Chapter LXXX.

QUESTIONS OF PRIVILEGE AND THEIR PRECEDENCE.

1. **Definition and precedence of. Sections 2521–2531.**[1]
2. **Debate and other procedure on. Sections 2532–2537.**
3. **Basis for raising question of privilege. Sections 2538, 2539,**
4. **In Committee of the Whole. Sections 2540–2544.**
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7. **In relation to transaction of other business. Sections 2550–2556.**

2521. Definition and precedence of questions of privilege.

Questions of privilege have precedence of all motions except the motion to adjourn.

Form and history of Rule IX.

The House rules define questions of privilege in Rule IX:

> Questions of privilege shall be, fast, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members individually in their representative capacity only; and shall have precedence of all other questions, except motions to adjourn.

This was a new rule framed in the revision of 1880,[2] and has not been changed essentially since that date. The object of the rule was to prevent the large consumption of time which resulted from Members getting the floor for all kinds of speeches under the pretext of raising a question of privilege.[3] As first framed, the motions for a recess and to fix the day to which the House shall adjourn were included with the motion to adjourn as having precedence of a question of privilege. These motions were dropped in the Fifty-first Congress, and, although restored in the Fifty-second and Fifty-third, were again dropped in the Fifty-fourth.

2522. A question of privilege supersedes consideration of the original question, and must first be disposed of.—Jefferson's Manual, in the latter portion of Section XXXIII, provides:

> A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of.

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[1] As to the duty of the Speaker in entertaining. Volume IV, section 2799. Precedence over questions merely privileged under the rules. Volume V, section 6451. The question of consideration may be demanded against. Volume V, sections 4941, 4942. Previous question applies to. Volume V, sections 5459, 5460.

[2] See Record, second session Forty-sixth Congress, pp. 205, 607, 608.

[3] See Record, second session Forty-sixth Congress, p. 482.

2523. It has long been the practice of the House to give a question of privilege precedence over all other business.—On February 6, 1836,[1] on motion of Mr. John M. Patton, of Virginia, the rules were suspended by a two-thirds vote in order to enable him to present for the consideration of the House a resolution returning to Mr. John Quincy Adams, of Massachusetts, the petition of Rachel Steers and eight other women of Fredericksburg, VA, presented by him on a preceding day, and received and laid on the table by the House.

Pending the question on this resolution, Mr. Waddy Thompson, of South Carolina, moved the following resolution:

Resolved, That the Hon. John Quincy Adams, by the attempt just made by him to introduce a petition purporting on its face to be from slaves, has been guilty of a gross disrespect to this House, and that he be instantly brought to the bar to receive the severe censure of the Speaker.

(Mr. Adams had informed the Speaker that he had such a petition immediately before Mr. Patton had moved suspension of the rules.)

During debate on the resolution moved by Mr. Thompson, Mr. Adams raised a question as to the propriety of the resolution displacing other business.

The Speaker[2] stated that the subject-matter of the resolution moved by Mr. Thompson, being a question of privilege, it would, until disposed of, take precedence over all other business.

2524. A question of privilege has precedence at a time set apart by a special order for other business.

An alleged attempt of a doorkeeper to detain and arrest a Member who was about to leave the Hall was held to involve a question of privilege, no authority having been given the doorkeeper so to act.

On August 9, 1890,[3] the House had just adopted a resolution from the Committee on Rules making the Indian appropriation bill a special order immediately and for two hours.

Thereupon Mr. Benjamin A. Enloe, of Tennessee, claimed the floor on a question of personal privilege.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the adoption of the resolution created a special order, and that for two hours nothing was in order except to consider the Senate amendments to the Indian appropriation bill.

After debate on the said point of order and question of privilege, the Speaker 4 overruled the said point of order on the following grounds:

The rights and privileges of all the Members of the House, in the discharge of their functions, are sacred, and the House can undertake no higher duty than the conservation of all those rights and privileges intact. And even if the case arises under dubious circumstances, it is proper for the House to pause and give suitable heed to any question which any Member raises with regard to his rights and privileges as a Member. It is for the House alone to determine what they are.

In this case the gentleman from Tennessee [Mr. Enloe] has embodied his complaint and the remedy therefor in the shape of a resolution for the House to pass upon, if it be a question of privilege. The Chair thinks that the question ought to be passed upon by the House. The rules of the House

[1] Second session Twenty-fourth Congress, Journal, p. 352; Debates, p. 1594.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Fifty-first Congress, Journal, pp. 936, 937; Record, pp. 8373, 8375.

[4] Thomas B. Reed, of Maine, Speaker.

make provision for obtaining and for the retention of a quorum of its Members in cases provided for under the rules. In order to accomplish that the rules of the House require, whenever a call of the House is ordered, that the doors shall be closed. Such closing of the doors, in the opinion of the Chair, is to prevent any Member from going out. It is done for the purpose of keeping such Members as are already here, and retaining those who may be brought here after having been sent for by the order of the House. But that is the opinion which the Chair entertained as an individual Member of the House.

The Speaker of the House has issued no order with regard to the matter; but in response to a question of the Doorkeeper, or one of his assistants, as to the meaning of the rule, the Chair stated that to be his opinion, and the Doorkeeper has acted upon it, apparently, subject always and of course to the decision of the House upon an examination. As this resolution raises the question of privilege directly, which may be disposed of by the House, the Chair rules that it is admissible, and is before the House for consideration.

Mr. Enloe thereupon submitted, as a question of personal privilege, the following resolution, viz:

Resolved, That George E. Minot, assistant doorkeeper of the House of Representatives, be arrested and brought to the bar of the House to answer for a breach of the privileges of a Member of the House in laying hands upon and attempting to arrest Hon. B. A. Enloe, a Member of this House and a Representative from the Eighth district of Tennessee, without authority of law and in violation of the Constitution of the United States.

On motion of Mr. Witthorne, by unanimous consent the resolution was referred to the Committee on the Judiciary, with instructions to inquire into the facts and report thereon to the House.

On December 8, 1890,[1] the committee reported as follows:

The committee find that on the 9th day of August last, the House being in session, Mr. Minot, who is a messenger for the House, under the Doorkeeper, was stationed at the western extremity of the passageway leading by the wash room. This passageway leads into the corridor extending north and south on the west side of the Hall of the House of Representatives, and at the point of intersection there is no door.

On the occasion referred to in the resolution, while the House was under call, Mr. Enloe, a Member of the House, having answered to his name, passed out of the Hall of the House through the doorway next west of the Speaker's chair, all other doors being closed, and approached the place where Mr. Minot was stationed, with the purpose of passing into the corridor and thence to Statuary Hall.

Mr. Minot, having been instructed by Assistant Doorkeeper Houk to prevent Members passing out at that point during calls of the House, informed Mr. Enloe that he was instructed to not allow Members to pass. Mr. Enloe inquired who gave the order, and was told that it came from the Speaker. (In this, however, Mr. Minot was mistaken.) Mr. Enloe said he would go through, and did. During the conversation Mr. Minot undoubtedly placed his hand on Mr. Enloe's arm or shoulder, although he does not remember that he did so, and it is quite likely he was not conscious of the fact at the time it occurred. One of the witnesses, a Member of the House, who was standing by, describes Mr. Minot's touch as an appeal to Mr. Enloe or a means of arresting his attention.

Mr. Minot did not attempt or intend to arrest or to detain Mr. Enloe by force. He was not rude or uncivil, and only seems to have been desirous of doing his duty as he understood it.

Your committee, after due consideration of the subject, believe that Mr. Enloe was not, under the rules of the House, liable to arrest, under the circumstances, and had there been any attempt to arrest him a case of breach of privilege might have arisen which would call for action; but your committee do not think the facts in this case disclose any breach of privilege or call for any action on part of the House, and therefore recommend that said resolution lie on the table.

The House agreed to the report.

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[1] Second session Fifty-first Congress, Record, p. 218.

2525. On January 21, 1857,[1] Mr. James L. Orr, of South Carolina, arose to report from the select committee to investigate charges that Members of the House had entered into corrupt combinations for the purpose of passing and preventing the passage of certain measures during the present Congress, stating that he rose to a question affecting the privileges of the House. Thereupon Mr. Galusha A. Grow, of Pennsylvania, made the point of order that a question of privilege could not override a special order of the House, as the House was acting under a suspension of the rules.

The Speaker[2] ruled that the question of privilege overruled the special order.

2526. A question of privilege takes precedence of a motion merely privileged under the rules.—On January 10, 1846,[3] Mr. Hannibal Hamlin, of Maine, made the privileged motion that the House resolve itself into the Committee of the Whole House on the state of the Union.

Pending this motion Mr. Garrett Davis, of Kentucky, as a question of privilege, presented a resolution for the dismissal of the Printer of the House.

Mr. Hamlin having raised a question as to the precedence of the pending questions, the Speaker[4] said that the motion submitted by the gentleman from Maine was undoubtedly a privileged motion, which could at any time be made by the rule; but there was this difference between the two motions: That of the gentleman from Maine was a privileged question, and the other was a question of privilege, and must put everything else aside.

2527. On January 24, 1842,[5] Mr. Henry A. Wise, of Virginia, rose and submitted that—

> The House having allowed Mr. Adams, by its vote, to defend himself from a charge contained in a paper or petition in his possession, and to read a portion of a letter of Mr. Wise, to prove that he (Mr. Wise) had also made the same or a similar charge, and to comment upon that portion of the letter, Mr. Wise now asks the privilege and the permission of the House to reply to the remarks of Mr. Adam and to speak in his own defense and to the question of privilege raised by Mr. Adams.

Mr. Joseph R. Underwood, of Kentucky, submitted as a question of order the following:

> That his request can not be received or entertained without a suspension of the rules regulating the order of business.

The Speaker[6] decided that the motion submitted by Mr. Wise having been stated as a question of privilege, he considered it in order to submit the question to the House without a suspension of the rules, leaving it for the House to determine whether it was a question of privilege.

An appeal having been taken, the decision of the Chair was sustained.

The record of the debates quotes the Speaker as saying that questions of privilege were always questions for the House and riot the Chair to decide.

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[1] Second session Thirty-fourth Congress, Globe, p. 403.

[2] Nathaniel P. Banks, of Massachusetts, Speaker.

[3] First session Twenty-ninth Congress, Globe, p. 177.

[4] John W. Davis, of Indiana, Speaker.

[5] Second session Twenty-seventh Congress, Journal, p. 270; Globe, p. 167.

[6] John White, of Kentucky, Speaker.

2528. The latest decision does not admit the soundness of earlier rulings that a matter merely privileged by a rule relating to the order of business may supersede an actual question of privilege.—On January 8, 1894,[1] Mr. Thomas C. Catchings, of Mississippi, called up a report from the Committee on Rules proposing a resolution for the consideration of the tariff bill, on which the previous question had been ordered.

Mr. Charles A. Boutelle, of Maine, asked that a resolution relating to actions of the President in relation to Hawaii, which had already been decided to present a question of privilege, and which had been reported adversely from the Committee on Foreign Affairs, be first considered, and submitted the point that the resolution involved a question of privilege and therefore took precedence over the privileged report from the Committee on Rules.

The Speaker[2] held that the resolution reported from the Committee on Rules was already before the House for consideration; that under the rules it presented a privileged question of the highest degree, and that no other business was in order until it should be finally disposed of. The Speaker therefore declined to recognize Mr. Boutelle for the consideration of his resolution.

Mr. Boutelle stated that he appealed from the decision of the Chair.

The Speaker declined to entertain the appeal upon the ground mentioned in the foregoing decision.

2529.—On February 2, 1894,[3] Mr. Thomas C. Catchings, of Mississippi, submitted from the Committee on Rules a privileged report proposing a time for the consideration of a resolution of the House relative to Hawaiian affairs.

Mr. Charles A. Boutelle, of Maine, submitted the point of order that a resolution heretofore presented by him presented a question of privilege and therefore took precedence of the report of the Committee on Rules.

The Speaker[2] overruled the point of order upon the ground that the Committee on Rules, under the rules of the House, had the right to report on the order of business at any time, and on the further ground that the very report from that committee just submitted provided for the consideration of the privileged question submitted by Mr. Boutelle.

2530. On July 8, 1897,[4] Mr. John Dalzell, of Pennsylvania, being recognized, proposed to present a privileged report from the Committee on Rules.

Mr. James Hamilton Lewis, of Washington, demanded recognition for a question which he claimed to be of the highest privilege, and made the point of order that a question of privilege had precedence of a report from the Committee on Rules.

After debate the Speaker[5] said:

The Chair is very far from ruling that there may not be a question of privilege which may interfere with the right of the Committee on Rules to report, although subsequent to the Fifty-first Congress, and consequently subject to any decision which was made at that time, a rule was adopted providing that it shall always be in order to call up for consideration a report from the Committee on Rules. Although the Speaker occupying the chair at the time when this rule was adopted, and who made the first rulings

[1] Second session Fifty-third Congress, Journal, pp. 71–72; Record, pp. 485, 527.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-third Congress, Journal, p. 132; Record, p. 1809.

[4] First session Fifty-fifth Congress, Record, p. 2478.

[5] Thomas B. Reed, of Maine, Speaker.

under it, decided that no question of privilege could interfere with the operation of the rule, the present occupant of the chair was never entirely satisfied that that was so; but the gentleman from Washington [Mr. Lewis] having now stated his proposition, namely, that we are not a House, the Chair overrules the point as dilatory, and the Clerk will read the pending report from the Committee on Rules.

Mr. Lewis having appealed, the Speaker declined to entertain the appeal.

2531. A question of personal privilege has been given precedence over privileged Senate amendments remaining to be disposed of after the rejection of a conference report.—On February 26, 1901,[1] the House had disagreed to the conference report on the naval appropriation bill, and was considering motions relating to the several Senate amendments to the bill, when Mr. John J. Lentz, of Ohio, claimed the floor on a question of personal privilege relating to the Congressional Record.

Mr. Joseph G. Cannon, of Illinois, made the point of order that a question of privilege might not interfere with a conference report.

The Speaker[2] said that he would hear the gentlemen from Ohio, as it would readily be seen that matters might arise which would have to be considered at once.

Mr. Lentz then went on to say that the copy of a speech, which he had left with the Public Printer for insertion in the Record, had not appeared in the Record, but, as he had been informed, had been delivered to the Speaker, and by the Speaker delivered to the gentleman from Ohio, Mr. Charles H. Grosvenor. He asked upon what authority that could be done.

After discussion, the Speaker held that before further action could be taken a distinctive proposition must be presented to the House.

Thereupon Mr. James D. Richardson, of Tennessee, offered this resolution:

Resolved, That the Speaker has no right to withhold from the Record the speech of a Member made on a general leave to print.

Mr. Cannon renewed his point of order, urging that this was not a question of privilege, and that the privileged matter before the House could not be interrupted.

The ruling of the Speaker on the point of order made by Mr. Cannon was as follows:

* * * The Chair desires to say in regard to the point of order made by the gentleman from Illinois that there are privileged questions and questions of privilege. The gentleman submits a privileged question, but the gentleman from Ohio submits a question of privilege, and the Chair would be very loath to hold that the question of privilege should not be considered.

2532. Although the previous question had been ordered on a motion to reconsider, it was held that a question of privilege might be debated.— On July 10, 1840,[3] the previous question had been ordered on a motion to reconsider the vote of the previous day whereby the House, had rejected the resolution of the Senate (No. 16) authorizing the President of the United States to accept certain presents from the Imaum of Muscat and the Sultan of Morocco.

At this point Mr. John Quincy Adams, of Massachusetts, submitted the following resolution:

Resolved, That the Clerk of this House, by delivering, privately, a resolution from the Senate which had been acted upon by this House, to be returned to the Senate, to a Member of this House, thereby retaining it from the Senate, has violated his official duty as Clerk of this House.

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[1] Second session Fifty-sixth Congress, Journal, pp. 281, 282; Record, p. 3092.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Twenty-sixth Congress, Journal, p. 1242; Globe, p. 519.

An inquiry being made as to whether this resolution was open to debate, the previous question having been ordered on the motion to reconsider, the Speaker[1] stated that, this being a question of privilege, suspended the motion to reconsider, and was open to debate.

Mr. Hopkins L. Turney, of Tennessee, having taken an appeal, the decision of the Chair was sustained, yeas 86, nays 66.

2533. Only one question of privilege may be pending at a time.—On March 1, 1877,[2] during proceedings incident to the count of the electoral vote, Mr. Fernando Wood, of New York, submitted this resolution:

Resolved, That the vote of Henry N. Sollace, claiming to be an elector from the State of Vermont, be not counted.

Mr. Earley F. Poppleton, of Ohio, claimed the floor as the objector in the joint meeting to the vote of Henry N. Sollace as an elector from the State of Vermont.

Mr. Bernard G. Caulfield, of Illinois, claimed the floor upon a question of high privilege.

The Speaker[3] declined to entertain the motion of Mr. Caulfield at this time, on the ground that but one question of privilege could be pending at a time.

Mr. Poppleton was thereupon recognized.

2534. A question of privilege relating to the conduct of several Members being before the House, one of them may not claim the floor by asserting a question of personal privilege.—On March 9, 1904,[4] the House was considering a resolution of privilege relating to the conduct of certain Members in relation to transactions in the Post-Office Department. This resolution was being considered under the terms of a special order limiting the time of debate and giving control of the time to representatives of the majority and minority.

Mr. Henry A. Cooper, of Wisconsin, rising to a parliamentary inquiry, asked:

Would not each Member of the House of Representatives whose name appears in this report be entitled to address the House as a matter of personal privilege, in view of the heading of the pages of the report "Charges concerning Members of Congress?"

The Speaker[5] said:

The Chair will say, in answer to the parliamentary inquiry of the gentleman, that that matter will be ruled upon when it arises. In the opinion of the Chair it is not in order at this time.

Later, on the same day, Mr. Ebenezer J. Hill, of Connecticut, demanded time in his own right as a matter of personal privilege.

The Speaker[5] said:

One question of privilege is already before the House. The Chair is of opinion that there can not be but one question of privilege at a time. * * * The Chair can not recognize the gentleman on a question of privilege when there is a question of privilege already before the House.

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[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] Second session Forty-fourth Congress, Journal, p. 587.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Fifty-eighth Congress, Record, pp. 3051, 3064.

[5] Joseph G. Cannon, of Illinois, Speaker.

On March 11,[1] the resolution being still before the House, Mr. James A. Tawney, of Minnesota, rising to a parliamentary inquiry, said:

I understand, Mr. Speaker, that every Member of the House who is named in this report can rise to a question of personal privilege, and occupy as much time as he wants. Is not that the fact? If so, the debate should be extended sufficiently to allow Members who desire to speak on the proposition to do so.

The Speaker[2] said:

The Chair ruled on that question on a former case. This is a question of the highest privilege and is entitled to consideration. Another question of privilege can not take this question from the floor of the House, or prevent the House from deciding this question when it desires to do so. The House has determined by special order when it will decide this question of privilege.

2535. Whenever a question of privilege is pending it may be called up by any Member, but may be postponed by a vote of the House.—On January 8, 1851,[3] Mr. William Strong, of Pennsylvania, called up the resolution reported from the Committee of Elections, to whom was referred the memorial of Jared Perkins, which resolution was read, and is as follows:

Resolved, That George W. Morrison is entitled to the seat which he now holds as a Representative from the Third Congressional district of New Hampshire.

Mr. George W. Jones, of Tennessee, made the point of order that it was not competent for any one Member to call up this question for the consideration of the House, but that it must be brought up on a motion made for that purpose.

The Speaker[4] stated that whenever a question of privilege is called for it must be taken up by the House,[5] although it may be postponed by a vote of the House. Such had been the practice of the House. He therefore overruled the point of order.

From this decision of the Chair Mr. Jones appealed. The decision of the Chair was sustained.

2536. While the Speaker should not entertain every motion which may be offered as a matter of privilege, he should submit to the House whatever relates to the privileges of the House or a Member.—On July 5, 1850,[6] the Journal of Wednesday having been read, Mr. Joshua R. Giddings, of Ohio, stated that he rose to a question of privilege, and submitted to the House a communication from a Washington correspondent in the Boston Atlas of the 2d instant, charging him with having abstracted from the files of the Post-Office, Department certain papers relating to the appointment of postmaster at Oberlin, Ohio.

The same having been read, Mr. Giddings was proceeding to make remarks thereon, when Mr. George W. Jones, of Tennessee, raised the question of order, that the said communication did not involve a question of privilege, and, consequently, that its consideration by the House was not in order.

The Speaker[4] decided that when a Member rises upon the floor, and brings

[1] Record, p. 3103.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Thirty-first Congress, Journal, p. 119; Globe, p. 190.

[4] Howell Cobb, of Georgia, Speaker.

[5] Of course the question of consideration can be raised.

[6] First session Thirty-first Congress, Journal, p. 1079.

before the House a matter relating to the privileges either of the House or a Member, the question must be entertained by the Chair, so far as to submit to the House to determine whether it is a question of privilege or not. The Chair would not entertain every motion which a Member might think proper to say was a question of privilege; but it is the duty of the Chair to see that the matter relates to the privileges either of the House or a Member. When it does so, as in the present case, then, under the precedents in the Twenty-ninth and Thirtieth Congresses, the Speaker holds it to be his duty to entertain it as a privileged question to the extent of submitting it to the House to determine whether it is a question of privilege or not for its consideration.

From this decision of the Chair Mr. Robert Toombs,[1] of Georgia, appealed; and, after debate, Mr. Van Dyke moved that the appeal be laid upon the table, which was done.

So the decision of the Chair was sustained, and it was accordingly submitted to the House to determine whether the said subject did involve a question of privilege. After debate, the previous question was ordered and the main question put: Does the subject-matter brought before the House by the Member from Ohio involve a question of privilege for the consideration of the House? And it was decided in the negative, yeas 71, nays 89.[2]

2537. On January 21, 1842,[3] Mr. John Quincy Adams, of Massachusetts, presented a petition of thirty-eight citizens of the county of Habersham, in the State of Georgia, praying the House to adopt such measures as, in the wisdom of the House, it may seem fit and proper, for the removal of Hon. John Quincy Adams from the head of the Committee on Foreign Affairs, and the substitution of any other Member of the House in his place.

Mr. Adams claimed the right to be heard on the subject-matter of the petition, as it involved, in his opinion, his privilege as a Member of this House.

Mr. Henry A. Wise called on the Speaker to decide, as a question of order, whether the subject before the House involved a question of privilege.

The Speaker[4] answered that there was no question of order involved; and as to whether the question of privilege was involved, that was a matter for the House itself to decide.

This was acquiesced in by the House.

The House, without coming to a decision of the question of privilege, allowed Mr. Adams to be heard.

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[1] The Globe (p. 1334) shows that Mr. Toombs, in appealing from the decision, held that the rules of the House provided that when a question was made it should be decided by the Chair. The Speaker was the organ of the House. He was to decide in the first instance, and the House would overrule his decision if it was wrong. But the idea that the House were a tribunal, independent of the action of the Chair, to which any Member might submit a question which he might declare to be a question of privilege, and by means of which character precedence was to be given to it over all other business, was a doctrine to which he could not assent.

[2] See also section 2655 of this volume for other proceedings in relation to this matter.

[3] Second session Twenty-seventh Congress, Journal, p. 262; Globe, p. 158.

[4] John White, of Kentucky, Speaker.

2538. The statement by a Member that a certain thing "is rumored" is sufficient basis for raising a question of privilege.

An alleged corrupt combination between Members of the House and the Executive was investigated as a question of privilege.

On February 16, 1867,[1] Mr. John Wentworth, of Illinois, as a question of privilege, submitted the following preamble and resolution:

Whereas the President of the United States has been impeached by a Member of this House of high crimes and misdemeanors, and the Committee on the Judiciary have been instructed to inquire into the facts upon which said impeachment was based, with power to send for persons and papers, and report them to this House in order, if thought warrantable, that the President may be arraigned for trial thereon by the Senate; and

Whereas while the Committee on the Judiciary are examining witnesses with relation to said high crimes and misdemeanors of which the President has been impeached, with a view of making a report to this House for its disinterested aetion, it has for some time been rumored, and has at last been asserted in public newspapers, that certain Members of this House, who are bound to act impartially upon the report of said committee when presented, are now holding, and have been for some time holding, private meetings with a view to a corrupt bargain, whereby, in violation of their oaths, they have pledged and are pledging themselves in advance to act adversely to said report if unfavorable to the President, and also to act adversely to certain other measures pending before this House to which they have heretofore been favorable, provided the President himself will do certain things to which he has heretofore declared himself hostile, and refrain from doing certain things to which he has heretofore declared himself favorable: Therefore,

Resolved, That the Committee on the Judiciary be instructed to inquire, etc.

Mr. Charles A. Eldridge, of Wisconsin, having raised a point of order against the reception of the resolution, the Speaker[2] said:

The Chair rules that this is unquestionably a question of privilege. The resolution states that it is rumored that certain Members of this House have been guilty of corrupt bargaining, acting in violation of their oaths, and that they have changed their views for corrupt motives. Although the resolution states that "it is rumored," still when a Member rises in his seat and states that it is so rumored, and introduces a resolution for an inquiry into the facts introduced, he of course makes himself the responsible author of the charge. The Chair, therefore, decides that it is a question of privilege.

The preamble and resolution were then agreed to, yeas 80, nays 40.

On February 25 Mr. John Hill, of New Jersey, presented a preamble reciting that the integrity of Members in the discharge of their official duties was of the utmost importance to the public, that that integrity ought not to be assailed except upon the gravest reason, and quoting the preamble and resolution presented on the 16th instant by Mr. Wentworth. Accompanying this preamble were the following resolutions, which were agreed to by the House:

Resolved, That the select committee of three appointed under said resolution be instructed to report immediately after the reading of the Journal to-morrow any evidence that may be in possession of said committee or any Member thereof relating to the corrupt bargain referred to in the preamble to said resolution.

Resolved further, That Hon. John Wentworth be requested at the same time to furnish to this House the newspaper assertions and a statement of the rumors in relation to said corrupt bargain referred to in the preamble to said resolution.

Accordingly, on February 27, the select committee reported that they had not discovered any evidence and were discharged. Mr. Wentworth did not make a statement other than to submit the report.

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[1] Second session Thirty-ninth Congress, Journal, pp. 402 486, 487, 504; Globe, pp. 1280, 1536, 1580.

[2] Schuyler Colfax, of Indiana, Speaker.

2539. A question of privilege may be based on a communication received by telegraph.—On December 21, 1876,[1] the Speaker laid before the House a telegram from Mr. William R. Morrison, of Illinois, chairman of the special committee on Louisiana affairs, communicating the record of proceedings in the case of E. W. Barnes, a recusant witness.

Thereupon Mr. J. Proctor Knott, of Kentucky, submitted a resolution directing the Speaker to issue a warrant directing the Sergeant-at-Arms of the House, either by himself or deputy, to arrest and bring to the bar of the House without delay E. W. Barnes to answer for contempt.

Mr. John A. Kasson, of Iowa, made the point of order that there was no legal or proper parliamentary ground for adopting an order of arrest of an American citizen based upon a telegraphic copy of an alleged report of a committee of Congress, without any official certificate of its accuracy and without verification of the signatures to the alleged copy, all the signatures being made by an alleged telegraphic operator and without any other verification.

The Speaker[2] overruled the point of order, on the ground that the telegram came to him through the usual channel of telegraphic communication and presented every evidence of authenticity, and believing it to be genuine, and that it presented a question of high privilege, he had accordingly laid it before the House for its action.

The resolution was then agreed to.

2540. Under the later rulings a question of privilege may be raised in Committee of the Whole as to a matter then occurring in that committee.— On April 25, 1890,[3] the House being in Committee of the Whole House on the state of the Union, Mr. Charles Tracey, of New York, claimed the floor on a question of privilege.

Mr. Benjamin Butterworth, of Ohio, made the point of order that the question of privilege was not in place in Committee of the Whole.

The Chairman[4] said:

> The question of privilege can only be raised at this time on a matter that occurred in Committee of the Whole.

2541. On May 17, 1890,[5] the House was in Committee of the Whole House on the state of the Union, considering the bill (H. R. 9416) to reduce the revenue and equalize the duty on imports, and for other purposes.

Mr. Thomas M. Bayne, of Pennsylvania, having read a letter from a citizen, James Campbell, in which certain statements were made in regard to Mr. William D. Bynum, of Indiana, the latter rose to a question of personal privilege on account thereof.

Joseph G. Cannon, of Illinois, made the point of order that a question of privilege was not involved, and also that a question of personal privilege touching the right of a Member of the House of Representatives could only be made in the

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[1] Second session Forty-fourth Congress, Journal, p. 133; Record, p. 353.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] First session Fifty-first Congress, Record, p. 3826.

[4] Lewis E. Payson, of Illinois, Chairman.

[5] First session Fifty-first Congress, Record, pp. 4858–4860.

House of Representatives and not in the Committee of the Whole. There was no Journal in the Committee of the Whole; there was no record in the Committee of the Whole. There was no power in the Committee of the Whole to arrest, punish, censure, or expel; all that could only be done in the House of Representatives, where alone a question of personal privilege could be presented.

The Chairman [1] said:

The rules of the House, so far as possible, are applicable to the Committee of the Whole. Now, can it possibly be that if a Member of the House is assailed here in Committee of the Whole House he must wait until to-morrow morning or until some subsequent day before he can be heard to defend himself? * * * The Chair is of opinion that a question of privilege extends very far beyond anything which requires the action of the House.

A Member may rise and deny that he has made a certain statement without invoking any action of the House, simply permitting the denial to go into the Record. He would have the right to do that as a question of privilege. * * *

The rule is that in order to constitute a question of personal privilege the attack must be made upon the Member in his representative capacity. Now, what are the facts before this committee? On one of the days of this session the gentleman from West Virginia, Mr. Wilson, and the gentleman from Indiana, Mr. Bynum, assailed (the Chair uses that term as expressive of the general generic nature of the remarks of the gentlemen) the character of a citizen of the country. That citizen now sends a letter which is intended to have some effect; whatever the ultimate effect may be, the intention is manifest:

"I see by the Associated Press report of the proceedings in Congress yesterday that Messrs. McMillin, Bynum, and Wilson made an attack on me personally. In relation to the statement of Mr. McMillin"—

Thereupon the statement proceeds with a view of furnishing a denial and refutation of the attack thus made in a representative capacity by gentlemen on the floor. The Chair is, therefore, of opinion that this is a reflection upon gentlemen in their representative capacity and is a question of privilege

2542. On April 8, 1892,[2] the House was in Committee of the Whole House on the state of the Union.

Mr. Seth L. Milliken, of Maine, rose to a question of privilege.

Mr. James D. Richardson, of Tennessee, made the point of order that the gentleman's matter of privilege should come up in the House and not in Committee of the Whole.

The Chairman [3] sustained the point of order.[4]

2543. On March 25, 1898,[5] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill under the five-minute rule.

Mr. Charles S. Hartman, of Montana, claimed the floor on a question of personal privilege.

Mr. Nelson Dingley, of Maine, made the point of order that no question of personal privilege could be raised in Committee of the Whole.

Mr. Charles H. Grosvenor, of Ohio, and Mr. Joseph W. Bailey, of Texas, called attention to the precedent of May 17, 1890.[6]

The Chairman [7] said:

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[1] Charles H. Grosvenor, of Ohio, Chairman.

[2] First session Fifty-second Congress, Record, p. 3116.

[3] James H. Blount, of Georgia, Chairman.

[4] Chairman Linn Boyd made a similar ruling. (Globe, 1st sess. 31st Cong., p. 1475.)

[5] Second session Fifty-fifth Congress, Record, p. 3233.

[6] See section 2541.

[7] James S. Sherman, of New York, Chairman.

The Chair will rule, complying with the precedent which the gentleman from Ohio and the gentleman from Texas state was made in the Fifty-first Congress. He will be governed by that ruling, and will hear the gentleman from Montana, provided he desires to speak upon the matter of personal privilege which has arisen now.

2544. On January 30, 1899,[1] the bill (H. R. 11022) for the reorganization of the Army of the United States was under consideration in the Committee of the Whole House on the state of the Union.

Mr. Jerry Simpson, of Kansas, demanded recognition on a question of personal privilege.

Mr. John A. T. Hull, of Iowa, rising to a parliamentary inquiry, said:

Can a Member rise to a question of personal privilege in Committee of the Whole?

The Chairman[2] said:

Only on a matter that arises at the time in the Committee of the Whole.

2545. During a call of the House, when a quorum is not present, a question of privilege may not be presented unless it be something connected immediately with the proceedings.—On February 21, 1893,[3] during a call of the House, Mr. John Lind, of Minnesota, claimed the floor on a question of privilege, and proceeded to read the declaration of a political convention relative to a certain bill (H. R. 9350) pending before the House.

Mr. James D. Richardson, of Tennessee, made the point of order that no question of privilege was presented.

The Speaker[4] sustained the point of order, holding that no question of privilege could be presented except such as might arise out of the call of the House, in which the House was then engaged, saying:

The Chair will state to the gentleman that when there is no quorum present, and when the House is acting under a call, no question of privilege, in the judgment of the Chair, can be called up unless it is something that is connected immediately with the proceedings, or arises out of the position of the body at the time. Any other question of privilege which the gentleman might desire to present could not now be brought before the House; for there are not present enough Members to constitute a House, although there are enough present under the Constitution to order a call of the House.

2546. In presenting a question of personal privilege the Member is not required in the first instance to make a motion or offer a resolution; but such is not the rule in presenting a case involving the privileges of the House.

A paper offered as involving a question of privilege should be read to the House rather than privately by the Speaker before a decision is made regarding its privilege.

A mere proposition to investigate, even though impeachment may be a possible consequence, does not involve a question of privilege.

On February 1, 1886,[5] Mr. Lewis Hanback, of Kansas, rising to a question of personal privilege, asked that a paper which he sent to the desk be read. The

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[1] Third session Fifty-fifth Congress, Record, p. 1279.

[2] James S. Sherman, of New York, Chairman.

[3] Second session Fifty-second Congress, Journal, p. 105; Record, p. 1964.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] First session Forty-ninth Congress, Record, pp. 1027, 1028; Journal, pp. 514, 515.

reading having proceeded for a time, Mr. Clifton R. Breckinridge, of Arkansas, made the point of order that no question of privilege was raised.

The Speaker[1] said:

The Chair thinks the practice has been for a gentleman who rises to a question of privilege and asks to have a paper read to at least state that there is something in the paper which involves a question of that character. The Chair does not yet know what is contained in the paper which the gentleman from Kansas, Mr. Hanback, has sent to the desk. * * * The Chair desires the gentleman from Kansas to state whether or not there is anything in this paper which in his judgment involves a question of personal privilege on the part of that gentleman. Unless that were the rule, any gentleman might rise to a question of privilege and have anything that he might choose read at the Clerk's desk.

Mr. Hilary A. Herbert, of Alabama, having suggested that the Speaker might privately inspect the paper to ascertain whether or not a question of privilege was involved, the Speaker said:

The difficulty in regard to the suggestion made by the gentleman from Alabama, Mr. Herbert, is that if the Chair simply takes the paper and reads it privately for his own information and then decides whether there is or is not a question of privilege involved, no Member on the floor could know whether it was proper to take an appeal from the decision or not. The House must decide finally upon every question of order; so that the first thing to be done is to have the paper read, provided it is presented in a proper way. When a gentleman rises upon the floor and states that there is a question of personal privilege involved in a matter which he presents, it has not been the practice of the House to require him to make in the first instance any motion or offer any resolution. * * * But when a Member states that he rises to a question involving the privileges of the House, then there must be some question presented. The Chair thinks the gentleman must make a motion or offer a resolution, and upon that the question of privilege will arise. Thus far the gentleman from Kansas has offered no resolution nor made any motion which would constitute the foundation for a question of privilege before the House. * * * Although the Chair has constantly endeavored to confine these questions of privilege as strictly as possible under the rules, still it is very difficult for the Chair, in administering the rules, to prevent gentlemen from sometimes making upon the floor statements which are not strictly within the rules. But the Chair will endeavor to administer the rule as fairly as it can be done.

Mr. Hanback having presented the following resolution:

Resolved, That the Committee on Expenditures in the Department of Justice be, and is hereby, empowered to make full inquiry into any expenditure upon the part of the Government relative to the rights of the Bell and Pan-Electric Telephone companies; and for the purpose of this investigation, and to the end that the people may be fully advised, the committee is granted the right to send for persons and papers, all expenses to be audited and accounted for upon approved vouchers, and when so approved to be paid out of any moneys in the Treasury not otherwise appropriated—

Mr. Nathaniel J. Hammond, of Georgia, made the point of order that this resolution was not a matter of privilege.

The Speaker said:

The Chair will state that during the last session of Congress the gentleman from Illinois, Mr. Springer, offered a resolution of a similar character to this, to investigate the conduct of a judge with a view ultimately to his impeachment. That resolution, it was claimed by the gentleman from Illinois, involved a question of privilege, but the Chair decided that it did not. The Chair is unable to see any difference between that resolution and the one now presented. They are simply resolutions proposing an investigation of matters which may or may not be proper for the House to investigate, but which do not involve questions of privilege under the rule.

2547. On November 13, 1903,[2] Mr. Edward J. Livernash, of California, claiming the floor for a question of privilege, proceeded to discuss a question as to

[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Fifty-eighth Congress, Record, pp. 233, 234.

whether or not the President of the United States, in his dealings with the revolution on the Isthmus of Panama, had invaded a constitutional prerogative of the House; and to comment on the length of time which had elapsed since the House had called on the Executive for information relating thereto.

Mr. Sereno E. Payne, of New York, having raised a question of order, the Speaker [1] said:

The Clerk will read a passage from the Manual bearing upon this question.

The Clerk read as follows:

In presenting a question of personal privilege a Member is not required in the first instance to make a motion or offer a resolution; but such is not the rule in presenting a case involving the privileges of the House.

The Speaker then said:

If the gentleman will offer his resolution in writing under the rules, he will then conform to the rules; and then, for the first time, the Chair can make a ruling as to whether the gentleman is in order. The point of order being made, the rule is perfectly plain.

If the gentleman is so unfortunate as not to be able to embody in a resolution in writing, for the information of the House, his question of privilege, he is unable to conform to the rules of the House, as the Chair understands the matter.

2548. A resolution presented as a matter of privilege relating to the rights of a Member should show on its face an invasion of those rights.— On March 6, 1894,[2] Mr. Hernando D. Money, of Mississippi, from the Committee on Naval Affairs, reported for immediate consideration, as involving a question of privilege, a joint resolution (H.J. Res. 128) authorizing the Secretary of the Navy to appoint a cadet at the United States Naval Academy from the Fifth district of South Carolina.

It appeared from the debate and from the accompanying report that the Member representing the district having failed to receive the notice that there was a vacancy for his district, made no appointment, and so under the law the Secretary of the Navy had filled the vacancy from the country at large. None of these facts, however, were alleged in the resolution.

The Speaker [3] said:

In determining whether this resolution is privileged the Chair can not go beyond the resolution itself. * * * The Chair does not think the resolution on its face is privileged. It alleges no violation of any right of a Member.

2549. The House having devoted a time to debate only, the Speaker hesitated to recognize a Member for a question of personal privilege.—On Friday, February 7, 1896,[4] the House met at 10:30 a.m., in continuation of the session of the preceding day, the session being for debate only on the bill (H.R. 2904) to maintain and protect the coin redemption fund, etc.

Mr. W. Jasper Talbert, of South Carolina, arose to a question of personal privilege.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 229; Record, p. 2629.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Record, first session Fifty-fourth Congress, p. 1457.

The Speaker[1] suggested that it would be better for the gentleman from South Carolina to wait until the regular session should open at noon, since this session was for debate only.

Mr. Talbert having asked if the Speaker would recognize him at 12 o'clock, the Speaker replied:

The Chair will be obliged to recognize the gentleman on "a question of personal privilege." The Chair thinks it would be better that the gentleman should not proceed now, because these understandings in regard to order of business ought never under any circumstances to be violated.

2550. A committee being intrusted with the examination of a question of high privilege, a broad construction was given in favor of the privileged character of its reports.—On January 16, 1877,[2] Mr. William A.J. Sparks, of Illinois, from the special committee on the privileges, powers, and duties of the House in reference to counting the electoral vote, reported this resolution:

Resolved, That with respect to any or all subjects to be considered by the special committee of the House on the privileges, powers, and duties of the House of Representatives in counting the electoral votes for President and Vice-President of the United States, said committee shall have power to send for persons and papers, and to sit during the sessions of the House.

Mr. James A. Garfield, of Ohio, made the point of order that the resolution was not privileged.

After debate the Speaker[3] said:

Under the Constitution of the United States, in a certain contingency this House of Representatives elects the President of the United States. That clearly is a question of the very highest privilege. The question of the powers, duties, and privileges of this House in connection with that provision of the Constitution has been referred to this committee, and by resolution of this House that committee was given the power to report at anytime. Therefore the Chair can reach no other conclusion than to overrule the point of order and to decide that the report at this time is in order as a question of privilege.

2551. A resolution relating to matters undoubtedly involving privilege, but also relating to other matters not of privilege, may not be entertained as of precedence over the ordinary business in regular order.—On January 4, 1904,[4] Mr. James Hay, of Virginia, claiming the floor for a question of privilege, offered the following:

Whereas Fourth Assistant Postmaster-General J.L. Bristow in his report to the Postmaster-General, dated October 24, 1903, and which report has been transmitted to a committee of this House, has charged that long-time leases for post-office premises were canceled and the rent increased upon the recommendation of influential Representatives;

And whereas it is charged in the same report that "if a Member of Congress requested an increase in the clerk hire allowed a postmaster, Beavers usually complied regardless of the merits of the case;"

And whereas certain cases of an aggravated character are cited on pages 133, 134, and 135 of said report to sustain the above charges;

And whereas on page 145 of said report it is charged that Members of Congress have violated section 3739 of the Revised Statutes, and that "in the face of this statute Beavers has made contracts with Members of Congress for the rental of premises, either in their own names, the names of their agents, or some member of their families;"

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Forty-fourth Congress, Journal, p. 240; Record, p. 666.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Fifty-eighth Congress, Journal, p. 89; Record, pp. 444–446.

And whereas these charges and others contained in said report reflect upon the integrity of the Membership of this House, and upon individual Members of this House whose names are not mentioned: Therefore,

Be it resolved, That the Speaker of this House appoint a committee consisting of five Members of this House to investigate said charges; and in connection therewith any frauds or irregularities in the conduct of the Post-Office Department; and that said committee have power to send for persons and papers, to enforce the production of the same; to examine witnesses under oath; to have the assistance of a stenographer, and to have power to sit during the sessions of the House, and to exercise all functions necessary to a complete investigation of said charges, and to report the result of said investigation as soon as practicable.

Mr. Frederick H. Gillett, of Massachusetts, made the point of order that the resolution contained a proposition not privileged.

After debate the Speaker[1] ruled:

Turning to page 583 of the Manual, the Chair reads as follows:

"The including of matter not privileged destroys the privileged character of a bill.

"A resolution of inquiry loses its privileged character if matter not privileged be contained therein.

"A privileged proposition may not be amended by adding thereto matter not privileged or germane to the original question"—

Citing the various decisions of the House.

The rulings of the House heretofore have been that you can not, under the guise of a privileged matter, couple therewith matters not privileged. It seems to the Chair that the House heretofore has decided wisely in that respect.

If a contrary ruling were adopted, there would be questions of privilege presented that might drag through many questions that were not privileged, and the House would be compelled to pass on the two together. In view of these rulings in the House from time to time, the Chair will call attention to this resolution.

The preamble seems by recitation to present a question of privilege. The resolution, however, is broader than the preamble. It is this:

"Be it resolved, That the Speaker of this House appoint a committee consisting of five Members of this House to investigate said charges"—

What follows?

"and in connection therewith any frauds or irregularities in the conduct of the Post-Office Department."

Again:

"And to have power to sit during the sessions of the House, and to exercise all functions necessary to a complete investigation of said charges, frauds, and irregularities."

The resolution on its face couples nonprivileged matters with privileged matters under sound rulings and determinations of the House heretofore; and for that reason, in its present shape, the Chair is compelled to sustain the point of order.

2552. In general a question of constitutional privilege may not be displaced by other privileged matters.—On March 3, 1879,[2] the House was considering the report of the Committee on Expenditures in the State Department proposing articles of impeachment against George F. Seward, late consul-general at Shanghai, China, and now minister plenipotentiary to China.

Mr. Benjamin F. Butler, of Massachusetts, as a question of privilege, proposed to submit a report from the Committee on the Judiciary, to which was referred the answer of George F. Seward in response to the order of the House, requiring him to show cause why he should not be declared in contempt of the House.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Third session Forty-fifth Congress. Journal, p. 642; Record, pp. 2362–2365.

The Speaker[1], held the report not in order at this time for the reason that a question of high constitutional privilege was pending, which the House by a yea and nay vote had determined to consider, and on which report and accompanying resolutions the main question had been ordered.

Mr. Butler having appealed, the appeal was laid on the table, yeas 125, nays 107.

2553. A proposition involving a question of constitutional privilege may supersede a pending motion to suspend the rules.—On March 2, 1877,[2] Mr. David Dudley Field, of New York, from the Select Committee on the Privileges, Powers, and Duties of the House of Representatives in counting the vote for President and Vice-President of the United States, reported a bill (H.R. 4698) to provide an effectual remedy for a wrongful intrusion into the office of President and Vice-President of the United States.

Mr. Omar D. Conger, of Michigan, made the point of order that the bill could not be reported or considered pending a motion to suspend the rules, which motion he claimed to have made before the bill was read.

The Speaker[1] held the report made by Mr. Field from the committee to be first in order, a question of high constitutional privilege being involved.

2554. A matter of constitutional privilege takes precedence of a special order.—On June 20, 1882,[3] the day was assigned to the consideration of the bill (H.R. 3843) to provide additional accommodations for the Library of Congress.

Mr. Thomas Updegraff, of Iowa, claiming the floor for a question of privilege, reported the bill (S. 613) to fix the day for the meeting of the electors of President and Vice-President, to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions rising thereon.

Mr. Selwyn Z. Bowman, of Massachusetts, made the point of order that the special order had precedence.

The Speaker[4] said:

> But questions of privilege or privileged questions, as has always been held, have a right to take precedence of any special or general order. It has been held, for instance, that the consideration of election cases are of a higher order of privilege and take precedence, although not mentioned in the exception to the special order. Now if the question which the gentleman from Iowa presents be one of constitutional privilege, it stands relatively in the same way toward all other matters and even matters of privilege.

2555. A question of privilege (as distinguished from a privileged question) does not lose its privilege through informality in the manner of reporting it.—On December 21, 1893,[5] Mr. James B. McCreary, of Kentucky, reported from the Committee on Foreign Affairs during the morning hour for the call of committees[6] a resolution relating to alleged intervention of the United States minister and naval forces in the affairs of the Government of Hawaii, and expressive of the sense of the House in relation thereto.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] Second session Forty-fourth Congress, Journal, p. 628; Record, pp. 2126, 2127.

[3] First session Forty-seventh Congress, Record, p. 5142.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] Second session Fifty-third Congress, Journal, pp. 50, 51; Record, p. 471.

[6] Under the present rule reports not privileged are filed with the Clerk.

Mr. Thomas B. Reed, of Maine, submitted the question of order, whether the effect of reporting of said resolution during the morning hour for reports and of the reference thereof to the Calendar would be to cause said resolution to lose its privileged character.

The Speaker[1] stated that that question might arise at a later period, but expressed the opinion that under the practice of the House the reporting of a privileged proposition during the morning hour for reports and the reference thereof to the Calendar caused such proposition to lose its privileged character.

Mr. Reed and Mr. Charles A. Boutelle, of Maine, made the point that the House could not be deprived of its right to consider the resolution by the action of one of its committees in thus reporting it.

Mr. Reed also objected that the resolution could not be referred to the Calendar in such manner as to destroy its privileged character, except after consideration and by the action of the House itself.

The Speaker stated that the question of the alleged privileged status of the resolution would arise when the resolution should be called up for consideration, and would be left open until that time.

On January 3, 1894,[2] the subject arising again, the Speaker said:

The question is not entirely free from doubt. There have been previous rulings—and the Chair does not design or intend to overrule them at all—that when a committee has the privilege of reporting at any time, and the committee exercises the privilege by reporting during the call of committees for reports, that the privilege of calling up afterwards the resolution for consideration as a question of privilege is waived or lost.

But the Chair is inclined to think that the privilege that is thus lost is that privilege only which is given to the committee. In the case of a resolution which is itself privileged without any regard to what committee it might be referred, a case where the privilege attached not to the committee, nor even to the committee and the resolution together, but to the resolution itself, the Chair does not think it loses its privilege because reported during the call; because if it did, then a committee, by exercising its right to report a privileged resolution during the call of committees, could deprive the House of the right to consider it as a privileged matter.

A contested-election case is regarded as matter of the highest privilege, involving the right of a Member to his seat. Such a case is referred, under the rule, to the Committee on Elections, and that committee make a report upon it. They may make the report during the call of committees if they desire to do so—there is nothing to prevent it—or they may make the report at any other time. But whenever a contested-election case is put upon the Calendar it may be called up by any Member of the House.

It is not necessarily called up by the committee, for it has been repeatedly held that any Member of the House may at any time call it up as a privileged question, unless some question of higher privilege is pending, and that the House will then proceed to consider it unless the question of consideration is raised and the House determines that it will not consider it. Therefore, inasmuch as the resolution offered by the gentleman from Maine [Mr. Boutelle] has been decided to be privileged, has been referred to a committee, and has been reported back from that committee with the recommendation that it lie upon the table, and is now in the House and not in the committee, the Chair thinks the gentleman has a right to call it up as a question of privilege.

2556. To justify a question of privilege an invasion of the prerogatives of the House must be alleged to be actual, not prospective.—On

[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 53, 54; Record, p. 485.

January 31, 1902,[1] Mr. James D. Richardson, of Tennessee, as a question of privilege, offered the following:

Whereas there are now pending before the Senate numerous treaties proposing commercial reciprocity with other nations, by which customs revenue duties will be changed from those established by acts of Congress duly approved by the President of the United States; and

Whereas there are bills originating in the Senate now pending before that body regulating the duties imposed on articles from Cuba and the Philippines imported into the United States; and

Whereas resolutions have been introduced in the Senate and are now pending in that body declaring that the doctrine of reciprocity as stated in the act of October 1, 1890, known as the McKinley bill, and the act of July 24, 1897, known as the Dingley bill, is the true doctrine, and that the various treaties pending in the Senate should receive consideration and action at the present session of Congress: Therefore,

Resolved, That it is the sense of this House that the negotiation by the executive department of the Government of a commercial treaty whereby the rates of duty to be imposed on foreign commodities entering the United States for consumption should be fixed would, in view of the provision of section 7. Article I, of the Constitution of the United States, be an infraction of the Constitution and an invasion of one of the highest prerogatives of the House of Representatives.

Mr. Sereno E. Payne, of New York, made the point of order that the resolution did not involve a question of privilege.

After debate the Speaker[2] said:

The Chair thinks that when he is once clear in his mind on a question like this it is better to rule on it and let the other business of the House go on.

The question first presented to the House for consideration is whether or not the resolutions offered by the gentleman from Tennessee are privileged resolutions. If so, it is because the prerogatives of the House are invaded. There is also presented the question whether we are entitled to go beyond the regular modes of procedure of the House in order to reach the desired result.

Now, there are three whereases in the resolution, each one of which shows that nothing has been done in this matter by the Senate. There is not a single averment in the resolution proposed by the gentleman from Tennessee showing a single specific legislative act on the part of the Senate. On the contrary, the averment in the resolution is simply to the effect that certain resolutions are pending in that body, but in no single case has action been taken upon it.

The Chair would state in this connection that this does not involve a discussion or a definition of the main question presented. It refers only to what has been done or is proposed to be done. The only thing, therefore for the Chair to determine is whether or not, under the resolution proposed by the gentleman from Tennessee, a question of privilege is presented, and whether such resolution is in order under the rule of the House.

Now, up to last night there were pending in the House 10,511 bills and resolutions, and up to the same hour there were pending in the Senate 3,380 bills and resolutions. We all know, as a matter of fact, that not every bill or resolution presented in either body becomes operative as a law, and it will not do to assume that all of this number of bills to which the Chair has called attention will be passed. Nor will it do to say that the House has not been vigilant in the consideration of matters relating to its rights and duties under the Constitution. This very morning, for instance, the House directed one of its committees to investigate and report upon a question which related to its functions under the Constitution. There can be no complaint of the want of consideration of such matters on the part of the House.

There has been no slumbering by the House in regard to its rights. But the House has not undertaken to fortify itself by the adoption of such a resolution as that presented by the gentleman from Tennessee, and the Chair, after a careful examination of his resolution—a dispassionate examination of it—fails to find anything specified in the resolution to indicate any positive action on the part of the Senate which would entitle the resolution to the consideration of the House. * * * The observa

[1] First session Fifty-seventh Congress, Journal, pp. 287, 288; Record, pp. 1181–1184.

[2] David B. Henderson, of Iowa, Speaker.

tion of the Chair was to the effect that there is no precedent cited by the gentleman wherein the House has felt that its prerogatives were being invaded. In the several cases presented by the gentleman, and where this question was considered by the House, there is nothing to show—not a single instance, as far as the Chair has been able to discover—where the House assumed to act before the Senate had taken such action as invaded the prerogatives of the House. It is true that there is a matter, as appears by the Record, which was once considered, where there was action taken as suggested by the gentleman, under a suspension of the rules.

Under individual suspension a gentleman, getting recognition, offered resolutions expressing his views, expressing his fears, calling the attention of the House to supposed dangers, supposed or proposed assaults upon its high privileges and rights; but that is not an authority in point; and if the gentleman can now cite to the Chair a single authority where action was taken by the House before the Senate acted or sent anything to the House, the Chair would be very glad indeed to have it. * * * The Chair, in view of the facts which he has stated, is very clearly of the opinion that this is not a privileged resolution. If the hand of the Senate is laid upon the prerogatives of this House, this House will act. There is no doubt about that, and it has already taken steps to be thoroughly qualified for doing it; but at this moment this great body is not justified, as it seems to the Chair, in taking such resolutions and passing upon them, and that the wise course for a great legislative body like the House of Representatives of the United States is to act with coolness and deliberation, and not strike back when not struck at.

The gentleman has his entire remedy, under the rules of the House, by bringing his resolution before the Committee on Ways and Means or any other committee.

The Chair therefore sustains the point of order made by the gentleman from New York.