under conditions prescribed by the rules.—On January 3, 1900,⁷ Mr. William Sulzer, of New York, offered as a privileged matter a resolution of inquiry relative to certain alleged transactions of the Secretary of the Treasury with certain national banks.

¹ First session Seventeenth Congress, Journal, p. 174; Annals, p. 756.

² See instance January 18, 1819. Second session Fifteenth Congress, Journal, p. 195.

³ First session Forty-sixth Congress, Journal, p. 224; Record, p. 1018, 1019. As early as 1872 Mr. Luke P. Poland, of Vermont, had proposed a rule that resolutions of inquiry should be referred to committees, with the privilege of reporting at any time.

⁴ Under the present rules all bills and resolutions are introduced by laying them on the Clerk's table.

⁵ Second session Forty-sixth Congress, Record, p. 206.

⁶ First session Fifty-first Congress, House Report No. 23. Resolutions sometimes direct or request that the reply be made at the next session of the same Congress. (First session Nineteenth Congress, Journal, pp. 602, 603, May 19, 1826.) For discussion of the rights of the two Houses in asking information see proceedings of the Senate from March 9 to 26, 1886. (First session Forty-ninth Congress, Record, pp. 2211, 2246, 2291, 2328, 2528, 2615, 2653, 2693, 2737, 2784.) For an instance wherein the House asked information in detail from the President see Mr. Daniel Webster's resolutions in 1813. (First session Thirteenth Congress, Annals, pp. 150, 170, 302–311, 433.)

⁷ First session Fifty-sixth Congress, Record, p. 635.

The Speaker¹ said:

This is in no sense a resolution of privilege, but must go to the Speaker, to be referred to the appropriate committee, under Rule XXII.

The Chair calls attention to paragraph 3 of Rule XXII. After referring in paragraph 1 to private resolutions, it says:

“3. All other bills, memorials, and resolutions may in like manner be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred.”

The titles, etc., to be indorsed thereon.

Paragraph 5 of Rule XXII provides that “All resolutions of inquiry addressed to the heads of Executive Departments shall be reported to the House within one week after presentation.”

The rules are not only distinct and explicit in saying what shall be done with these resolutions of inquiry, but the practice as long and well settled must certainly be known to the gentleman from New York. The rules are so explicit also that no harm can come, as the committee is bound under the rules to report within one week. The Chair therefore rules the matter to be not privileged, and not in order for immediate consideration.

1858. The week’s time required to make a resolution of inquiry privileged is seven days, exclusive of either the first or last day.—On July 1, 1902,² Mr. William Sulzer, of New York, claiming the floor for a privileged motion moved to discharge the Committee on Military Affairs from the consideration of a resolution which he described as a resolution of inquiry relating to the army transport service.

Mr. John A. T. Hull, of Iowa, made the point of order that the motion was not yet privileged.

The Speaker¹ said:

This resolution was referred to the Committee on Military Affairs June 25. Only six days have elapsed; so it is not yet privileged. * * * In order to make it seven days we would have to count the first and the last days. * * * The rule says one week, if the Chair remembers right. * * * Within one week after the introduction. This is clearly not privileged as yet.

1859. On March 3, 1905,³ Mr. Willard D. Vandiver, of Missouri, as a privileged question, moved to discharge the Committee on the Judiciary from the further consideration of a resolution of inquiry relating to the so-called armor-plate trust.

Mr. John J. Jenkins, of Wisconsin, having raised a question that the motion was not privileged, the Speaker⁴ said:

This resolution seems to have been introduced February 24, and this is the 3d day of March. The week’s time required to make a resolution of inquiry privileged is * * * seven days, exclusive of either the first or the last day, but not exclusive of both.

1860. A resolution authorizing a committee to request information has been treated as a resolution of inquiry.—On December 8, 1903,⁵ Mr. Jesse Overstreet, of Indiana, from the Committee on the Post-Office and Post-Roads, reported the following resolution:

Resolved, That the Committee on the Post-Office and Post-Roads is hereby authorized to request the Postmaster-General to send to the committee all papers connected with the recent investigation of his Department.

¹ David B. Henderson, of Iowa, Speaker.

² First session Fifty-seventh Congress, Record, p. 7771.

³ Third session Fifty-eighth Congress, Record, p. 4019.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ Second session Fifty-eighth Congress, Record, pp. 51–54.

Mr. Irving P. Wanger, of Pennsylvania, proposing to object, the Speaker¹ said:

The Chair will state that on examining the resolution it seems to be a report from the Committee on the Post-Office and Post-Roads of a resolution of inquiry, and, in the opinion of the Chair, does not require unanimous consent. The question therefore is on agreeing to the resolution.

Later, the previous question having in the meantime been ordered, Mr. James D. Richardson, of Tennessee, made the point of order that the resolution was not privileged.

After debate, the Speaker said:

The Chair does not desire to hear further discussion. If the point of order were well taken, it comes too late; and the previous question having been ordered, it is not necessary for the Chair to rule. But the Chair is of opinion at this time that if the point of order had been made in apt time the Chair would have overruled the point of order. The resolution comes in an unusual form, it is true, but the object of the resolution is to obtain information—"the letter killeth, but the spirit giveth life;" and therefore, in the opinion of the Chair, the resolution is in order.

1861. Only resolutions of inquiry addressed to the heads of Executive Departments are privileged.—On January 27, 1891,² Mr. Benjamin A. Enloe, of Tennessee, on the ground of its being a question of privilege, submitted a resolution requesting certain information from the Regents of the Smithsonian Institution.

The resolution having been read, the Speaker³ ruled that it did not present a privileged question, for the reason that under clause 5 of Rule XXII only "resolutions of inquiry addressed to the heads of Executive Departments" were required to be reported to the House within one week after presentation, thus presenting under the practice a privileged question when it was alleged that the rule had not been complied with.

1862. On March 12, 1904,⁴ Mr. Frederick H. Gillett, of Massachusetts, from the Committee on Reform in the Civil Service, submitted as privileged a report on the following resolution:

Resolved, That the President of the Civil Service Commission be, and he is hereby, directed to inform the House of Representatives, as follows:

In how many cases the civil-service law and the regulations made thereunder have been suspended, and by whom, since the 4th day of March, 1885, giving, with said information, the dates of all such suspensions, and where such suspensions have operated to put in office individuals who otherwise could not have been appointed, the names of such individuals, and the date of the suspension of said civil-service law and the regulations made thereunder, in each individual case.

The Speaker¹ said:

As the Chair understands, this is not a privileged matter under the rules, as it is not a resolution calling upon the head of a Department, but upon the Civil Service Commission. Does the gentleman from Massachusetts ask its consideration now?

Thereupon, by unanimous consent, the resolution was agreed to.

¹ Joseph G. Cannon, of Illinois, Speaker.

² Second session Fifty-first Congress, Journal, p. 188; Record, p. 1874.

³ Thomas B. Reed, of Maine, Speaker.

⁴ Second session Fifty-eighth Congress, Record, p. 3181.

1863. On February 4, 1904,¹ Mr. Edgar D. Crumpacker, of Indiana, from the Committee on the Census, reported as privileged the following resolution:

Resolved by the House of Representatives, That the Director of the Census be, and he is hereby, directed to inform the House what persons have been selected and employed by him and the dates and periods of time for which such persons have been employed in the Census Office under the provisions of the act of March 3, 1903, which provided as follows, etc.: * * *

And how long such employees have continued under such appointment, and, if such appointments were discontinued, for what reasons they were so discontinued.

The resolution having been read, the Speaker, said:

The Chair desires to say that the Chair is of opinion that this is not a matter of privilege. It is not in the language of the rule addressed to the head of an Executive Department. The Chair merely wants to call the attention of the gentleman to the fact. Is there objection?

There being no objection, the resolution was, by unanimous consent, considered.

1864. The privilege of resolutions of inquiry applies to those addressed to the President of the United States.—On January 29, 1906,³ Mr. Oscar W. Gillespie, of Texas, claiming the floor for a privileged question, moved to discharge the Committee on Interstate and Foreign Commerce from consideration of the following resolution of inquiry, which had been referred to that committee more than one week previously:

Resolved, That the President of the United States be, and he is hereby, requested to report to the House of Representatives, for its information, all the facts within the knowledge of the Interstate Commerce Commission which shows or tends to show that there exists at this time, or heretofore within the last twelve months has existed, a combination or arrangement between the Pennsylvania Railroad Company, the Pennsylvania Company, the Norfolk and Western Railway Company, the Baltimore and Ohio Railroad Company, the Philadelphia, Baltimore and Washington Railroad Company, the Northern Central Railway Company, and the Chesapeake and Ohio Railway Company, or any two or more of said railroad companies, in violation of the act passed July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or acts amendatory thereof.

The motion was agreed to, and then the resolution, being before the House, was agreed to after it had been amended on motion of Mr. Sereno E. Payne, of New York, by the insertion of the words—

if not incompatible with the public interests.

Mr. John Dalzell, of Pennsylvania, having moved to reconsider, a question arose as to the form of the resolution, Mr. Dalzell saying:

Mr. Speaker, the President is not the head of a Department within the meaning of that rule. But, in the second place, if that information ought to be had by reason of an inquiry addressed to the Interstate Commerce Commission, and it is sought to evade the rule because that is not an Executive Department, then this resolution can not be made privileged by addressing it to the President of the United States.

The Speaker² said:

The Chair does not know that he ought to rule on a subject not before the House, but if before the House the Chair would be prepared to rule; and perhaps by unanimous consent the Chair may be indulged in an informal expression of opinion, which he might not possibly be bound by, as to whether

¹Second session Fifty-eighth Congress. Record, p. 1643.

²Joseph G. Cannon, of Illinois, Speaker.

³First session a Fifty-ninth Congress, Record, pp. 1701, 1702.

the President is the head of the Executive Departments. Now, it seems to the Chair, under a fair construction of this rule, that the President is the head not only of one but all the Executive Departments. The Chair only intimates what he would hold as at present advised if the question were before the House.

The motion to reconsider was laid on the table, yeas 122, nays 93.¹

1865. A committee not having reported a resolution of inquiry within the time fixed by the rule, the House may reach the resolution only by a motion to discharge the committee from its consideration. On June 29, 1886,² Mr. John M. Glover, of Missouri, as a privileged question, moved that the Committee on Expenditures in the Treasury Department be discharged from the consideration of a resolution of inquiry relating to alleged frauds in the revenue, and that the resolution be put on its passage.

The Speaker³ said:

The gentleman may move to discharge the committee from the further consideration of the resolution, but that is the extent of his motion. * * * When the committee is discharged then the resolution is before the House, but the question of consideration can be raised against it by one Member.

Mr. Glover having made the proper motion was proceeding to debate, when he was called to order by Mr. Nathaniel J. Hammond, of Georgia.

The Speaker said:

There is nothing before the House except the simple motion to discharge the committee. The merits of the resolution pending before the committee are not before the House for discussion.

The motion to discharge the committee was disagreed to.

Mr. Glover then moved that the committee be directed to report the resolution within a given time.

The Speaker said:

That is not a privileged motion. The privileged motion is to discharge the committee.

Mr. John A. Anderson, of Kansas, made the point of order that, the resolution not having been reported within the time prescribed by the rule, the committee having custody of the same was thereby discharged from the consideration of it.

The Speaker overruled the point of order, and held that the committee could only be discharged by motion, which the House had just refused to do.

1866. A resolution of inquiry not being reported back within one week, a motion to discharge the committee from the consideration of it presents a privileged question.—On April 25, 1882,⁴ Mr. William E. Robinson, of New York, moved, as a matter of privilege, to discharge the Committee on Foreign Affairs from the consideration of a resolution relating to alleged imprisonment of American citizens abroad, which had been referred to the committee more than a week previous.

Mr. John A. Anderson, of Iowa, made the point of order that the motion did not present a question of privilege.

¹ On December 26, 1832, after several days of debate, the House agreed to a resolution calling on the President for a list of appointments of Members of Congress to offices. (Journal, 2d sess., 22d Cong., pp. 80, 97; Debates, pp. 901–911.)

² First session Forty-ninth Congress, Journal, p. 2036; Record, pp. 6283, 6284.

³ John G. Carlisle, of Kentucky, Speaker.

⁴ First session Forty-seventh Congress, Journal, p. 1124; Record, p. 3275.

The Speaker¹ ruled:

The resolution, from the further consideration of which it is sought to discharge the Committee on Foreign Affairs, is a resolution of inquiry, and originally introduced as such and referred to that committee. Upon being reported back to the House it was recommitted to the Committee on Foreign Affairs with certain instructions. The Chair holds, in the first place, that the resolution, upon being recommitted to the committee, holds the same relation to the committee and the same right under the rules of the House to be considered by the committee and reported back in the same time as if it had been an original resolution of inquiry referred to them at the time of its recommitment. Under the last clause of paragraph 1 of Rule XXIV² the committees of the House are required to report resolutions of inquiry directed to heads of Executive Departments back within one week from the time of their reference. This being so, the question now before us is, Is it a question of privilege to ask to discharge the Committee on Foreign Affairs from the further consideration of the resolution of inquiry as recommitted?

The Chair holds that this is a matter affecting the order of the business of the House. There may be perfectly good, wise, and valid reasons why the committee have not reported back the resolution, but the Chair is inclined to hold that the House may control the matter, and after the time has expired for reporting the resolution back the House has a right, as a matter of privilege, to call upon the committee to report it back or to discharge the committee from its further consideration. The Chair therefore holds that the resolution presented by the gentleman from New York, in so far as it seeks to discharge the Committee on Foreign Affairs from further consideration of the resolution of inquiry, is a matter of privilege, and therefore overrules the point of order.

1867. On April 28, 1886,³ Mr. W. P. Taulbee, of Kentucky, claiming the floor for a privileged motion, moved that the Committee on Reform of the Civil Service be discharged from the further consideration of a resolution of inquiry as to certain alleged practices in the Treasury Department, which had been referred to the committee more than a week previous.

The Speaker⁴ held the motion to be out of order, but stated that a motion to instruct the committee to report the resolution within a given time would be in order.

1868. On February 10, 1891,⁵ Mr. Benjamin A. Enloe, of Tennessee, called attention of the House that a resolution of inquiry concerning the execution of the law relating to the National Geological Park, which had been referred to the Committee on Expenditures in the Treasury Department, had not been reported within the time required by the rules, and offered as privileged a motion to discharge the committee from the consideration of the resolution.

Mr. Joseph G. Cannon, of Illinois, having made the point of order that no question of privilege was involved, the Speaker⁶ ruled that this was a privileged question, but not a question of privilege. The gentleman from Tennessee was entitled to have the question decided whether or not the committee should be discharged. That, however, was a question of procedure, to be decided without debate. The question of the priority of business was not debatable.⁷

¹J. Warren Keifer, of Ohio, Speaker.

²Now section 5 of Rule XXII. (See sec. 1856 of this chapter.)

³First session Forty-ninth Congress, Journal, p. 1420; Record, pp. 3929, 3930.

⁴John G. Carlisle, of Kentucky, Speaker.

⁵Second session Fifty-first Congress, Record, pp. 2456, 2457.

⁶Thomas B. Reed, of Maine, Speaker.

⁷See Rule XXV. Section 3061 of Volume IV of this work.

1869. On March 18, 1892,¹ Mr. Allen R. Bushnell, of Wisconsin, as a privileged question, moved to discharge the Committee on Rivers and Harbors from the consideration of a resolution of inquiry requesting of the Secretary of War and Attorney-General information relating to alleged injuries to the navigation of the upper Mississippi River. This resolution had not been reported within the time prescribed by the rule.

Mr. John Lind, of Minnesota, made the point of order that the motion was not privileged because the resolution was erroneously referred to the Committee on Rivers and Harbors, and that committee had no jurisdiction of the subject.

The Speaker² overruled the point of order, holding that the resolution might have been properly referred to either the Committee on Rivers and Harbors or the Committee on Interstate and Foreign Commerce.

1870. On July 15, 1892,³ Mr. Benjamin A. Enloe, of Tennessee, moved, as a privileged motion, to discharge the Committee on the Post-Office and Post-Roads from the consideration of a resolution of inquiry requesting the Postmaster-General to transmit certain information to the House, the resolution having been referred to the committee more than a week previous.

Mr. Christopher A. Bergen, of New Jersey, and Air. Albert J. Hopkins, of Illinois, submitted the point of order that the motion was not privileged.

The Speaker² overruled the point of order on the ground that, it being the duty of the Committee on the Post-Office and Post-Roads to report the resolution within one week after its reference, on its failure to so report it a motion to discharge the committee was privileged. The Speaker also held that the duty to report within one week carried with it the right to report at any time during that period, and, if delayed, the right to report at any time thereafter, and consequently the right of consideration when reported.

1871. At the expiration of a week a motion to discharge a committee from the consideration of a resolution of inquiry is privileged, although the resolution may have been delayed in reaching the committee.—On September 22, 1893⁴ Mr. Eugene F. Loud, of California, as a privileged motion, moved that the Committee on the Judiciary be discharged from the consideration of a resolution of inquiry requesting information from the Attorney-General as to the enforcement of the “Chinese-exclusion act.”

Mr. Loud alleged, as a ground for his motion, that the resolution had been presented and referred to the Committee on the Judiciary one week ago.

Mr. William C. Oates, of Alabama, submitted the point that the resolution had not been before the committee, and that the motion of Mr. Loud was, therefore, not in order.

It appeared that the resolution was introduced and referred to the committee one week before, but was not delivered to the committee until four days thereafter.

¹First session Fifty-second Congress, Journal, p. 107; Record, p. 2192.

²Charles F. Crisp, of Georgia, Speaker.

³First session Fifty-second Congress, Journal, p. 296; Record, p. 6218.

⁴First session Fifty-third Congress, Journal, pp. 106, 107.

The Speaker¹ overruled the point made by Mr. Oates and held that, pursuant to clause 4 of Rule XXII, resolutions of inquiry are required to be reported within one week² from their presentation to the House, regardless of the time when they may be actually delivered to the committee, and that the motion of Mr. Loud was, therefore, privileged.

1872. A resolution of inquiry, to enjoy its privilege, should call for facts rather than opinions and should not require an investigation.—On December 19, 1905,³ Mr. Webster E. Brown, of Wisconsin, from the Committee on Mines and Mining, reported back from that committee this resolution, with a favorable recommendation:

Resolved, That the Secretary of the Interior be, and he is hereby, requested to furnish to Congress a report on the progress of the investigation of the black sands of the Pacific slope, authority for which was included in that section of the sundry civil act approved March 3, 1905, which provided for the preparation of the report on the mineral resources of the United States, and for his opinion as to whether or not this investigation should be continued.

A question arose as to whether or not this resolution was privileged as a resolution of inquiry, whereupon the Speaker⁴ held:

The Chair thinks the first part of the resolution privileged. The latter part is not privileged, and that destroys the privilege of the whole resolution.

1873. On January 18, 1906,⁵ Mr. Oscar W. Gillespie, of Texas, claimed the floor for a privileged motion in order to move to discharge the Committee on Interstate and Foreign Commerce from the further consideration of the following resolution, which had been referred to that committee more than a week previously:

Resolved, That the Attorney-General of the United States be, and he is hereby, requested to forthwith report to the House of Representatives, for its information, whether there exists at this time, or heretofore within the last twelve months there has existed, a combination or arrangement between the Pennsylvania Railroad Company, the Pennsylvania Company, the Norfolk and Western Railway Company, the Baltimore and Ohio Railroad Company, the Philadelphia, Baltimore and Washington Railroad Company, and the Northern Central Railway Company, and the Chesapeake and Ohio Railway Company, or any two or more of said railroad companies, in violation of the act passed July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or acts amendatory thereof; and the said Attorney-General is also requested to report to this House all the facts upon which he bases his conclusion.

Mr. Sereno E. Payne, of New York, made the point of order that the resolution was not privileged, as it asked for an opinion of the Attorney-General as well as for facts.

After debate, the Speaker⁴ said:

The House undoubtedly has power to call for facts. And under the rule, where a resolution privileged within the meaning of the rule is referred to a committee and is not reported within a certain time, it is in order to move to discharge the committee and bring the resolution before the House for consideration. But that rule applies to a resolution calling for facts and information. Now, the query

¹ Charles F. Crisp, of Georgia, Speaker.

² In the rules of the Fifty-third Congress this section was numbered 4, instead of 5, as at present.

³ First session Fifty-ninth Congress, Record, pp. 591-593.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ First session Fifty-eighth Congress, Record, p. 1240.

the Chair puts to the gentleman is, Does not the concluding lines in these words, "and the facts upon which he bases his conclusion," show that what is practically asked for is the conclusion or opinion of the Attorney-General or the head of the Department of Justice, and does not that destroy, under the rule, the privileged character of the resolution? * * * In reading the resolution without the last line the Chair might perhaps have a doubt as to whether it were a resolution of inquiry asking for facts or one asking for an opinion. Now, the Chair is perfectly clear that, under the precedents, if the resolution is to be made privileged, it must be a resolution of inquiry as to facts existing—something in esse. It seems to the Chair that a resolution asking an opinion from the head of a Department would not be privileged. While it is in the power, the Chair apprehends, for the House by resolution to ask an opinion of the head of a Department, it occurs to the Chair that such a resolution would not be privileged and would not come within the rule that is now invoked. But whatever the ruling of the Chair might be, were it not for the concluding line or lines of the resolution it is perfectly patent to the Chair that what is desired by the resolution is not the facts alone, if at all, but the conclusion or opinion of the Attorney-General. Therefore the Chair sustains the point of order.

1874. On February 13, 1906,¹ Mr. Oscar W. Gillespie, of Texas, moved to discharge the Committee on the Post-Office and Post-Roads from the consideration of the following resolution of inquiry, which had been referred to that committee more than one week previously:

Resolved, That the Postmaster-General be, and he is hereby, requested to furnish the House, at his earliest convenience, a comparative statement showing the cost to the Government for the transportation of the mails per ton per mile by the railroads and the cost of transporting express matter per ton per mile by the railroads.

Mr. Sereno E. Payne, of New York, made the point of order that the resolution called for an investigation by the Post-Office Department.

In the course of the debate and at its conclusion the Speaker² said:

The Chair notices that this resolution provides that the Postmaster-General be requested to furnish the House, at his earliest convenience, a comparative statement showing the cost to the Government for the transportation of mails per ton per mile by the railroads and the cost of transporting express matter per ton per mile by the railroads. The doubt in the mind of the Chair is that this calls for information touching a matter that is not at all under the Postmaster-General, so far as express matter is concerned; and therefore it would seem that if the resolution were to be adopted that it would set on foot an investigation in the Post-Office Department.

It seems to the Chair—and the Chair suggests to the gentleman that the language goes further—that he furnish the House at his earliest convenience a comparative statement showing the cost for transporting mails and the cost of transporting express matter. Now, it might be assumed that if he does not have the information he will so report; but it will also be assumed that he will be required to enter into an inquiry.

It seems to the Chair that the resolution, requesting the Postmaster-General to report the cost to the Government of transporting the mails per ton per mile by the railroads, if it stopped there, would be a privileged resolution under the rule; but when it adds "and the cost of transporting express matter per ton per mile by the railroads" it does not cover a question of privilege under the rule, and it is only the question of privilege that is to be considered. The gentleman arises in his place and makes his motion to discharge the Committee on the Post-Office and Post-Roads from further consideration of this resolution because, a week having elapsed since it was referred to that committee, it has not reported the same back. In other words, the rule enables the gentleman, if he has the proper case under the rule, to halt the consideration of all other resolutions that are not privileged and the ordinary business of the House, and to halt the House in the consideration of business upon the Calendars from the various committees, and dispose of this resolution by virtue of this rule. Now, if the motion does not prevail

¹First session Fifty-ninth Congress, Record, pp. 2494, 2495.

²Joseph G. Cannon, of Illinois, Speaker.

and it is not a question of privilege, the resolution remains with the Committee on the Post-Office and Post-Roads for disposition under the rules of the House, the same as other business.

Now, the uniform ruling of the Chair in former Congresses and in this Congress has been by construction not to enlarge the matter of privilege in these cases. It does seem, following the precedents for the orderly transaction of business in the House, that the construction holding the resolution privileged should be strict, and in the opinion of the Chair the latter clause of the resolution is not privileged and vitiates the resolution as a question of privilege. Therefore the Chair sustains the point of order.¹

1875. A resolution of inquiry is usually simple rather than concurrent in form.—On March 28, 1902,² Mr. Charles F. Cochran, of Missouri, moved to discharge the Committee on Rivers and Harbors from the consideration of the following resolution:

Resolved by the House of Representatives (the Senate concurring), That the Secretary of War is hereby instructed to send to the House of Representatives information as to the condition of river improvements heretofore constructed on the Missouri River at a point south of St. Joseph, Mo., whether said improvements are incomplete and, on account of their incomplete condition, in danger of destruction, and the sum necessary to complete said improvements and prevent their destruction by the encroachments of the current.

The committee having been discharged, the resolution was so amended as to convert it into a simple resolution, and as amended the resolution was agreed to.

1876. Joint resolutions are not required for calling for information from the Executive Departments.—On February 3, 1899,³ Mr. Jacob H. Bromwell, of Ohio, presented and the House agreed to a resolution requesting the President to return to the House the joint resolution (H. Res. 298) calling for information from the Secretary of State concerning certain outrages perpetrated upon American citizens in China. Mr. Bromwell explained that the President had called attention to the fact that the resolution was joint in form and if signed by the President might be considered a precedent that the House alone had not the right to call for such information.

On February 4 the joint resolution was returned by the President and was by the House laid on the table.

Mr. Bromwell then offered a simple resolution of the House calling for the information, and the same was agreed to.

¹ On April 15, 1898 (second session Fifty-fifth Congress, Record, pp. 3908, 3909), Mr. William H. Fleming, of Georgia, as a privileged motion, presented a resolution discharging the Committee on Naval Affairs from the consideration of the following resolution, which had been presented more than a week before:

Resolved, That the Secretary of the Navy is hereby directed to inform the House of Representatives if the Senate printed Document No. 207, Fifty-fifth Congress, second session, contains all the evidence embraced in the report of the naval court of inquiry upon the destruction of the U. S. battle ship *Maine* in Havana Harbor, February 15, 1898, now of file in the Navy Department; and if any portion of said evidence has been omitted in said printed document the Secretary of the Navy is hereby directed to transmit to the House of Representatives a copy of such omitted evidence."

Mr. Walter Evans, of Kentucky, made the point of order that the resolution to discharge the committee did not present a question of privilege. It was urged that the direction to the Secretary of the Navy contained in the latter part of the resolution was not privileged, and that this destroyed the privileged character of the resolution.

The Speaker (Thomas B. Reed, of Maine) sustained the point of order.

² First session Fifty-seventh Congress, Journal, p. 535; Record, p. 3365.

³ Third session Fifty-fifth Congress, Record, pp. 1438, 1452, 1453.

1877. The privilege of a resolution of inquiry may be destroyed by a preamble, although the matter therein recited may be germane to the subject of inquiry.—On March 3, 1907 [legislative day of March 2],¹ Mr. Choice B. Randell, of Texas, proposed to call up as a privileged resolution of inquiry a resolution as follows:

Whereas it is currently reported that negotiations have been entered into by the executive department of the United States, and under its direction, with the Government of the German Empire affecting the commerce between Germany and the United States and the tariffs and regulations on and concerning the same, thereby changing the conditions of trade between these countries and affecting the revenues of this Government received from import duties without the action of Congress: Therefore, be it

Resolved, That the President of the United States is hereby requested, if not incompatible with the public interest, to direct the Secretary of State to report to him for the information of the House, etc.

Mr. James E. Watson, of Indiana, made the point of order that the preamble destroyed the privilege.

The Speaker² held:

It has been frequently held that a preamble to a resolution of inquiry that makes an alleged statement of fact destroys the privilege, although the balance of the resolution might be privileged. That has been frequently held by many Speakers and was ruled by the present Speaker at the last session of Congress on a resolution presented by the gentleman from New York [Mr. Cockran]. Clearly this is not privileged, and the Chair sustains the point of order.

1878. On June 28, 1906,² Mr. W. Bourke Cockran, of New York, as a privileged motion, proposed to discharge the Committee on the Post-Office and Post-Roads from consideration of the following resolution:

Whereas at a court of general sessions of the peace in and for the county of New York, the same being a court of record of the State of New York, one Norman Hapgood was on the 31st day of October, 1905, indicted by a grand jury on a charge of libel, for that he had written and published of and concerning one Joseph M. Deuel, then and now a judge of the court of special sessions in the said city and county of New York, the following words, to wit: "He is part owner and one of the editors of a paper of which the occupation is printing scandal about people who are not cowardly enough to pay for silence;" and

Whereas the said Norman Hapgood on the 31st day of October, 1905, was arraigned upon the said indictment before the said court and entered a plea of not guilty thereto; and

Whereas the said indictment, having been duly transferred from the said court of general sessions of the peace in and for the city and county of New York to the supreme court of the State of New York, came on for trial on the 15th day of January, 1906, in said court, before the Hon. James Fitzgerald, a justice thereof, and a jury; and the said Norman Hapgood having admitted that he had written and published the matter charged in said indictment to be libelous, justified it on the ground that the same was true, and the jury after hearing evidence rendered its verdict that he was not guilty of libel; and

Whereas it appeared from the uncontradicted evidence given on said trial that the paper of which the said Joseph M. Deuel was part owner and one of the editors, the characterization of which as "a paper of which the occupation is printing scandal about people who are not cowardly enough to pay for silence" by the said Hapgood was charged in said evidence to be a libel, is a weekly publication entitled, called, and known as "Town Topics;" and

Whereas the said verdict of not guilty and the judgment of acquittal entered thereon in favor of said Hapgood is a judicial declaration by a court of competent jurisdiction that the description of Town Topics charged in said indictment to be libelous is in fact true: Now, therefore, be it

Resolved, That the Postmaster-General be, and he is hereby, requested to inform the House of Representatives whether said paper, periodical, or publication entitled, called, and known as "Town

¹ Second session Fifty-ninth Congress, Record, p. 4664.

² Joseph G. Cannon, of Illinois, Speaker.

³ First session Fifty-ninth Congress, Record, pp. 9541–9543.

Topics," so adjudged by a competent court to be "a paper of which the occupation is printing scandal about people who are not cowardly enough to pay for silence," is admitted now to the use of the mails, and whether its said occupation of extorting money by blackmail is in any way facilitated, promoted, or assisted by this Government through the operation of its Post-Office Department.

Mr. Jesse Overstreet, of Indiana, made the point of order that the motion was not privileged.

After debate the Speaker¹ ruled:

The only question presented to the Chair under the point of order is whether this motion is a privileged motion under the rules of the House. The motion is to discharge the Committee on Post-Offices and Post-Roads from the consideration of the resolution which has been read. After seven days the motion is privileged, providing the resolution has nothing in it which destroys that privilege.

Now, this resolution is coupled with the preamble, which recites that there was an indictment in a State court for libel, recites that the defendant justified, recites that there was a trial, recites that the defendant was acquitted, and then in the recitation in the last whereas sets forth matter which does not reflect upon the party whom the State of New York alleged had been libeled in very complimentary terms; in fact, to the contrary. The resolution refers to the preamble and certain matters alleged in the preamble, none of which are matters that are privileged under the rules of the House.

A resolution calling for information from the Department upon a question of fact is privileged, and if this resolution alone covered such information it would be privileged. The Chair has no doubt that the preamble destroys the privilege that otherwise would be contained in the resolution, and therefore the Chair sustains the point of order.

Mr. Cockran then asked:

Would it be in order, Mr. Speaker, to move to strike out the preamble and allow the resolution to stand?

The Speaker replied:

That would bring the House to a vote on that very question, and this is a matter not before the House. It was introduced and went to the committee. This is a motion to bring it before the House, and the privilege being destroyed by nonprivileged matter, the Chair sustains the point of order, which of course, if the ruling of the Chair is correct, prevents the House obtaining possession of the resolution in this way.

1879. Resolutions of inquiry are delivered under direction of the Clerk.—On January 22, 1822,² a rule was adopted that resolutions of inquiry, passed by the House, should be delivered under direction of the Clerk. Heretofore such resolutions addressed to the President had been delivered by a committee especially appointed in each case. Resolutions directed to heads of Departments were probably sent by the Clerk, no mention of method being made.

1880. The House decided early in its history that the secretaries of the President's Cabinet should not be called to give information personally on the floor of the House.—On November 13, 1792,³ the following resolution was proposed:

Resolved, That the Secretary of the Treasury and the Secretary of War be notified that this House intend, on Wednesday next, to take into consideration the report of the committee appointed to inquire

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Seventeenth Congress, Journal, p. 174; Annals, p. 756.

³ Second session Second Congress, Journal, p. 619 (Gales & Seaton ed.); Annals, pp. 679–683. It appears that the Secretary of War desired to appear before the House. See letter of General Knox, Annals, p. 685.

into the causes of the failure of the late expedition under General St. Clair, to the end that they may attend the House, and furnish such information as may be conducive to the due investigation of the matters stated in the said report.

Mr. Hugh Williamson, of North Carolina, moved to strike out the portion respecting the attendance of the Secretaries. This motion was supported by Mr. James Madison, of Virginia, who thought the introduction of the Secretaries on the floor of the House contrary to the practice of the House and the spirit of the Government.¹ He favored written information.

Messrs. Fisher Ames and Elbridge Gerry, of Massachusetts, favored the proposition of the resolution.

The House agreed to the amendment, and then negatived the resolution as amended.

1881. Members of the President's Cabinet appear before committees of the House and give testimony.—Cabinet officers frequently appear before committees of the House. Thus, on February 3, 1837,² Hon. Levi Woodbury, Secretary of the Treasury, appeared in obedience to a summons, before the committee appointed to investigate the Executive Departments, and gave his testimony. Also, on February 13, Hon. John Forsyth, Secretary of State, appeared and testified before the same committee.

1882. On February 13, 1839,³ Levi Woodbury, Secretary of the Treasury, appeared before the select committee appointed to investigate the defalcations in the New York custom-house, and was sworn as a witness, and testified.

1883. On January 16, 1861,⁴ the chairman of the select committee on seizure of forts, arsenals, etc., by direction of the committee, addressed the Secretary of the Navy requesting him to attend the committee and give testimony. The chairman concluded as follows: "Please state whether a formal subpoena will be required."

The Secretary attended without the subpoena.

1884. In 1842 the House vigorously asserted and President Tyler as vigorously denied the right of the House to all papers and information in possession of the Executive relating to subjects over which the jurisdiction of the House extended.—On June 3, 1842,⁵ the Speaker laid before the House a letter from the Secretary of War in answer to a call of the House, of the 18th of May, for information as to the affairs of the Cherokee Indians and as to frauds upon them, stating that, as negotiations were pending with the Indians for the settlement of their claims and all other matters of difference between them and the Government, it was believed to be inconsistent with the public interest to disclose the information called for by the House; and that, as regarded the frauds referred to, the evidence being *ex parte*, and not under oath, it would be

¹ Cabinet officers often appear before committees of the House.

² House Report No. 194, second session Twenty-fourth Congress, Journal of the Committee, pp. 75, 104.

³ Third session Twenty-fifth Congress, House Report No. 313, p. 579.

⁴ Second session Thirty-sixth Congress, House Report No. 91, p. 28.

⁵ Second session Twenty-seventh Congress, Journal, pp. 913–915; Globe, pp. 576, 579.

unjust to the parties implicated, and would defeat the ends of justice to promulgate the papers called for.¹

On the succeeding day this communication was referred to the Committee on Indian Affairs.

On July 24,² Mr. James Cooper, of Pennsylvania, from this committee,³ made a report.

The report of the committee recommended the adoption of the following resolutions:

Resolved, That the House of Representatives has the right to demand from the Executive such information as may be in his possession relating to subjects of the deliberations of the House and within the sphere of its legitimate powers.

Resolved, That the reports and facts called for by the House of Representatives, by its resolution of the 18th ultimo, related to subjects of its deliberations and were within the sphere of its legitimate powers, and should have been communicated; Therefore,

Resolved, That the President of the United States be requested to cause to be communicated to this House "the several reports lately made to the Department" of War by Lieutenant-Colonel Hitchcock relative to the affairs of the Cherokee Indians, together with all information communicated by him concerning the frauds he was charged to investigate; also all facts in the possession of the Executive, "from any source, relating to the subject."

On August 13, after a debate extending over several days,⁴ the first resolution was amended by adding after "Executive" the words "or heads of Departments," and as amended was agreed to, yeas 140, nays 8. The second resolution was agreed to, yeas 94, nays 64, and the third was also agreed to, yeas 83, nays 60.

The committee in their report⁵ took the ground that the House of Representatives had a right to all the information in the possession of the Executive, when such information related to subjects over which the jurisdiction of the House extended. This was one of the incidental powers of the House, like the power to punish for contempts. The committee denied that the relations with the Indian tribes were the same as those with foreign nations, and therefore denied the exclusive jurisdiction of the Executive and Senate over treaties or agreements with the Indians. The committee concluded by deeming it conclusive of the question that in the fifty years of the history of the Government there was no single precedent to justify the refusal to communicate the information required.⁶

¹This resolution of inquiry was as follows: "That the Secretary of War be required to communicate to this House the several reports lately made to the Department by Lieutenant-Colonel Hitchcock relative to the affairs of the Cherokee Indians, together with all information communicated by him concerning the frauds which he was charged to investigate; also all facts in the possession of the Department, from any source, relating to the subject. (Journal, pp. 831, 832.)"

²Journal, p. 1183; Globe, p. 810.

³This committee consisted of Messrs. James Cooper, of Pennsylvania; Robert L. Caruthers, of Tennessee; Thomas C. Chittenden, of New York; Augustus R. Sollers, of Maryland; William Butler, of South Carolina; Harvey M. Watterson, of Tennessee; William A. Harris, of Virginia; John B. Weller, of Ohio, and John C. Edwards, of Missouri.

⁴Journal, pp. 1284-1289; Globe, pp. 888, 889. The Globe does not report the debates on these resolutions.

⁵House Report No. 960, second session Twenty-seventh Congress.

⁶For authorities in support of this position the report cites Jefferson's Memoirs, vol. 4, p. 464, the Journal of the House of Representatives, 1793, 1797, p. 499, and debates in the House of Commons, on motion of Lord Limerick, to appoint a committee to inquire into the conduct of affairs at home and abroad for the last twenty years, Debates in the Commons, 1741-42, vol. 13.

1885. On December 30, 1842,¹ Mr. James Cooper, of Pennsylvania, from the Committee on Indian Affairs, reported the following resolution which seems to have been agreed to by the House:

Whereas a resolution calling on the President of the United States "to cause to be communicated to this House the several reports lately made to the Department of War by Lieutenant-Colonel Hitchcock relative to the affairs of the Cherokee Indians, together with all information communicated by him concerning the frauds he was charged to investigate; also all facts in possession of the Executive from any source relating to the subject," was adopted by this House on the 13th day of August last; and whereas the information received by the said resolution has not been communicated, nor any reason assigned for the delay; Therefore,

Resolved, That the President be requested to communicate to this House when the information called for by the aforesaid resolution may be expected.

On February 1 President Tyler responded to this resolution. He communicated the papers called for, but at the same time he dissented from any doctrine that might imply the right of the House of Representatives to demand from the Executive or the heads of Departments all papers without regard to the discretion of those officers:

If, by the assertion of this claim [says the President], of right to call on the Executive for all the information in its possession relating to any subject of deliberation of the House and within the sphere of its legitimate powers, it is intended to assert, also, that the Executive is bound to comply with such call, without the authority to exercise any discretion on its part in reference to the nature of the information required, or to the interests of the country or of individuals to be affected by such compliance, then do I feel bound, in the discharge of the high duty imposed upon me, "to preserve, protect, and defend the Constitution of the United States," to declare, in the most respectful manner, my entire dissent from such a proposition. The instrument from which the several Departments of the Government derive their authority makes each independent of the other in the discharge of their respective functions. The injunction of the Constitution that the President "shall take care that the laws be faithfully executed," necessarily confers an authority, commensurate with the obligation imposed, to inquire into the manner in which all public agents perform the duties assigned to them by law. To be effective, these inquiries must often be confidential. They may result in the collection of truth or of falsehood; or they may be incomplete, and may require further prosecution. To maintain that the President can exercise no discretion after the time in which the matters thus collected shall be promulgated, or in respect to the character of the information obtained, would deprive him at once of the means of performing one of the most salutary duties of his office. An inquiry might be arrested at its first stage, and the officers whose conduct demanded investigation may be enabled to elude or defeat it. To require from the Executive the transfer of this discretion to a coordinate branch of the Government is equivalent to the denial of its possession by him and would render him dependent upon that branch in the performance of a duty purely executive.

Nor can it be a sound position that all papers, documents, and information of every description, which may happen by any means to come into the possession of the President or of the heads of Departments, must necessarily be subject to the call of the House of Representatives, merely because they relate to a subject of the deliberations of the House, although that subject may be within the sphere of its legitimate powers. It can not be that the only test is whether the information relates to a legitimate subject of deliberation. The Executive Departments and the citizens of this country have their rights and duties, as well as the House of Representatives; and the maxim that the rights of one person or body are to be so exercised as not to impair those of others is applicable in its fullest extent to this question. Impertinence or malignity may seek to make the executive department the means of incalculable and irremediable injury to innocent parties by throwing into them libels most foul and atrocious. Shall there be no discretionary authority permitted to refuse to become the instruments of such malevolence?

And although information comes through a proper channel to an executive officer, it may often be of a character to forbid its being made public. The officer charged with a confidential inquiry, and who

¹Third session Twenty-seventh Congress, Journal, pp. 117, 296, 465; Globe, p. 102.

reports its result under the pledge of confidence which his appointment implies, ought not to be exposed individually to the resentment of those whose conduct may be impugned by the information he collects. The knowledge that such is to be the consequence will inevitably prevent the performance of duties of that character, and thus the Government will be deprived of an important means of investigating the conduct of its agents.

It is certainly no new doctrine in the halls of judicature or of legislation that certain communications and papers are privileged, and that the general authority to compel testimony must give way in certain cases to the paramount rights of individuals or of the Government. Thus, no man can be compelled to accuse himself, to answer any question that tends to render him infamous, or to produce his own private papers on any occasion. The communication of a client to his counsel and the admissions made at the confessional in the course of religious discipline are privileged communications. In the courts of that country from which we derive our great principles of individual liberty and the rules of evidence, it is well settled, and the doctrine has been fully recognized in this country, that a minister of the Crown or the head of a department can not be compelled to produce any papers, or to disclose any transactions relating to the executive functions of the Government which he declares are confidential, or such as the public interest requires should not be divulged; and the persons who have been the channels of communication to officers of the State are in like manner protected from the disclosure of their names. Other instances of privileged communications might be enumerated, if it were deemed necessary. These principles are as applicable to evidence sought by a legislature as to that required by a court.

The practice of the Government since its foundation has sanctioned the principle that there must necessarily be a discretionary authority in reference to the nature of the information called for by either House of Congress.

The authority was claimed and exercised by General Washington in 1796. In 1825 President Monroe declined compliance with a resolution of the House of Representatives calling for the correspondence between the Executive Departments of this Government and the officers of the United States Navy and others, at or near the ports of South America on the Pacific Ocean. In a communication made by the Secretary of War in 1832 to the Committee of the House on the Public Lands, by direction of President Jackson, he denies the obligation of the Executive to furnish the information called for and maintains the authority of the President to exercise a sound discretion in complying with calls of that description by the House of Representatives or its committees. Without multiplying other instances, it is not deemed improper to refer to the refusal of the President at the last session of the present Congress to comply with the resolutions of the House of Representatives calling for the names of the Members of Congress who had applied for offices. As no further notice was taken in any form of this refusal it would seem to be a fair inference that the House itself admitted that there were cases in which the President had a discretionary authority in respect to the transmission of information in the possession of any of the Executive Departments.

Apprehensive that silence under the claim supposed to be set up in the resolutions of the House of Representatives under consideration might be construed as an acquiescence in its soundness, I have deemed it due to the great importance of the subject to state my views that a compliance in part with the resolution may not be deemed a surrender of a necessary authority of the Executive.

President Tyler's message was referred to the Committee on Indian Affairs, and on February 25, this committee, submitted to the House a report¹ which combats the argument of the President:

It is undoubtedly true [says this report, after a review of the origin and circumstances of the controversy] to a certain extent, that the Constitution, from which the several Departments of the Government derive their power, had made each of them independent of the other in the discharge of their several functions. But what are the functions which are exercised independently of each other by the several Departments of the Government? The President exercises the office or function of Commander in Chief

¹House Report No. 271, third session Twenty-seventh Congress. The committee making this report consisted of Messrs. James Cooper, of Pennsylvania; Thomas C. Chittenden, of New York; William Butler, of South Carolina; Abraham Rencher, of North Carolina; Joseph L. White, of Indiana; Harvey M. Watterson, of Tennessee; John B. Weller, of Ohio; John C. Edwards, of Missouri; and William A. Harris, of Virginia.

of the Army independently of Congress; his power to grant reprieves and pardons for offenses against the United States is exercised independently of Congress; he has the power, by and with the advice and consent of the Senate, to make treaties independently of the House of Representatives; he has the power to nominate, and, by and with the advice and consent of the Senate, to appoint ambassadors, ministers, consuls, and judges of the Supreme Court, independently of the House of Representatives, etc. But what has all this to do with the right of the House to institute inquiries and investigate abuses? It is a function of the House of Representatives to investigate abuses—sometimes for the purpose of legislating to prevent their recurrence—sometimes for the purpose of punishing the offenders; but in either case its power to examine witnesses, to compel the production of papers, to exercise all the powers of a judicial tribunal in the investigation of like offenses subject to certain well-established rules has never been doubted, and is as clearly implied in the Constitution as the right of the President “to inquire into the manner in which all public agents perform the duties assigned to them by law.”

The House of Representatives has the sole power of impeachment. The President himself, in the discharge of his most independent functions, is subject to the exercise of this power—a power which implies the right of inquiry on the part of the House to the fullest and most unlimited extent. The committee need not say that the right of inquiry without the right to produce evidence would be nugatory. They will presently look further into this subject, but before proceeding to do so they will remark that the exercise of this right does not in any wise abridge the independent discharge of the Executive functions. In the exercise of the right, claimed by the House in its resolutions, to demand from the Executive such information as may be in his possession relative to subjects of its deliberations and within the sphere of its legitimate power, is not, as the President alleges, “equivalent to the denial” of a right of inquiry by him into the same matter. The exercise of this right by the House is not in design and can not be in effect “to arrest inquiry by the Executive and enable officers whose conduct demands investigation to elude and defeat it.”

The report goes on to say that the Executive has limited powers of inquiry, its commissions not having the power to compel the testimony of witnesses, and then continues:

But the power of the House to pursue an investigation of this kind is as ample as that of any other tribunal. All the means to enforce the attendance of witnesses, the power to issue commissions to take the testimony of those who are absent, as well as to procure all the necessary instruments of evidence relative to any subject of inquiry in which it may be engaged, is possessed by the House in as much plentitude as by the judicial tribunals of the country. We shall show hereafter that the House has the right to compel the production of evidence which, for reasons of state policy, may be withheld from the courts.

The committee next take up the paragraph of the message which denies the right of the House to demand documents and papers of every description that may relate to the subject of its deliberations, and continues:

This is principally but a reiteration of the assertion of the President that the resolution adopted by the House of Representatives declaratory of its rights is too broad and would invest it with powers not conferred upon it by the Constitution and which, if carried into practice, would invade the rights of the Executive. The latter part of this proposition has already been fully disproved. It has been shown that the exercise of the right to demand from the Executive and heads of departments such papers or copies of papers, or other information, as may be in their possession is no invasion of the rights of the Executive, impairs none of its just powers, nor suspends any of its functions.

But is the resolution adopted by the House more comprehensive than a fair construction of the Constitution warrants? The resolution asserts that the “House has a right to demand from the Executive and heads of departments such information as may be in their possession relating to subjects of the deliberations of the House and within the sphere of its legitimate powers.”

The question involved in this resolution is: Does the House of Representatives possess the right to investigate abuses?—a right virtually denied to the House if the Executive doctrines prevail. For the right to investigate abuses without full power to procure information and evidence would present the anomaly of the existence of a right without the means of enforcing it.

By the Constitution of the United States the President, Vice-President, and all civil officers of the Government are liable to impeachment for treason, bribery, or other high crimes and misdemeanors, and the sole power to impeach is vested in the House of Representatives. If the House possess the power to impeach it must likewise possess all the incidents of that power—the power to compel the attendance of witnesses and the production of all such papers as may be considered necessary to prove the charges on which the impeachment is founded. If it did not the power of impeachment conferred on it by the Constitution would be nugatory. It could not exercise it with effect. But is the power of the House to compel the production of papers or the attendance of witnesses limited to proceedings in cases of impeachment? Has the House of Representatives no power to inquire into offenses not impeachable? Does not the power to impeach for great offenses involve the power to inquire into all offenses? It necessarily does so. In its character of grand inquest of the nation it possesses this right and in this character the House acts, whether it be engaged in investigation of some petty fraud committed by some subordinate officer of the Government or the impeachment of the President for high crimes and misdemeanors. This right to demand information belongs to its character—is one of its attributes, not merely an accidental right which it acquires when it takes upon itself the duty of impeachment. It is not a right which it derives from the act of proceeding to investigate a particular kind of offense and which it loses when it is engaged in the investigation of another or smaller offense. It is a permanent right inherent in it and not an incident of some peculiar function.

The power of the House to institute inquiries and investigate abuses has been exercised by it from the beginning of the Government to the present day. Such inquiries and investigations have at various times been made in every department of the Government and every branch of the public service, civil and military, and the power of the House to inquire into all official abuses and misconduct and into the management of public affairs at home and abroad, as far as the knowledge of the committee extends, has never been denied or questioned until now. Let this power to investigate the abuses which may exist in the several departments of the Government be surrendered by the House and there will be no check upon extravagance; the responsibility of public officers will be at an end; profligate and corrupt agents, unawed by the fear of exposure, will riot in the spoils of a plundered treasury, whilst Congress will have lost all power to bring them to account or to protect the public interest against their rapacity.

By claiming for the House “the right to demand from the Executive and heads of departments such information as may be in their possession relating to subjects of the deliberation of the House and within the sphere of its legitimate powers,” the committee do not mean to assert that there may not be at some times information and papers in their possession which should not be made public. Such there no doubt are; but the House has the right to inspect them, and it, and not the Executive, is to be the judge of the propriety of making them public. The President has all along assumed in his message that the publication of all information and papers is a necessary consequence of their communication to the House. In this he is mistaken. It does not follow that all information communicated to the House must be made public. Confidential communications are almost daily made by the Executive to the Senate and secrecy is always observed in regard to them as long as the public interest requires it. There is nothing in the constitution of the House to prevent it from doing the same thing. Information transmitted to it by the Executive, on his suggestion that it is of confidential character, may be referred to a committee under the charge of secrecy until an examination of it can be made, when, if the committee concur in opinion with the Executive, its publication will be dispensed with. This is the true parliamentary course. It furnishes at once a security against secret abuses and the irresponsibility of the public officers and agents which would follow the denial of the right of the House to demand information, and at the same time protect the state against the discovery of facts important for the time to be concealed. In the present case on the suggestion of the President, the report and other papers were referred to the committee under at least an implied injunction of secrecy, and if the committee had concurred with the President in opinion nothing would have been easier than to have returned them to the Executive department, their contents remaining unknown excepting to the committee. Thus it will be seen that the resolution protested against by the President requires nothing from the Executive which can ever prove detrimental to the interest of the State, unless it be presumed that those interests would be more safe in his keeping than in that of the House—a presumption which finds no warrant in the Constitution and as little in the executive history of the Government.

Taking up the President's contention in regard to privileged communications which involve the paramount rights of individuals, in regard to the right of the citizen to refuse to incriminate himself, and to the privilege of ministers of the Crown in England, the report proceeds:

The general rule of law is that no one will be permitted to withhold any communication which is important as evidence, however secret and confidential the nature of that communication may have been. There are, however, some instances where the courts exclude particular evidence on the ground of public policy, because greater mischief and inconvenience would result to the State from the reception of it than would overbalance the injury which individuals might sustain by its exclusion. The interests of individuals are made to give way to the paramount interest of the community. Thus a witness is not allowed to reveal facts in a court of justice the disclosure of which might be injurious to the State; and of course the same rule prevails in relation to papers the contents of which would have a like tendency. The communication of evidence to a jury is a promulgation of it to the country, and the law so regards it, and it is so in fact. Hence the rule which excludes evidence the disclosure of which would be detrimental to the interests of the State. But this rule is only applicable to the judicial, and not to parliamentary tribunals; and the error of the President consists in not having observed the distinction.

The reason of the rule which excludes certain evidence is founded on the fact that its reception by the courts is equivalent to a publication, which principles of public policy forbid in particular cases. The reason of this rule, however, does not extend to parliamentary tribunals, which may conduct their investigations in secret, without divulging any evidence which may be prejudicial to the State. The practice of conducting investigations by secret committees has constantly prevailed in the British House of Commons ever since the Revolution of 1688, and perhaps from an earlier period; and the committee are aware of no instance in which evidence has been excluded in pursuance of the above rule. There is no reason for its observance in such cases, because there is no necessity for the publication of the evidence which may be delivered before such a tribunal. Thus it appears there exists no rule which would exclude any evidence from the House or a committee of the House, which are as competent to guard the interests of the State, and have as high motives for doing so as the Executive can have. On the other hand, it has already been shown that to withhold such evidence at the mere discretion of the Executive would be in effect to strip the House of the right to institute inquiries and investigate abuses. The consequence of this everyone foresees. Public officers and agents will become irresponsible, speculations and abuses of every kind will be perpetrated with impunity, and fraud and corruption will walk abroad unrebuked in open day. Such would be the practical operation of the rule laid down by the President; but this rule, it had been shown, is applicable only to judicial and not to legislative investigations.

It is certainly a sound rule of law that a witness is not bound to answer questions when, by doing so, he would criminate himself; nor is he under any obligation to produce his private papers when they would have a similar tendency. But in what manner does this rule conflict with the resolutions of the House asserting its right to call upon the Executive and heads of Departments for such information as may be in their possession relating to subjects of its deliberations? The information referred to in the resolution is the official information spread upon the records of the Departments or contained in their archives or on their files. This information is not the private property of the Executive or heads of Departments; nor is there any rule of law which would exclude it from being given in evidence in the impeachment of the President or any of the heads of Departments or other persons. It is not privileged in the sense spoken of by the President. All the information in the possession of the Executive and of the Departments is subject to the demands of the courts, legally made, for purposes of evidence, except when it is of such a character as would be prejudicial to the State. The President himself is subject to the process of the court to compel the attendance of witnesses. He is liable to the writ of subpoena ad testificandum; and in the trial of Aaron Burr it was decided he was liable to be served with a subpoena duces tecum. It was intimated, however, by the court that he would not be bound to produce confidential communications or papers, the disclosure of which would be prejudicial to the public safety. This rule of the courts, which excludes evidence on the ground of State policy, the committee have already shown is applicable to judicial and not parliamentary proceedings. This distinction should be constantly borne in mind. Forgetfulness of it is believed to be a principal cause of the errors into which the President has fallen.

The report goes on to discuss and deny the citation of the President in regard to the Crown ministers of England, and having done this, takes up the language of the resolution which declares the right of the House and says:

This, it will be remarked, does not include any assertion of right on the part of the House to demand from the Executive the information in his possession relating to negotiations with foreign governments or appointments to office. By the Constitution the power of making treaties is vested in the President and Senate. The House has no participation in the treaty-making power, nor in that of appointment to office; and the resolution, only asserting the right of the House to demand information relative to subjects over which its power extends, will be found not to conflict in the slightest degree with the cases cited. On the other hand, a majority of these cases will be found not only to admit as broad, but a broader right than the resolution asserts. But although the terms of the resolution do not assert the right of the House to demand from the Executive information of negotiations and appointments to office, the committee do not intend to disclaim its right. It will be time enough to settle this question when it shall arise.

The committee next goes on to discuss the precedents cited by the President, and to argue that they do not sustain the contention which he makes. During this discussion the committee say:

But if the Constitution did not by the clearest implications confer upon the House the right to demand from the Executive and heads of Departments the information and papers in their possession, the uninterrupted exercise of this right, acquiesced in and admitted as it has been for almost half a century, would give it the force and sanction of a customary law. The history of the Government from its foundation to the present day, as far as the committee have been able to discover, does not furnish an instance, except that already referred to, where the Executive has refused to communicate the information required by either House of Congress, unless the discretion to do so was conferred upon him by the resolution containing the demand. Whenever the resolution has been positive and imperative in its terms there has always been a compliance. It has, however, been the usual, perhaps the almost universal practice of both Houses of Congress, in demanding information from the President, to invest him with the discretion of communicating it or not, as he should judge proper. There is often a convenience in doing so. But if, by virtue of his office or constitutional functions, he possesses this discretion, why has it always been deemed necessary to invest him with it by special grant? It is plain, from what has been the practice in such cases, that both the President and Congress have concurred in regarding this discretion as belonging to the latter. If it does not, both branches of Congress have been practicing a continued usurpation upon the Executive for a period of more than fifty years; and, what is singular, the Executive has acquiesced in it during all the time without complaint and probably without having discovered it. It was left for the sharper scrutiny of the present Chief Magistrate to discover, and to his more intrepid firmness to resist, this usurpation.

The report of the committee recommends no action of the House in regard to this matter.

1886. The House having asserted its right to direct the heads of the Executive Departments to furnish information, the Secretary of War returned an answer to a portion of the inquiry, declining to respond to the remainder.—On December 2, 1861,¹ the House agreed to the following resolution:

Resolved, That the Secretary of War be requested, if not incompatible with the public interest, to report to the House whether any, and, if any, what, measures have been taken to ascertain who is responsible for the disastrous movement of our troops at Balls Bluff.

¹Second session Thirty-seventh Congress, Journal, p. 10.

The Secretary of War having replied that a compliance with the resolution would, in the opinion of the general in chief, be injurious to the public service, on January 6, 1862,¹ Mr. Roscoe Conkling, of New York, submitted the following:

Resolved, That the said answer is not responsive nor satisfactory to the House, and that the Secretary be directed to return a further answer.

In the debate on this resolution it was urged, on the one hand, that the management of the armies belonged to the executive department of the Government, and that an investigation into failures belonged rather to the military tribunals than to the House. On the other hand, it was urged that as the Congress raised the armies it had a right to inquire as to their management. It was also urged that the House had a right to direct the heads of Executive Departments to furnish information and that this right, exercised also by the Parliament of Great Britain, had been recognized by a rule of the House adopted in 1820.²

The House agreed to the resolution—yeas 80, nays 54.

On January 10, 1862,³ a communication was received from the Secretary of War, in response to the resolution, acknowledging the receipt of the resolution, and saying:

In reply, I have respectfully to state that “measures have been taken to ascertain who is responsible for the disastrous movement of our troops at Balls Bluff,” but that it is not deemed compatible with the public interest to make known those measures at the present time.

This communication was referred to the Joint Select Committee on the conduct of the War.

1887. President Jackson declined to furnish to the Senate a copy of a paper purporting to have been read by him to the heads of the Executive Departments.—On December 11, 1833,⁴ after considerable debate as to the propriety of the proceeding, the Senate agreed to a resolution requesting the President of the United States to communicate to the Senate “a copy of the paper which had been published, and which purports to have been read by him to the heads of the Executive Departments, dated the 18th day of September last, relating to the removal of the deposits of the public money from the Bank of the United States and its offices.” On December 12 President Jackson responded in a message denying the constitutional right of the Senate to make such an inquiry, and declining to send the paper in question.

1888. On request, President Johnson furnished to the House the minutes of a meeting of the Cabinet.—On July 8, 1867,⁵ the House passed a resolution asking the President if certain publications relating to action of the President and Cabinet were authorized and accurate, and that he be requested to furnish to the House the full minutes of the meeting. On July 20 the President (Mr. Johnson) sent a message stating that the publication was made by proper authority, and transmitting the desired documents.

¹ Journal, pp. 134–137; Globe, pp. 191–198.

² Rule 53 at this time had this language: “A proposition requesting information from the President of the United States, or directing it to be furnished by the head of either of the Executive Department or by the Postmaster-General,” etc. This rule dated from December 13, 1820.

³ Journal, p. 162; Globe, p. 274.

⁴ First session Twenty-third Congress, Debates, pp. 30–37.

⁵ First session Fortieth Congress, Journal, pp. 171, 249; Globe, p. 515.

1889. President Grant declined to answer an inquiry of the House as to whether or not he had performed any executive acts at a distance from the seat of Government.—On April 3, 1876,¹ on motion of Mr. J. C. S. Blackburn, of Kentucky, and under suspension of the rules, the House agreed to the following:

Resolved, That the President of the United States be requested to inform this House, if, in his opinion, it is not incompatible with the public interest, whether since the 4th day of March, 1869, any executive offices, acts, or duties, and, if any, what, have been performed at a distance from the seat of government established by law, and for how long a period at any one time, and in what part of the United States; also whether any public necessity existed for such performance, and, if so, of what character, and how far the performances of such executive offices, acts, or duties at such distance from the seat of government established by law was in compliance with the act of Congress of the 16th day of July, 1790.

On May 4,² the President (Mr. Grant) replied in a message, declining to make any specific and detailed answer, saying:

I have never hesitated and shall not hesitate to communicate to Congress, and to either branch thereof, all the information which the Constitution makes it the duty of the President to give, or which my judgment may suggest to me or a request from either House may indicate to me will be useful in the discharge of the appropriate duties confided to them. I fail, however, to find in the Constitution of the United States the authority given to the House of Representatives (one branch of the Congress in which is vested the legislative power of the Government) to require of the Executive, an independent branch of the Government, coordinate with the Senate and House of Representatives, an account of his discharge of his appropriate and purely executive offices, acts, and duties, either as to when, where, or how performed.

What the House of Representatives may require as a right in its demand upon the Executive for information is limited to what is necessary for the proper discharge of its powers of legislation or impeachment. The inquiry in the resolution of the House as to where executive acts have within the last seven years been performed and at what distance from any particular spot, or for how long a period at any one time, etc., does not necessarily belong to the province of legislation. It does not profess to be asked for that object.

If this information be sought through an inquiry of the President as to his executive acts in view or in aid of the power of impeachment vested in the House, it is asked in derogation of an inherent natural right, recognized in this country by a constitutional guarantee which protects every citizen, the President as well as the humblest in the land, from being made a witness against himself.

1890. The President having failed to respond to a resolution of inquiry, the House respectfully reminded him of the fact.—On December 3, 1866,³ the House asked a second time of the President for information, respectfully reminding him of the first application.

1891. The head of a Department having declined to respond to an inquiry of the House, a demand for a further answer was entertained as a matter of privilege.—On January 6, 1862,⁴ Mr. Roscoe Conkling, of New York, submitted as a question of privilege, the following:

Whereas on the second day of the session, this House adopted a resolution, of which the following is a copy:

Resolved, That the Secretary of War be requested, if not incompatible with the public interest, to

¹ First session Forty-fourth Congress, Journal, p. 724; Record, p. 2158.

² Journal, pp. 916, 917; Record, p. 2999.

³ Second session Thirty-ninth Congress, Journal, p. 11.

⁴ Second session Thirty-seventh Congress, Journal, p. 134; Globe, p. 191.

report to this House whether any, and if any, what measures have been taken to ascertain who is responsible for the disastrous movement of our troops at Ball's Bluff.

And whereas, on the 16th of December, the Secretary of War returned an answer whereof the following is a copy:

WAR DEPARTMENT, *December 12, 1861.*

SIR: I have the honor to acknowledge the receipt of a resolution of the House of Representatives calling for certain information with regard to the disastrous movement of our troops at Ball's Bluff, and to transmit to you a report of the Adjutant-General of the United States Army, from which you will perceive that a compliance with the resolution, at this time, would, in the opinion of the general-in-chief, be injurious to the public service.

Very respectfully,

SIMON CAMERON, *Secretary of War.*

Hon. G. A. GROW,
Speaker of the House of Representatives.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, December 11, 1861.

SIR: In compliance with your instructions, I have the honor to report, in reference to the resolution of the honorable the House of Representatives, received the 3d instant, that (here quotes the resolution), that the general-in-chief of the Army is of opinion an inquiry on the subject of the resolution would, at this time, be injurious to the public service. The resolution is herewith respectfully returned.

Respectfully submitted.

L. THOMAS, *Adjutant-General.*

Hon. SECRETARY OF WAR, *Washington.*

Therefore,

Resolved, That the said answer is not responsive nor satisfactory to the House, and that the Secretary be directed to return a further answer.

Mr. William A. Richardson, of Illinois, having raised a question as to whether or not the resolution involved a question of privilege, the Speaker¹ submitted the question to the House, and the House decided to entertain the resolution as a question of privilege.

1892. A demand that the head of an Executive Department transmit a more complete reply to a resolution of inquiry may not be presented as a matter of privilege.—On February 12, 1847,² Mr. George Rathbun, of New York, claiming the floor for a question of privilege, stated that the Secretary of the Treasury had made to the House an inadequate reply to its call for information concerning the secret inspectors of customs, and offered this resolution:

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to report forthwith to this House the names of all persons who now are, or have been since the 4th day of March, 1845, secret agents or inspectors of customs.

Mr. George C. Dromgoole, of Virginia, objected to the introduction of the resolution on the ground that it did not involve a question of privilege.

The Speaker¹ said that, having read the report made in answer to the resolution calling on the Secretary of the Treasury, the Chair was constrained to decide that the resolution was not a question of privilege. The Chair did not intend to rule that the House could not call for the names at any time. All that the Chair decided was

¹ Galusha A. Grow, of Pennsylvania, Speaker.

² Second session Twenty-ninth Congress, Journal, p. 333; Globe, p. 400.

³ John W. Davis, of Indiana, Speaker.

that this resolution was not, in the parliamentary sense, a question of privilege, because the Secretary did not seem to have acted in derogation of the order or dignity of the House.

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

1893. A proposition to investigate whether or not the head of an Executive Department had failed or declined to respond to an inquiry of the House was held not to be a matter of privilege.—On January 25, 1847,¹ Mr. Garrett Davis, of Kentucky, offered the following resolution as a question of privilege:

Resolved, That a select committee of five be raised to inquire whether the Secretary of the Treasury has failed or refused to furnish to this House any information called for by it of him; and also to inquire into the cause of such failure or refusal; and that said committee have power to send for persons and papers, and report to this House.

The Speaker² decided that the subject-matter of the resolution did not involve the privilege of the House, and was not therefore a question of privilege.

Mr. Davis having appealed, the decision of the Chair was sustained.

1894. In 1886 the refusal of the Attorney-General to transmit certain papers called for by the Senate led to a discussion of prerogatives and a declaration by the Senate.—In 1886,³ there was a prolonged consideration in the Senate of the relations of the Senate and the Executive, caused by the declination of the Attorney-General to transmit to the Senate certain documents concerning the administration of the office of the district attorney of the southern district of Alabama.

The Senate had called for “all documents and papers that have been filed in the Department of Justice since the 1st day of January, 1885, in relation to the management and conduct of the office of district attorney of the United States of the southern district of Alabama.” The papers which the Attorney-General refused to transmit were those having “exclusive reference to the suspension by the President of George M. Duskin, the late incumbent,” and he stated that “it was not considered that the public interest would be promoted by a compliance” with the request of the Senate.

On February 18 Mr. George F. Edmunds, of Vermont, from the Committee on the Judiciary, made an exhaustive report on the obligations of the Executive to transmit to Congress documents called for, and concluding with a resolution condemnatory of the Executive for this refusal. The minority of the committee presented views in opposition to this proposed action.

The report included the following:

The important question, then, is whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States created by laws enacted by themselves. It may be fully admitted that except in respect of the Department of the Treasury there is no statute which commands the head of any Depart-

¹ Second session Twenty-ninth Congress, Journal, p. 229; Globe, pp. 252–254.

² John W. Davis, of Indiana, Speaker.

³ First session Forty-ninth Congress, Record, pp. 1584, 1893, 1902, 2211, 2784–2814; Senate Report No. 135.

ment to transmit to either House of Congress on its demand any information whatever concerning the administration of his Department, but the committee believes it to be clear that from the very nature of the powers entrusted by the Constitution to the two Houses of Congress it is a necessary incident that either House must have at all times the right to know all that officially exists or takes place in any of the Departments of the Government.

So perfectly was this proposition understood before and at the time of the formation of the Constitution that the Continental Congress, before the adoption of the present Constitution, in establishing a department of foreign affairs and providing for a principal officer thereof, thought it fit to enact that all books, records, and other papers in that office should be open to the inspection of any Member of Congress, provided that no copy should be taken of matters of secret nature without special leave of Congress. It was not thought necessary to enact that the Congress itself should be entitled to the production and inspection of such papers, for that right was supposed to exist in the very nature of things, and when, under the Constitution, the department came to be created, although the provision that each individual Member of Congress should have access to the papers was omitted (evidently for reasons that can now be quite well understood), it was not thought necessary that an affirmative provision should be inserted, giving to the Houses of Congress the right to know the contents of the public papers and records in the public offices of the country whose laws and whose offices they were to assist in creating.

It is believed that there is no instance of civilized governments having bodies representative of the people or of States in which the right and the power of those representative bodies to obtain in one form or another complete information as to every paper and transaction in any of the executive departments thereof does not exist, even though such papers might relate to what is ordinarily an executive function, if that function impinged upon any duty or function of the representative bodies.

A qualification of this general right may under our Constitution exist in case of calls by the House of Representatives for papers relating to treaties, etc., under consideration and not yet disposed of by the President and Senate.

The committee feels authorized to state, after a somewhat careful research, that within the foregoing limits there is scarcely in the history of this Government until now any instance of a refusal by a head of a Department, or even of the President himself, to communicate official facts and information, as distinguished from private and unofficial papers, motions, views, reasons, and opinions, to either House of Congress when unconditionally demanded. Indeed, the early Journals of the Senate show great numbers of instances of directions to the heads of Departments, as of course, to furnish papers and reports upon all sorts of affairs, both legislative and executive.

The instances of requests to the President and commands to the heads of Departments by each House of Congress from those days until now for papers and information on every conceivable subject of public affairs are almost innumerable, for it appears to have been thought by all the Presidents who have carried on the Government now for almost a century that, even in respect of requests to them, an independent and coordinate branch of the Government, they were under a constitutional duty and obligation to furnish to either House the papers called for, unless, as has happened in very rare instances, when the request was coupled with an appeal to the discretion of the President in respect of the danger of publicity, to send the papers if, in his judgment, it should not be incompatible with the public welfare.

Even in times of the highest party excitement and stress, as in 1826 and 1844, it did not seem to occur to the Chief Executive of the United States that it was possible that any official facts or information existing, either in the Departments created by law or within his own possession, could, save as before stated, be withheld from either of the Houses of Congress, although such facts or information sometimes involved very intricate and delicate matters of foreign affairs as well as sometimes the history and conduct of officers connected with the administration of affairs.

The Senate, on February 18, agreed to this resolution:

Resolved, That it is, under these circumstances, the duty of the Senate to refuse its advice and consent to proposed removals of officers the documents and papers in reference to the supposed official or personal misconduct of whom are withheld by the Executive or any head of a Department when deemed necessary by the Senate and called for in considering the matter.

The President,¹ on March 1, transmitted a message in which he said:

While, therefore, I am constrained to deny the right of the Senate to the papers and documents described, so far as the right to the same is based upon the claim that they are in any view of the subject official, I am also led unequivocally to dispute the right of the Senate, by the aid of any documents whatever, or in any way save through the judicial process of trial on impeachment, to review or reverse the acts of the Executive in the suspension, during the recess of the Senate, of Federal officials.

I believe the power to remove or suspend such officials is vested in the President alone by the Constitution, which in express terms provides that "the executive power shall be vested in a President of the United States of America," and that "he shall take care that the laws be faithfully executed."

The Senate belongs to the legislative branch of the Government. When the Constitution by express provision superadded to its legislative duties the right to advise and consent to appointments to office and to sit as a court of impeachment, it conferred upon that body all the control and regulation of Executive action supposed to be necessary for the safety of the people; and this express and special grant of such extraordinary powers, not in any way related to or growing out of general Senatorial duty, and in itself a departure from the general plan of our Government, should be held, under a familiar maxim of construction, to exclude every other right of interference with Executive functions.

In the first Congress which assembled after the adoption of the Constitution, comprising many who aided in its preparation, a legislative construction was given to that instrument in which the independence of the Executive in the matter of removals from office was fully sustained.

As to the law of 1867, Mr. Cleveland said:

The first enactment of this description was passed under a stress of partisanship and political bitterness which culminated in the President's impeachment.

This law provided that the Federal officers to which it applied could only be suspended during the recess of the Senate when shown by evidence satisfactory to the President to be guilty of misconduct in office, or crime, or when incapable or disqualified to perform their duties, and that within twenty days after the next meeting of the Senate it should be the duty of the President "to report to the Senate such suspension, with the evidence and reasons for his action in the case."

This statute, passed in 1867, when Congress was overwhelmingly and bitterly opposed politically to the President, may be regarded as an indication that even then it was thought necessary by a Congress determined upon the subjugation of the Executive to legislative will to furnish itself a law for that purpose, instead of attempting to reach the object intended by an invocation of any pretended constitutional right.

* * * * *

The requests and demands which by the score have for nearly three months been presented to the different Departments of the Government, whatever may be their form, have but one complexion. They assume the right of the Senate to sit in judgment upon the exercise of my exclusive discretion and executive function, for which I am solely responsible to the people from whom I have so lately received the sacred trust of office. My oath to support and defend the Constitution, my duty to the people who have chosen me to execute the powers of their great office and not to relinquish them, and my duty to the Chief Magistracy, which I must preserve unimpaired in all its dignity and vigor, compel me to refuse compliance with these demands.

From March 9 to March 26 the Senate debated the issue involved, and concluded with a condemnation of the action of the Attorney-General as—

in violation of his official duty and subversive of the fundamental principles of the Government and of a good administration thereof.

1895. It has been considered proper to use the word "request" in asking for information from the President and "direct" in addressing the heads of Departments.—On January 21, 1837,² the select committee

¹ Grover Cleveland, President.

² House Report No. 194, second session, Twenty-fourth Congress, journal of the committee, pp. 4, 6, 7.

appointed to investigate the Executive Departments of the Government, was considering a resolution calling for information, in terms as follows:

Resolved, That the President of the United States and the heads of the several Executive Departments be required to furnish this committee with a list or lists of all officers, etc.

Mr. Dutee J. Pearce, of Rhode Island, moved to amend the resolution so that it would read "requested" as to the call upon the President and "directed" as to the call upon heads of departments.

This amendment was agreed to, yeas 7, nays 1.

1896. Resolutions of inquiry addressed to the President have usually contained the clause "if not incompatible with the public interest," especially when on the subject of diplomatic affairs.

In some instances the House has made its inquiries of the President without condition, and has even made the inquiry imperative.

On January 16, 1807,¹ Mr. John Randolph, of Virginia, offered this resolution:

Resolved, That the President of the United States be, and he hereby is, requested to lay before this House any information in possession of the Executive, except such as he may deem the public welfare to require not to be disclosed, touching any illegal combination of private individuals against the peace and safety of the Union, or any military expedition planned by such individuals against the territories of any power in amity with the United States; together with the measures which the Executive has pursued for suppressing or defeating the same.

Question arose as to the propriety of the resolution, and reference was made to similar resolutions passed in 1797² and 1798.³

The resolution was agreed to, yeas 109, nays 14, and yeas 67, nays 52, a separate vote having been taken on the latter portion of the resolution, "together with the measures which the Executive has pursued" etc., the words "and proposes to take" having been stricken out on motion of Mr. Randolph.

Mr. John Randolph and Mr. Lloyd were appointed a committee to present the resolution to the President, and on January 19 Mr. Randolph reported that the President signified that he would

cause the information requested to be laid before the House.

On January 22, the President⁴ communicated the information to the House.

1897. On February 27, 1856,⁵ the House agreed to the following resolution:

Resolved, That the President be requested to communicate to this House so much of the correspondence between the Government of the United States and that of Great Britain touching the Clayton-Bulwer convention, not heretofore communicated, as he shall deem not incompatible with the public interest.

On April 9, President Pierce transmitted the information called for.

¹ Second session Ninth Congress, Journal, pp. 533-536, 545 (Gales & Seaton ed.); Annals, pp. 334-359.

² January 2, 1797, Journal second session, Fourth Congress, p. 634 (Gales & Seaton ed.)

³ April 2, 1798.

⁴ Thomas Jefferson, President.

⁵ First session Thirty-fourth Congress, Journal, pp. 609, 802; Globe, pp. 521, 841.

1898. On March 30, 1798,¹ Mr. John Allen, of Connecticut, proposed this resolution:

Resolved, That the President of the United States be requested to communicate to this House the dispatches from the envoys extraordinary from the United States to the French Republic, mentioned in his message of the 19 instant, or such parts thereof as consideration of public safety and interest, in his opinion, may permit.

Discussion arose as to the last clause of the resolution, objection being made that it proposed to transfer to the President a right which the House itself should exercise of determining what it was proper to publish in consideration of the public interest. This case differed from that when papers relating to the British treaty were called for, since this was a subject within the constitutional authority of the House. The House, without division, struck out the objectionable clause, and the resolution was agreed to in this form, yeas 65, nays 27:

Resolved, That the President of the United States be requested to communicate to this House the instructions to, and dispatches from, the envoys extraordinary from the United States to the French Republic, mentioned in his message of the 19th ultimo.

Ordered, That Mr. Allen and Mr. Hanna be appointed a committee to present the foregoing resolution to the President of the United States.

The same day Mr. Allen reported that the committee had performed that service, and that the President signified to them that he would take the subject into his consideration, and do thereon what it should appear to him the public safety required.

On April 3² the President³ transmitted, "in compliance with the request of the House of Representatives," the papers mentioned in the resolution, "omitting only some names and a few expressions descriptive of the persons." The President then said:

I request that they may be considered in confidence until the members of Congress are fully possessed of their contents, and shall have had opportunity to deliberate on the consequences of their publication; after which time I submit them to your wisdom.

The House then proceeded to consider the papers in secret session.

1899. On June 1, 1868,⁴ the House agreed to a resolution "directing" the President to send to the House certain information in regard to the return of John C. Breckinridge to the United States. Mr. James G. Blaine, of Maine, called attention to the fact that the usual word was "requested," but the resolution was passed in the original form.

1900. On December 17, 1821,⁵ Mr. Ezekiel Whitman, of Maine, proposed the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House such information as he may think proper to communicate in relation to any misunderstanding which may have existed between Andrew Jackson, as governor of the Floridas, and Elijius Fromentin, as judge of the court therein; and also in relation to any delay or omission on the part of the officers under his

¹ Second session Fifth Congress, Journal, pp. 248, 249 (Gales & Seaton ed.); Annals, pp. 1357–1371.

² Journal, p. 252.

³ John Adams.

⁴ Second session Fortieth Congress, Journal, pp. 99, 785, 786; Globe, p. 2756.

⁵ First session Seventeenth Congress, Journal, pp. 65, 108, 109, 198; Annals, pp. 558–559, 610–620, 826.

Catholic majesty to surrender to the officers and commissioners of the United States, duly authorized to receive the same, any of the archives and documents which relate directly to the property and sovereignty in and over the said Floridas, etc.

On motion of Mr. Lewis Williams, of North Carolina, the words "thin proper to communicate" were stricken out and in their place was inserted the word "possess."

Also, on January 2, this amendment was added at the end of the resolution:

And also such part of the correspondence as it may be consistent with the public interest to disclose, and which has not heretofore been communicated, which may have taken place between the Executive and the said Andrew Jackson touching the proceedings of the latter during his continuance as governor of said Territory.

Considerable debate was occasioned as to the propriety of the resolution, but it was agreed to.

On January 29 President Monroe responded to the request, saying in his message:

Being always desirous to communicate Congress or to either House all the information in the possession of the Executive respecting any important interest of our Union which may be communicated without real injury to our constituents, and which can rarely happen except in negotiations pending with foreign powers, and deeming it more consistent with the principles of our Government in cases submitted to my discretion, as in the present instance, to hazard error by the freedom of the communication rather than by withholding any portion of information belonging to the subject, I have thought proper to communicate every document comprised within this call.

1901. On December 31, 1849,¹ Mr. Abraham W. Venable, of North Carolina, offered the following:

Resolved, That the President of the United States be requested to communicate to this House, as early as he conveniently can whether, since the last session of Congress, any person has been by him appointed either a civil or military governor of California or New Mexico. If any military or civil governor has been appointed, their names and their compensation. If a military and civil governor has been united in one person, whether any additional compensation has been given for said duties, and the amount of the same, etc. (The resolution continues in other paragraphs relating to the same subject.)

A suggestion was made by Mr. Henry W. Hilliard, of Alabama, that the words "if not incompatible with the public interest," be inserted after the word "House," where it first occurs.

Mr. Venable declined to accept the modification. He said he believed that this clause was usually inserted in resolutions calling for information relating to foreign relations, and not necessarily in other calls. He intended no discourtesy to the President, but wanted the information.

Mr. Hilliard then moved to insert the clause, but the House decided the motion in the negative without division.

The resolution was then agreed to.

On January 21, 1850, the President transmitted the information called for.

1902. A discussion in the Senate as to its powers in calling for papers from the President.

The clause, "if not, in his judgment, incompatible with the public

¹First session Thirty-first Congress, Journal, pp. 207, 208, 379; Globe, p. 90.

interest,” is generally used by the Senate in resolutions of inquiry directed to the President.

On January 28, 1904,¹ in the Senate, in open session, Mr. Charles A. Culberson, of Texas, called up for consideration the following resolution:

Resolved, That the President be requested to inform the Senate whether all the correspondence and notes between the Department of State and the legation of the United States at Bogota, and between either of these and the Government of Colombia for the construction of an isthmian canal since June twenty-eighth, nineteen hundred and two, and all the correspondence and notes between the United States and any of its officials or representatives or the Government of Panama concerning the separation of Panama from Colombia, have been sent to the Senate, and, if not, that he be requested to send the remaining correspondence and notes to the Senate in executive session.

To this Mr. Shelby M. Cullom, of Illinois, proposed to add the following amendment:

if not, in his judgment, incompatible with the public interest.

An extended debate arose as to the powers of the Senate to call on the Executive for papers, with an abundant citation of precedents. Mr. Cullom said that so far as he had examined the qualifying clause which he had proposed was first inserted in a resolution of inquiry by Mr. Daniel Webster, when a Senator.

After debate it was agreed that a vote should be taken on the resolution on the next day.

On January 29, 1904,² the debate was concluded, and the question being taken on the amendment proposed by Mr. Cullom, there were yeas 39, nays 20; so the amendment was agreed to.

Then, after certain other amendments verbal in nature had been agreed to, the resolution was agreed to by the Senate.

1903. On March 11, 1905,³ in the Senate, the following resolution, offered by Mr. Henry M. Teller, of Colorado, was considered:

Resolved, That the President is hereby requested, if, in his opinion, not incompatible with the public interest, to send to the Senate, for use in executive sessions, copies of the instructions given to Commodore Dillingham and Minister Dawson, or either of them, regarding Dominican affairs, and copies of all correspondence and telegrams relating to Dominican affairs, or relating to any proposed agreement, protocol, or treaty between the United States and Santo Domingo, from July 1, 1904, to the 1st of March, 1905.

The consideration of this resolution caused a debate of some length, which extended into the next day's session, as to its propriety, with a review of precedents.

The resolution was finally referred to the Committee on Foreign Relations.

1904. Discussion in the Senate as to the practice of requiring information from the heads of Departments and requesting it of the President.— On December 6, 1906,⁴ the Senate was considering this resolution:

Resolved, That the President be requested to communicate to the Senate, if not incompatible with the public interests, full information bearing upon the recent order dismissing from the military service of the United States three companies of the Twenty-fifth Regiment of Infantry, United States troops (colored).

when Mr. John C. Spooner, of Wisconsin, said:

¹ Second session Fifty-eighth Congress, Record, pp. 1303–1324.

² Record, pp. 1361–1365.

³ Special session of the Senate, Fifty-ninth Congress.

⁴ Second session Fifty-ninth Congress, Record, pp. 97–106.

Mr. President, I am opposed to the resolution offered by the Senator from Pennsylvania. My opposition to it is based entirely upon the form of it. This resolution does not, so far as the subject-matter goes, fall within the clam of inquiries which the Senate has ever been accustomed to address to the President. It implies on its face, Mr. President, a doubt here which I think does not exist; as to whether the Senate is of right entitled to all the facts relating to the discharge of the three named companies or not. Always the Senate, in passing resolutions of inquiry addressed to Cabinet officers, except the Secretary of State, make them in form of direction, not request. It rarely has happened that a request has been addressed to any Cabinet officer where foreign relations were involved. Where such a resolution has been adopted it has been addressed to the President, with the qualification that he is requested to furnish the information only so far as, in his judgment, the transmission of it is compatible with the public interest.

There are reasons for that, Mr. President. The State Department stands upon an entirely different basis as to the Congress from the other Departments. The conduct of our foreign relations is vested by the Constitution in the President. It would not be admissible at all that either House should have the power to force from the Secretary of State information connected with the negotiation of treaties, communications from foreign governments, and a variety of matters which, if made public, would result in very great harm in our foreign relations—matters so far within the control of the President that it has always been the practice, and it always will be the practice, to recognize the fact that there is of necessity information which it may not be compatible with the public interest should be transmitted to Congress—to the Senate or to the House.

There are other cases, not especially confined, Mr. President, to the State Department, or to foreign relations, where the President would be at liberty obviously to decline to transmit information to Congress or to either House of Congress. Of course, in time of war, the President being Commander in Chief of the Army and Navy, could not, and the War Department or the Navy Department could not, be required by either House to transmit plans of campaign or orders issued as to the destination of ships, or anything relating to the strategy of war, the public knowledge of which getting to the enemy would defeat the Government and its plans and enure to the benefit of an enemy.

There are still other cases. The Department of Justice would not be expected to transmit to either House the result of its investigations upon which some one had been indicted, and lay bare to the defendant the case of the Government. The confidential investigations in various departments of the Government should be, and have always been, treated by both Houses as confidential, and the President is entirely at liberty to permit by the Cabinet officer to whom the inquiry is addressed as much or as little information regarding them as he might see fit. I have no doubt the President would transmit everything upon this subject. My objection is to the form of the resolution. I think we ought to maintain the uniform practice upon the subject. I do not think, as to a matter upon which the Senate clearly has a right to be fully advised, it should depart from the usual form of directing the transmission by the Secretary of War or the Secretary of the Navy or the Secretary of the Interior, to adopt a resolution of request of the President, bearing upon its face a recognition of the fact that he is at liberty to withhold the information or to transmit such part of it as he shall see fit.

Mr. President, in time of peace as to matters relating to the organization and the administration of the Army there can be no secrecy. It is purely domestic public business, as to which the Congress has a right to know. I should be very much disappointed if in a matter of this kind the Senate should address the inquiry to the President, coupled, as it must be, with the suggestion that we doubt our right to the information. I think it is a bad precedent to establish. In such matters I think we ought to maintain the practice which, so far as I remember, hitherto has been unbroken. Therefore I am opposed to the form of the resolution of the Senator from Pennsylvania. I am in favor of the form of the resolution of the Senator from Ohio.

On the other hand, various Senators expressed the opinion that, in accordance with the precedents of the Senate, it would be perfectly proper to ask the information of the President. Mr. Henry M. Teller, of Colorado, said:

I had occasion some time ago to consult the precedents running back forty or fifty years, and I have a very distinct recollection of a number of cases where Presidents have declined to communicate information both to the House and to the Senate.

I do not think there is any impropriety in our asking the President in a courteous, proper manner to communicate information to the Senate. I am under the impression, Mr. President, that the better practice would be to ask the Secretary of War, the Secretary of the Treasury, or the Secretary of the Navy, whoever it might be that had the matter under control, without annoying the President and adding to his work. But, so far as I am concerned, I am willing to vote for a resolution asking the President for information, or I am willing to vote for a resolution asking the Secretary of War for information; but I do not think we ought to ask them both. It seems to me we ought to confine ourselves to one or the other. I simply express my preference for the method of asking the Secretary of War, instead of asking the President.

The Senate agreed to the resolution without changing it in respect to suggestions of Mr. Spooner.

1905. Discussion of the status of the Department of State in relation to resolutions of inquiry.—On January 23, 1906,¹ in the Senate, Mr. John C. Spooner, of Wisconsin, said in the course of a speech on the prerogatives of the President in relation to foreign affairs:

The act creating the Department of State, in 1789, was an exception to the acts creating the other Departments of the Government. I will not stop to refer to the language of it or to any of the discussions in regard to it, but it is a Department that is not required to make any reports to Congress. It is a Department which from the beginning the Senate has never assumed the right to director control, except as to clearly define matters relating to duty imposed by statute and not connected with the conduct of our foreign relations.

We direct all the other heads of Departments to transmit to the Senate designated papers or information. We do not address directions to the Secretary of State, nor do we direct requests, even, to the Secretary of State. We direct requests to the real head of that Department, the President of the United States, and, as a matter of courtesy, we add the qualifying words, "if in his judgment not incompatible with the public interest."²

1906. The Postmaster-General having responded to an inquiry in a manner considered disrespectful, the Senate referred the matter to the President, whereat an explanation was forthcoming.—On March 1, 1839,³ the Senate agreed to the following resolution:

Resolved, That the letter of the Postmaster-General to the President of the Senate, stating that the only reason why he had not sent an answer to a previous resolution was because it was not ready is considered by the Senate as disrespectful to this body.

Resolved, That said letter, with the resolution to which it purported to be an answer, be laid before the President of the United States for such action as he may deem proper.

The same day a message from the President transmitted a letter of explanation from the Postmaster-General.

1907. The Senate returned to the Secretary of the Navy an impertinent document transmitted in response to an inquiry.—On March 3, 1865,⁴ the Senate considered and examined, as a question of privilege, the act of the Secretary of the Navy in sending to the Senate, in answer to an inquiry, a document

¹First session Fifty-ninth Congress, Record, p. 1420.

²The statutes provide that the Secretary of War (R. S., secs. 227–229), of the Treasury (R. S., secs. 257–264), the Attorney-General (R. S., secs. 384, 385), the Postmaster-General (R. S., sec. 413), the Secretary of the Navy (R. S., sec. 429), the Secretary of the Interior (R. S., sec. 445), shall make certain specified reports; but nowhere does there appear legislation requiring them to transmit documents or information in response to inquiries of either House.

³Third session Twenty-fifth Congress, Globe, p. 220.

⁴Second session Thirty-eighth Congress, Globe, pp. 1346, 1361.

which did not relate to the inquiry, but which embodied a reply by the Assistant Secretary to some remarks made in relation to him by a Senator. After investigation by the Judiciary Committee, the Senate decided that the document should not have been communicated, and directed that it be returned to the Secretary of the Navy.

1908. A subordinate officer of the Government, to whom the House has directed a resolution of inquiry, may respond directly or through his superior.—On January 5, 1863,¹ the House by resolution asked of the Secretary of State certain information relating to the relations of the United States with the Government in New Granada. On January 16 a response was received, not from the Secretary of State, but from the President.

1909. On January 30, 1863,² the House “directed” the General in Chief of the Army to inform the House as to paroles of certain confederate officers. On February 9 the inquiry was responded to by the Secretary of War.

1910. In 1868³ frequent instances occurred wherein the House called directly on the General of the Army for information, and in turn the General of the Army transmitted his communications directly to the House.

¹Third session Thirty-seventh Congress, Journal, pp. 134, 196.

²Third session Thirty-seventh Congress, Journal, pp. 298, 354.

³Second session Fortieth Congress, Journal, pp. 503, 505, 650, 678.