

Chapter LXXXII.

PRIVILEGE OF THE MEMBER.

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2667. Definition of questions of privilege affecting the Member individually.—Rule IX defines questions of privilege affecting the Member as those affecting “the rights, reputation, and conduct of Members individually, in their representative capacity only.”³

2668. Jefferson's summary of the privileges of members of Parliament.—Thomas Jefferson, in his manual written for the use of the Senate and in 1837 adopted as a guide for the House in all cases not provided for by its rules and orders, has the following in his discussion of the subject of privilege:

The privileges of members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never-yielding pace. Claims seem to have been brought forward from time to time and repeated till some example of their admission enabled them to build law on that example. We can only, therefore, state the points of progression at which they now are. It is now acknowledged, first, that they are at all times exempted from question elsewhere for anything said in their own House; second, that during the time of privilege, neither a member himself, his⁴ wife, nor his servants (*familiares sui*), for any matter of their own, may be⁵ arrested on mesne process in any civil suit, third, nor be detained under execution, though levied before time of privilege; fourth, nor impleaded, cited, or subpoenaed in any court; fifth, nor summoned as a witness or juror; sixth, nor may their lands or goods be distrained; seventh, nor their persons assaulted or characters traduced. And the period of time covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the courts of justice. In one instance, indeed, it has been relaxed by the 10 G., 3, c. 50, which permits judiciary proceedings to go

¹ See also case of Houston, section 1616 of Volume II.

² See section 7012 of Volume V.

³ See section 2521 of this volume for the full form and history of this rule.

⁴ Order of the House of Commons, 1663, July 16.

⁵ *Elsynge*, 217; 1 *Hats.*, 21; 1 *Grey's Deb.*, 133.

on against them. That these privileges must be continually progressive seems to result from their rejecting all definition of them, the doctrine being that “their dignity and independence are preserved by keeping their privileges indefinite, and that ‘the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast and are not defined and ascertained by any particular stated laws.’” (1 Blackst., 163, 164.)

2669. Privilege of Parliament takes place by force of election and may not be waived by the Member without leave.—Thomas Jefferson, in his Manual written for the use of the Senate and in 1837 adopted as a guide for the House in all cases not provided for by its rules and orders, has the following in his discussion of the subject of privilege:

Privilege from arrest takes place by force of the election; and before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he can not vote until he is sworn. (Memor., 107, 108. D’Ewes, 642, col. 2; 643, col. 1. Pet. Miscel. Parl., 119. Lex. Parl., c. 23. Hats., 22, 62.)

Every man must, at his peril, take notice who are Members of either House returned of record (Lex. Parl., 23; 4 Inst., 24.)

On complaint of a breach of privilege, the party may either be summoned or sent for in custody of the sergeant. (1 Grey, 88, 95.)

The privilege of a Member is the privilege of the House. If the Member waive it without leave, it is a ground for punishing him, but can not in effect waive the privilege of the House. (3 Grey, 140, 222.)

2670. The Constitution grants to Members privilege from arrest under certain conditions.

The Constitution guards Members from being questioned outside of the House for speech or debate in the House.

The Constitution provides for the punishment or expulsion of Members.

The Constitution of the United States, in article 1, section 6, provides:

They [the Senators and Representatives] shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Also, in section 5 of article 1:

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

2671. Privilege as to speech or debate in Parliament is limited by certain conditions.—Section III of Jefferson’s Manual, on the subject of privilege, provides:

For any speech or debate in either House they shall not be questioned in any other place (Const. U.S., 1, 6; S.P. protest of the Commons to James 1, 1621; 2 Rapin, No. 54, pp. 211, 212); but this is restrained to things done in the House in a parliamentary course (1 Rush., 663.), for he is not to have privilege contra, morem parliamentarium, to exceed the bounds and limits of his place and duty. (Com. P.)

2672. Jefferson’s discussion of the privilege conferred on Members by the Constitution, especially as to arrest, summons, etc.—Thomas Jefferson, in his Manual, written for the use of the Senate and in 1837 adopted as a guide for the House in all cases not provided for by its rules and orders, has the following in his discussion of the subject of privilege:

It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House." (Const. U.S., art. 1, sec. 6.) Under the general authority "to make all laws necessary and proper for carrying into execution the powers given them" (Const. U.S., art. 2, sec. 8), they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground: 1. The act of arrest is void, *ab initio*. (2 Stra., 989.) 2. The Member arrested may be discharged on motion (1 Bl., 166; 2 Stra., 990), or by habeas corpus under the Federal or State authority, as the case may be, or by a writ of privilege out of the chancery (2 Stra., 989), in those States which have adopted that part of the laws of England. (Orders of the House of Commons, 1550, February 20.) 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. 4. The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable, also, as in other similar cases, to have their proceedings stayed or corrected by the superior courts.

The time necessary for going to and returning from Congress not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, *eundo*, *morando*, et *redeundo*, the House of Commons themselves decided that "a convenient time was to be understood." (1580, 1 Hats., 99, 100.) Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct, some necessity perhaps constraining him to it. (2 Stra., 986, 987.)

This privilege from arrest, privileges, of course, against all process the disobedience to which is punishable by an attachment of the person, as a subpoena *ad respondendum*, or *testificandum*, or a summons on a jury; and with reason, because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence; when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

2673. The words "treason, felony, and breach of the peace" in the constitutional guarantee of privilege have been construed to mean all indictable crimes.—On November 14, 1877,¹ the House, on motion of Mr. Benjamin F. Butler, of Massachusetts, agreed to a preamble and resolution instructing the Committee on the Judiciary to investigate the arrest and confinement of Robert Smalls, of South Carolina, a Member of the House, and report whether the arrest was in violation of the privileges of the House.

On January 25, 1878,² Mr. J. Proctor Knott, of Kentucky, from the Committee on the Judiciary, submitted a report,² which, after reciting the statutes of South Carolina on the subject of bribery, presented the following statement of facts:

It appears that after his credentials as a Member-elect to the Forty-fifth Congress of the United States had been formally issued and forwarded to the Clerk of the House of Representatives Mr. Smalls was arrested, under a regular warrant issued by a duly authorized magistrate, on a charge of having accepted a bribe in violation of the statute just recited, and on the 9th day of October, 1877, entered into a recognizance to appear at the next ensuing term of the court of general sessions in and for the county of Richland, in said State, and answer such bill of indictment as might be preferred against him therefor.

¹ First session Forty-fifth Congress, Journal, p. 212; Record, p. 399.

² Second session Forty-fifth Congress, H. Report No. 100; Journal, p. 287.

Whether he was actually on his way to attend the session of Congress called to meet on the 15th of October when arrested your committee are not advised, but on that day he appeared at the bar of the House with his credentials as a Member thereof, was admitted to his seat as such, and took the oath prescribed by law. On the 25th day of the same month he was granted a leave of absence at his own request and returned to Columbia, S. C., where, in discharge of his recognizance, he appeared in the court of general sessions, the tribunal having jurisdiction of the offense charged against him, to answer an indictment preferred against him on the 22d of October for having accepted from one Josephus Woodruff a bribe of \$5,000 on the 18th day of December, 1872, etc.

On the 8th of November Mr. Smalls presented his petition to the court in which the indictment was pending for a removal of the cause to the circuit court of the United States for the district of South Carolina, which having been overruled, he moved the court to discharge him from custody on the ground that his arrest and detention were in violation of his privilege as a Member of Congress, which motion was overruled and a trial had by jury, which resulted in his conviction and sentence to imprisonment in the penitentiary for five years. The accused having before sentence filed his motions for a new trial and in arrest of judgment, which were respectively overruled, appealed from the judgment of the court and was admitted to bail in the sum of \$10,000 and discharged from custody pending the appeal, since which time he has been in attendance upon the sessions of the House.

The committee proceed to say that it is worthy of note that the question to what extent, if any, a Member of Congress enjoys immunity from arrest under criminal process, State or Federal, was now presented for the first time since the organization of the Government. The Constitution had limited privilege from arrest by the clause declaring that Senators and Representatives "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses and in going to and returning from the same." It was evident, therefore, that the question at issue turned on the consideration whether or not the offense of bribery fell within the exception embraced by the terms "treason, felony, and breach of the peace." At the time the Constitution was formed bribery, like perjury and forgery, did not, by either the common law or any statute then in force in any of the States, come within the technical definition of either treason, felony, or breach of the peace. Indeed, at the present time the offense of bribery was only a misdemeanor in South Carolina, although in some of the States it was a felony. The committee comment upon the fact that if the words of the Constitution were to be taken literally a Member might plead his privilege in one State, while in another a Member might be held for the same offense. A President might be impeached for bribery, yet if bribery were not included in the phrase "treason, felony, or breach of the peace" a Senator held for bribery might be taken from court by the Senate to sit in judgment on the President accused of the same offense. Furthermore, it was never expected that Congress would be given a wider range of privilege than had been claimed for Parliament. And the committee show by abundant English precedents that the provision of our Constitution was intended to embrace the entire range of indictable crimes. The fact also was commented on that any other than a broad construction of the Constitution would deny the Member privilege for a mere assault or brawl in a tavern and allow him the benefits of privilege in a case where he had defrauded his neighbor by perjury. After quoting May and Cushing, the committee proceed to consider the contention that the Constitution refers only to treasons, felonies, and breaches of the peace against the laws of the United States. If that were so, a Member was not privileged at all from arrest upon processes issued by State authority, even in civil suits,

because the language used in the exception is as general as that employed in the rule. The report concludes:

Upon principle therefore, as well as in view of the precedents, your committee are clearly of the opinion that the arrest of Mr. Smalls upon the charge and under the circumstances hereinbefore set forth, was in no sense an invasion of any of the rights or privileges of the House of Representatives; and that, so far as any supposed breach of privilege is concerned, his detention by the authorities of South Carolina for an alleged violation of the criminal law of that State was legal and justifiable; and having arrived at that conclusion they have deemed it not only unnecessary but improper for them to make any suggestion here as to what course the House should have pursued had the arrest been a violation of its privileges.

Your committee, therefore, submit the following resolution, and recommend its adoption:

Resolved, That the arrest of Robert Smalls, a Member of this House, by the authorities of South Carolina, for an alleged crime against the laws of that State, was no violation of any right or privilege of this House; and that the detention of said Smalls for trial in the courts of said State, so far as any supposed breach of the privilege of this House is concerned, was legal and justifiable.

This report was printed and recommitted, and there does not appear to have been any further action by the House on the matter. The printing and recommitting was undoubtedly a matter of form, and not a decision on the merits of the question involved.

2674. Instance wherein the courts discussed and sustained the privilege of the Member in going to and returning from the sessions of the House.—On August 9, 1886, Judge Dyer, United States district judge for the eastern division of Wisconsin, made a decision in the cases of *Miner v. Markham*, which involved the construction of that clause of the Constitution relating to the privileges of the Member in going to and returning from the sessions of the House.¹

These were two suits begun in the State court and removed to this court. The summons in each case was served on the defendant personally at Milwaukee, on the 28th day of October, 1885. Before the removal of the cases to this court the defendant appeared specially therein, and moved to set aside the service of the summons in each action on the ground that he was a Member of Congress, and at the time of such service was on his way from his residence in California to Washington for the purpose of attending the next ensuing session of Congress. The motion was overruled by the State court, but without prejudice to the right of the defendant to renew the motion in that or any other court in which the cases should be thereafter pending. Thereupon the defendant, thereafter appearing in the cases for the purpose only of removing the same to this court, filed petitions in each suit for the removal of the same under the act of 1875, and the cases were duly removed. A new motion was then made in behalf of the defendant to quash the service of the summons in each action upon the same ground as that upon which a similar motion was made in the State court, which motion was opposed and argued.

Affidavits filed in the cases in support of the motion showed that at the time of the service of process, and for a considerable time prior thereto, the defendant was a Member of the Congress of the United States, having been duly elected thereto as a Representative from the Sixth Congressional district of the State of California, and that he is a resident of the county of Los Angeles in that State. He alleged that at the time of the service of process upon him he was on his way to the city of Washington for the purpose of attending a session of the House of Representatives as a Member thereof from the Sixth Congressional district of California, and was at the time of such service temporarily in the city of Milwaukee. He further stated in his affidavit that he left Los Angeles, accompanied by his wife and four children, intending to proceed to Washington and there secure a suitable place of residence for himself and family during the session and in time to arrange for and settle his family and household affairs there prior to the date of the commencement of the session; that during his journey several of his children were ill, and by reason thereof he was obliged to stop at several places on his

¹From Manual and Digest, second session Fifty-first Congress, pp. 460–464. (See also 24 Fed. Law Rep., p. 387.)

way to Washington; and further, that by reason of such illness he was being detained in Milwaukee at the residence of his brother at the time of the service of summons in said actions. He further states in his affidavit that he started from his residence in Los Angeles County to attend the session of Congress only a reasonable length of time before the commencement of the session, and such as he considered proper and necessary under all the circumstances connected with the proper discharge of his duties as a Representative in Congress, and was proceeding on his way to attend the session without any unreasonable or unnecessary delay.

* * * * *

Thus it will be seen that the decisions are not entirely harmonious upon the question of the extent of the privilege in question; but it has been the law in this jurisdiction from Territorial times that the privilege in such a case as that at bar extends to exemption from civil process, with or without actual arrest; and in the absence of more authoritative exposition of the constitutional provision from the Supreme Court of the United States, I shall hold that under that provision the defendant, as a Member of the Congress of the United States, was entitled to exemption from service of process upon him, although it was not accompanied with an arrest of his person, provided the privilege was in force at the time of such service.

2. This brings us to the second proposition involved, namely: Was the defendant, when served with process, "going to" the capital to attend a session of the House of which he was a Member, within the meaning of the constitutional provision? No fixed time is prescribed by the Constitution during which, before and after the close of the session, the privilege in question shall extend. The clause is: "During their attendance at the session of their respective Houses, and in going to and returning from the same." It would be a superfluous task to go into all the old law on this subject as it once existed in England, when members of Parliament were allowed prescribed periods of exemption from arrest before and after sessions of Parliament. An exhaustive review of the law and of the English authorities may be found in the case of *Hoppin v. Jenckes* (8 R. I. 453), and nothing can be profitably added to what is there said on the subject. In *Cushing's Law and Practice of Legislative Assemblies*, at section 582, it is said:

"In the Federal Government, and in many States, Members are privileged while going and returning merely, without other limitation of time. Where the duration of the privilege is thus stated, Members are entitled to a reasonable or, as it was expressed by the House of Commons on occasion, a convenient time for going and returning. Thus they are not obliged at the close of the session to set out immediately on their return home, but may take a reasonable time to settle their private affairs and prepare for the journey; nor will the privilege be forfeited by reason of some slight deviation from the most direct road."

The *Manual of Parliamentary Practice*, published by authority of the House of Representatives in 1860, states the rule thus:

"The time necessary for going to and returning from Congress not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, *eundo morando et redeundo*, the House of Commons themselves decided that a convenient time was to be understood. (1 *Hats.*, 99, 100.) Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs and to prepare for his journey, and does not even scan his road very nicely nor forfeit his protection for a little deviation from that which is most direct, some necessity, perhaps, constraining him to do it. (*Str.*, 986, 987.)"

Such, also, is, in substance, the language of Judge Story, in his work on the Constitution, section 864. As a result of the authorities that bear on the question, it is held, in *Hoppin v. Jenckes*, *supra*, that the privilege from arrest of a Member of Congress is limited to the continuance of the session and to a reasonable time for going and returning; and this is now the law of this country. What is a reasonable time for "going to and returning," from the seat of government must depend upon circumstances and may be difficult to determine. The observations of Judge Story, that the law does not scan the road which the Member may take in his journey very nicely, nor forfeit his protection for a slight deviation from the route which is most direct, nor, it may be added, measure with precision the time absolutely necessary for going to or returning from the capital, furnish a just and sensible test in considering the question. To entitle the defendant to the privilege here invoked he must have been in good faith on his way to the seat of government to enter upon the discharge of his public duties;

that must have been the primary object of his journey. He must have left his residence in California with the intent of then going to Washington to take his seat in the Congress to which he was elected, and the time taken for the journey must have been reasonable. He had a right, without forfeiture of his privilege, to set out from his residence at such time before the session should open as would enable him conveniently to establish his quarters and settle his family and household affairs at the capital, and also, I think, to enable him to inform himself as a new Member regarding pending legislation, so that he might enter advisedly upon the discharge of his duties. A slight deviation from the usual route, for rest, convenience, or because of family sickness, ought not to cause a loss of his privilege, if such deviation was but an incident to the principal journey. Nor ought the duration of the privilege to be strictly measured by the exact number of days, with the present facilities for travel, required for a journey from his residence in California to Washington. At the same time his privilege could not and ought not to avail him if the deviation was equivalent to an abandonment of the original journey for purposes of pleasure or family visiting. If, when he left his home in California, his intention was to make a journey, not to Washington, but to Milwaukee, there to spend an indefinite time visiting relatives, and then to go from Milwaukee to Washington after such prearranged delay at the former place as would still enable him to arrive at the capital in reasonable time to enter upon his public duties, so that it might be fairly said that the object of his journey at the time he set out upon it was not then to go to the capital, but elsewhere, it is clear that while in Milwaukee he could not assert the constitutional privilege of exemption from arrest or service of process.

Applying these principles to the facts as here presented, I am of the opinion that the defendant was privileged from the service of process upon him in these cases. It is evident that when he set out with his family from Pasadena his intended destination was Washington. The primary object of the journey was to go to the capital to prepare for and enter upon his duties as a Member of Congress. He had a right to exercise a reasonable judgment in connection with the settlement of his family in Washington, as to the time required for the accomplishment of his primary purpose, with its necessary incidents. It can not be said from the facts shown that his destination was Milwaukee. It is evident that the health of his family to a large extent controlled his movements. Under the circumstances, his deviation from the direct route was not such as to justify an inference of abandonment of the original journey or its primary object. His privilege, in view of all the facts shown, ought not, I think, to be adjudged forfeited by such deviation, nor ought the court to measure with mathematical accuracy the days and hours required by the most rapid course of transit to travel from Pasadena to Washington. In short, the defendant was in good faith on his way to the seat of government to enter upon his public duties as a Member-elect of the Forty-ninth Congress when the process in these cases was served upon him. His deviation to Milwaukee was but an incident in the journey and seems to have been occasioned by circumstances which made the deviation justifiable, if not absolutely necessary. He was therefore entitled to the protection of his privilege.

The defendant having appeared specially in the State court both in his motion to set aside the service of the summons in these cases and in his application for the removal of the cases to this court, and the motion made in the State court having been denied without prejudice to a renewal of the same, the defendant has not waived his privilege and can assert it here with the same force and effect as if the suits had been brought and the motion made in this court in the first instance. (*Atchinson v. Morris*, supra; *Harkness v. Hyde*, 98 U.S., 476.; *Sanderson v. Ohio Cent. R. and C. Co.*, 61 Wis., 609; S. C., 21 N. W. Rep., 818.)

Motion to set aside the service of summons granted.

2675. In the case of *Kilbourn v. Thompson* the court affirmed the immunity of Members of the House from prosecution on account of their action in a case of alleged contempt.

The constitutional privilege as to “any speech or debate” applies generally to “things done in a session of the House by one of its Members in relation to the business before it.”

At the October term of 1880 the Supreme Court of the United States rendered an opinion in the case in error of Hallet Kilbourn against John G. Thompson,

Michael C. Kerr, John M. Glover, Jephtha D. New, Burwell P. Lewis, and A. Herr Smith. This was an action for false imprisonment, the plaintiff having been imprisoned by the defendant, Thompson, who was Sergeant-at-Arms of the House of Representatives, on a warrant given under the hand of Michael C. Kerr, who was Speaker, and authorized by action of the House, taken on report of an investigating committee, of which the remaining defendants were members.¹ The defendant, Kerr, died before process was served on him. The other Members of the House² who were defendants pleaded their constitutional privilege, which protected them against being “questioned in any other place.”³

The opinion⁴ of the court, delivered by Mr. Justice Miller, proceeds:

As these defendants did not make the actual assault on the plaintiff, nor personally assist in arresting or confining him, they can only be held liable on the charge made against them as persons who had ordered or directed in the matter, so as to become responsible for the acts which they directed.

The general doctrine that the person who procures the arrest of another by judicial process, by instituting and conducting the proceedings, is liable to an action for false imprisonment, where he acts without probable cause, is not to be controverted. Nor can it be denied that he who assumes the authority to order the imprisonment of another is responsible for the act of the person to whom such order is given, when the arrest is without justification. The plea of these defendants shows that it was they who initiated the proceedings under which the plaintiff was arrested. It was they who reported to the House his refusal to answer the questions which they had put to him, and to produce the books and papers which they had demanded of him. They expressed the opinion in that report that plaintiff was guilty of a contempt of the authority of the House in so acting. It is a fair inference from this plea that they were the active parties in setting on foot the proceeding by which he was adjudged guilty of a contempt, and in procuring the passage of that resolution.

If they had done this in any ordinary tribunal, without probable cause, they would have been liable for the action which they had thus promoted.

The House of Representatives is not an ordinary tribunal. The defendants set up the protection of the Constitution, under which they do business as a part of the Congress of the United States. That Constitution declares that the Senators and Representatives “shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.”

Is what the defendants did in the matter in hand covered by this provision? Is a resolution offered by a Member a speech or debate within the meaning of the clause? Does its protection extend to the report which they made to the House of Kilbourn’s delinquency? To the expression of opinion that he was in contempt of the authority of the House? To their vote in favor of the resolution under which he was imprisoned? If these questions be answered in the affirmative they can not be brought in question for their action in a court of justice or in any other place. And yet if a report, or a resolution, or a vote is not a speech or debate, of what value is the constitutional protection?

We may perhaps find some aid in ascertaining the meaning of this provision if we can find out its source, and fortunately in this there is no difficulty. For while the framers of the Constitution did not adopt the *lex et consuetudo* of the English Parliament as a whole, they did incorporate such parts of it, and with it such privileges of Parliament as they thought proper to be applied to the two Houses of Congress. Some of these we have already referred to, as the right to make rules of procedure, to determine the election and qualification of its Members, to preserve order, etc. In the sentence we have just cited another part of the privileges of Parliament are made privileges of Congress. The

¹ See sections 1608–1611 of Volume II of this work for proceedings in full.

² The House authorized employment of counsel for defendants. Second session Forty-fourth Congress, Journal, p. 678; Record, p. 2241. Also first session Forty-fourth Congress, Journal, p. 1413; Record, p. 5387.

³ The case against the defendant, Thompson, gave rise to other questions.⁴ 103 U.S., pp. 200–205.

freedom from arrest and freedom of speech in the two Houses of Parliament were long subjects of contest between the Tudor and Stuart kings and the House of Commons. When, however, the revolution of 1688 expelled the last of the Stuarts and introduced a new dynasty many of these questions were settled by a bill of rights, formally declared by the Parliament and assented to by the Crown. (I W. & M., st. 2, c. 2.) One of these declarations is "that the freedom of speech and debates and proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

In *Stockdale v. Hansard*, Lord Denman, speaking on this subject, says: "The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For every paper signed by the Speaker¹ by order of the House, though to the last degree calumnious, or even if it brought personal suffering upon individuals, the Speaker can not be arraigned in a court of justice. But if the calumnious or inflammatory speeches should be reported and published the law will attach responsibility on the publisher. So if the Speaker by authority of the House order an illegal act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship money could justify his revenue officer."

Taking this to be a sound statement of the legal effect of the Bill of Rights and of the parliamentary law of England, it may be reasonably inferred that the framers of the Constitution meant the same thing by the use of language borrowed from that source.

The court refers to similar provisions in the fundamental laws of the colonies, which afterwards became States. The Massachusetts constitution of 1780 had a provision which received judicial construction in 1808, in a decision from which quotation is made. The opinion of Mr. Justice Story is also quoted in support of the conclusion that—

It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally or by passing between the tellers. In short, to things generally done in a session of the House by one of its Members in relation to the business before it.

Therefore the plea set up by the Members is held good.

2676. A Member having been arrested and detained under mesne process in a civil suit, the House liberated him and restored him to his seat by the hands of its own officer.

On suggestion based on a newspaper report the House investigated the arrest and detention of a Member by authority of a court.

Interpretation of word "felony" as related to the privilege of a Member from arrest.

The House has decided that a Member arrested during vacation was entitled to discharge from arrest and imprisonment on the assembling of Congress.

On December 20, 1866,² Mr. Thomas Williams, of Pennsylvania, as a question of privilege, from the Committee on the Judiciary, to whom it was referred to inquire into the circumstances of the detention from his seat in this House, under arrest, of

¹The Speaker was originally one of the defendants, but died before this question came in issue.

²Second session Thirty-ninth Congress, Journal, pp. 103, 105.

the Hon. Charles V. Culver,¹ submitted a report in writing, accompanied by the following resolution; which was read, considered, and agreed to:

Resolved, That the Speaker be directed to issue his warrant to the Sergeant-at-Arms, commanding him to deliver forthwith the Hon. Charles V. Culver, a Member of this House, detained, as it appears under mesne process issuing out of the court of common pleas of Venango County, in the State of Pennsylvania, in a civil suit instituted therein at the instance of a certain James S. Myers, from the custody of the sheriff and jailer of said county, or any other person or persons presuming to hold and detain the said Culver by virtue of such process, wherever he may be found, a copy of the said warrant, duly authenticated by the Clerk of this House, being first delivered to the party or parties in whose custody he may be, and to make return to this House of the said warrant, along with the manner in which he may have executed the same.

On the same day the Speaker laid before the House the following return made by the Sergeant-at-Arms to the warrant this day issued by order of the House, viz:

OFFICE OF THE SERGEANT-AT-ARMS OF THE HOUSE OF REPRESENTATIVES,

Washington, D. C., December 20, 1866.

Pursuant to this warrant, I have taken the Hon. C. V. Culver from the custody of Philander R. Gray, esq., sheriff of Venango County, in the State of Pennsylvania, and have delivered to the said Gray a certified copy of the within warrant, as within commanded, and now have the Hon. Charles V. Culver unrestrained in his seat as a Member of the Thirty-ninth Congress.

N. G. ORDWAY,

Sergeant-at-Arms of the House of Representatives.

The Committee on the Judiciary were instructed to examine into the case by a resolution² passed December 10, Mr. Robert S. Hale, of New York, who introduced the resolution, basing his action upon a newspaper report that Mr. Culver was held in custody, and that on a writ of habeas corpus a United States judge had decided that a Member of Congress arrested under such conditions was not entitled to his privilege. The report of the Judiciary Committee³ shows that Mr. Culver was arrested in the preceding month of June, during the actual session of Congress, at his home, by virtue of a warrant issuing out of the court of common pleas of the county, under an act of the general assembly of Pennsylvania passed on the 12th day of July, 1842, upon an affidavit filed by a certain James S. Myers, as the plaintiff in an action of assumpsit instituted against the said Culver upon a contract for the return of certain bonds and notes alleged to have been lent to him, charging that the debt incurred thereby was fraudulently contracted by said Culver; and that upon a hearing before the then acting judge of said county he was committed, in default of the required security to the jail, where he had been imprisoned until the 18th instant.

The committee found that under the sixth section of the first article of the Constitution, which provides that Senators and Representatives "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same," there had been a violation of the privilege of the House,

¹The case of Mr. Culver had been brought to the attention of the House on December 10 by a resolution instructing the committee to make the inquiry. The resolution was based on a newspaper paragraph, and was entertained as a question of privilege. *Journal*, p. 54; *Globe*, p. 51.

²*Cong. Globe*, second session Thirty-ninth Congress, p. 51.

³*Globe*, p. 225.

and that the arrest did not fall within any of the specified exemptions. The process issued was but a warrant, authorized by an act of assembly abolishing imprisonment for debt in cases where fraud was charged as an ingredient in the contract, and its effect was only to require the defendant to pay or secure the debt, or give security not to remove or dispose of his property in fraud of his creditor, or that he would apply within thirty days for the benefit of the insolvent laws of the State. It was therefore but a mesne or interlocutory process, and the action which authorized it was no wise penal nor the proceeding itself a criminal one.

It was conceded that Mr. Culver was neither in actual attendance on the House nor going to or returning from the seat of government at the time when he was arrested. But a liberal construction has always been given in such cases. The arrest was made during the last session of Congress, and the detention continues during the present one. It was his duty to be present, and a Member arrested during vacation, or at any other time when not entitled to assert his privilege, was entitled to his discharge from such arrest and imprisonment on the assembling of the body to which he belonged.

As to the method of proceeding, the report reviews the precedents of Parliament, and the suggestion of Cushing, that the proper course is in conformity with the modern English practice, where liberation is effected by an order of discharge, properly authenticated by the Clerk. But the committee could see no reason for the issue of an order to which no answer could be received but absolute obedience, and where, in case of contumacy, an attachment for contempt would only result in the punishment of the delinquent without effecting the object aimed at. Therefore the committee advised the more summary, simple, and complete remedy of actual deliverance by the hands of the House's own officer.

2677. Challenge of a Member by a Senator in 1796 was determined to be a breach of the privileges of the House.—March 14, 1796,¹ Mr. Abraham Baldwin, one of the Members from the State of Georgia, presented to the House certain papers relative to a correspondence between James Gunn, a United States Senator from Georgia, and himself, including a challenge addressed to him by Gunn. These were received, read, and ordered to lie on the table.

On March 15 the Speaker laid before the House two letters, one from James Gunn and the other from Frederick Frelinghuysen, United States Senator from New Jersey, on the subject referred to in the papers presented to the House on the previous day. These papers, with those submitted the day before, were referred to the Committee on Privileges, to which committee Mr. James Madison, of Virginia, was added, in the place of Mr. Baldwin, who had withdrawn at his own request.

On March 17 Mr. Madison made a report from that committee, which was, on the next day, agreed to. The report held:

That it appears to the committee, from a view of all the circumstances attending the transaction referred to them, that the same was a breach of the privileges of this House on the part of James Gunn, a Senator from the State of Georgia, and Frederick Frelinghuysen, a Senator from the State of New Jersey.

That the several letters addressed to the House by the said James Gunn and the said Frederick Frelinghuysen, together with that addressed by the latter to the committee and herewith reported, contain apologies and acknowledgments on the occasion, which ought to be admitted as satisfactory to the House, and therefore that any further proceeding thereon is unnecessary.

¹First session Fourth Congress, Journal, pp. 470–474; Annals, pp. 786–795.

2678. A Member having stated, upon the authority of 11 common rumor," that another Member had been menaced, there was held to be ground for action.

Question as to the right of the House to interfere for the protection of Members who, without the Hall, get into difficulties disconnected with their official duties. (Footnote.)

The Speakers have been accustomed for many years to give a preliminary determination as to questions presented as involving privilege.

On April 20, 1848,¹ Mr. John G. Palfrey, of Massachusetts, saying that he rose to a question of privilege, stated that common report had represented to Members of this House that a lawless mob had assembled for two nights past and committed acts of violence, setting the laws at defiance and menacing individuals of this body and other persons residing in this city, and that he proposed to submit to the House a preamble and resolution thereon.

Mr. Thomas H. Bayley, of Virginia, raised the question of order, and inquired whether the recital of a fact, upon rumor, that a Member of this House had been menaced could make it a question of privilege.

The Speaker² decided that the allegation of the gentleman from Massachusetts raised a question relating to the privilege of Members, and that it would be for the House, and not for the Chair, to decide whether any breach of privilege was involved, or whether any steps were necessary for the protection of any of its Members. The House might call for specifications, and if such specifications were not made it might be sufficient ground for the House, in their own judgment, to refuse the inquiry, but it was not sufficient reason for the Chair to rule it out of order, the House alone having the power to determine a question of privilege.

The record of debates³ shows that the Speaker said that the question was entirely new, but that the parliamentary law laid down expressly that "common rumor" was sufficient ground for action. Moreover, it was well understood that where the life, or person, or liberty of a Member was menaced in any way it was a proper subject to be acted upon by the House. The case was on record where a Member had been challenged by a person out of doors, and the House had considered that he was menaced and that it constituted a question of privilege. The Chair therefore held, upon the best consideration he could give the question, that where an allegation was made that the life, liberty, or person of a Member of this House was menaced, it was a question of privilege in regard to which any Member ought to be heard. The Speaker then quoted Jefferson's Manual in its reference to the Randall and Whitney case, and the case of a challenge to a Member of the House.⁴

The Chair therefore ruled that it was a privileged question, and that it was for the House to determine whether any steps were necessary to be taken for the protection of any of its Members.

This decision was sustained on appeal; and thereupon Mr. Palfrey offered the following preamble and resolution:

¹ First session Thirtieth Congress, Journal, pp. 712, 720.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ See Globe, p. 649.

⁴ See section 1597 of Volume II and section 2677 of this volume.

Whereas common report has represented to Members of this House that a lawless mob has assembled within the District of Columbia on each of the two nights last past and has committed acts of violence, setting at defiance the laws and constituted authorities of the United States and menacing individuals of this body and other persons residing in this city: Therefore,

Resolved, That a select committee of five Members be appointed to inquire into the facts above referred to; that said committee have power to send for persons and papers and to report facts, with their opinion whether any legislation is necessary or expedient in the premises; and that they further have leave to sit during the sessions of the House.

After an amendment had been offered and the subject had been debated, the whole subject was, on April 25, laid on the table.¹

2679. A proposition to investigate as to duels occurring on account of words spoken in debate was admitted as a question of privilege.—On January 16, 1845,² Mr. Preston King, of New York, rising to a question of privilege, submitted the following resolutions:

Resolved, That a select committee be appointed by the Speaker, whose duty it shall be to inquire and report to this House whether any (and, if any, what) Members of this House have been engaged in fighting a duel on account of words spoken in debate on this floor; and that the said committee have power to send for persons and papers.

Resolved, That if it shall appear to the said committee that any Members of this House have been engaged in fighting a duel on account of words spoken in debate on this floor, then the said committee are instructed to report the facts, with a resolution to expel from this House any Member or Members guilty of such crime.

Mr. William W. Payne, of Alabama, having proposed to object to the resolutions, the Speaker³ said that they involved a question of privilege, and were therefore in order.

¹The Globe (1st sess. 30th Cong., pp. 664, 649, 650, 672) shows that the resolution gave rise to an extended debate. The riotous proceedings seem to have arisen over an effort to enable certain slaves in the District of Columbia to escape from their masters. The Member who had been menaced was Mr. Joshua R. Giddings, of Ohio, who furnished a statement in writing which Mr. Palfrey read. Mr. Giddings in this statement said that he had been menaced by a mob, and gave particular places and times.

In the debate Mr. Robert Toombs, of Georgia, took the ground that the preamble of the resolution did not aver that any Member of the House had been called in question by a mob or anybody else for anything uttered or done in this House, and he held that the Chair erred if he supposed that this House had the right or authority to interfere generally for the protection of Members in any strait they might get into out of doors, disconnected with their official duties. If the Member had been called in question by anyone for the discharge of his official duty, that would be a question of privilege which would demand the intervention of the House.

Mr. Joseph R. Ingersoll, of Pennsylvania, contended that such a view was too narrow. A far wider extent of jurisdiction was embraced in the character of the assembly, in the fundamental rules of its existence, and in the sovereign necessity and duty of self-preservation which every constituent principle of continued organization implies. Why should a speech delivered be the subject of protection rather than a speech prevented? If you could notice by the power of the House an unlawful attempt to rebuke or assault a Member for the just performance of his duty, why should you not with equal rigor restrain and prevent disorderly attempts to overawe and restrain him from performing it at all? The power to make laws carried with it the power of self-protection while engaged in the act.

The question was debated until August 25, the subject of slavery being often brought in, and on that day was laid on the table.

²Second session Twenty-eighth Congress, Journal, pp. 217, 218; Globe, pp. 144–147.

³John W. Jones, of Virginia, Speaker.

The resolutions were debated at some length, the power of the House to expel for such an offense being disputed, and the argument being made that a law against dueling made the offense punishable in the District of Columbia.

Finally the resolutions, with a pending amendment, were laid on the table—yeas 106, days 82.

2680. An appeal of a Member to the President for protection was considered derogatory to the privileges of the House.

It not being clear that a Member had been insulted by officers of the military establishment for words spoken in debate, the House declined to act on his complaint.

On January 14, 1800,¹ a message was received from the President of the United States transmitting a letter which had been addressed to him by a Member of the House, Mr. John Randolph, of Virginia. In this letter Mr. Randolph complained that he had been grossly and publicly insulted by two officers of the Army or Navy for words of a general nature uttered on the floor of the House, with a view to effect the reduction of the military establishment.

President Adams, in his message of transmittal, said that he had directed the Secretaries of War and Navy to investigate the circumstances, but the case relating to the privileges of the House, it ought, in his opinion, to be inquired into by the House.

The message, with the accompanying letter, was referred to a committee composed of Messrs. Chauncey Goodrich, of Connecticut; Nathaniel Macon, of North Carolina; John W. Kittera, of Pennsylvania; James Jones, of Georgia; Samuel Sewall, of Massachusetts; Robert Williams, of North Carolina, and James A. Bayard, of Delaware.

The evidence showed that at the theater some incidents had occurred which caused suspicion of an attempt to insult Mr. Randolph; but these incidents had been found capable of explanation or so doubtful as not to render it certain that a breach of privilege had been committed. The committee say:²

Your committee, being of opinion that the matter of complaint respects the privileges of the House, inherent in its own body and there exclusively cognizable, can not but consider the appeal in this instance to the Executive authority, however otherwise intended, as derogating from those rights of the House with which are intimately connected both its honor and independence, and the inviolability of its Members.

The committee recommended the adoption of the following resolutions:

Resolved, That this House entertain a respectful sense of the regard which the President of the United States has shown to its rights and privileges in his message of the 14th instant, accompanied by a letter addressed to him by John Randolph, Jr., a Member of this House.

Resolved, That in respect to the charge alleged by John Randolph, Jr., a Member of the House, in his letter addressed to the President of the United States on the 11th instant, and by him submitted to the consideration of the House, that sufficient cause does not appear for the interposition of this House on the ground of a breach of its privileges.

¹First session Sixth Congress, Annals, pp. 374, 378, 387, 426, 506; also American State Papers, Miscel., Vol. I, p. 196.

²For this report in full see Journal, first session Sixth Congress, pp. 572, 573.

The House, after long debate, adopted the first resolution on June 29, but after amending the second resolution by words condemning the conduct of the officers, the House defeated it by a vote of 49 yeas, to 51 nays.

2681. An explanation having been demanded of a Member by a person not a member for a question asked of the latter when a witness before the House, the matter was considered but not pressed as a breach of privilege.—On May 14, 1832,¹ Mr. Eleutheros Cooke, of Ohio, presented to the House a paper accompanied by the following resolution:

Resolved, That the letter of E. S. Davis, and a statement of facts accompanying it, which has been sent to the Chair, containing, as is believed, a breach of the privileges of the House, be read.

This resolution being agreed to, the letter of Mr. Davis to Mr. Cooke was read:

SIR: During my examination before the House of Representatives in the case of General Houston you very impertinently asked, among other questions, my business in this city. Whilst the trial of General Houston was pending I deferred calling on you for the explanation which I now demand through my friend General Demitry.

In connection with this note Mr. Cooke submitted a statement explaining the circumstances, giving a statement of a threat made by Davis on the floor, and claiming that it was an attempt by menace and violence to overawe the Members and curb the freedom of debate.

Mr. Joseph H. Crane, of Ohio, moved a resolution that the communication be referred to a select committee consisting of seven Members, to report the facts, and their opinion whether the same established a contempt and a breach of the privileges of this House or not, the said committee to have power to send for persons and papers.

The House declined to agree to the resolution—87 yeas to 85 yeas.

The House seems to have felt not quite sure that a breach of privilege was involved, and not disposed to enter upon another inquiry so soon after the Houston case and while much party feeling was existing.

2682. A letter from a person supposed to have been assailed by a Member in debate asking properly and without menace if the speech was correctly reported was held to involve no question of personal privilege.—On January 23, 1865,² Mr. James Brooks, of New York, rose and presented the following letter, addressed to him by Maj. Gen. B. F. Butler, claiming that the said letter presented a question of privilege:

WASHINGTON, *January 20, 1865.*

SIR: I find in the daily Globe of the 7th instant a report of your remarks in the House of Representatives on the 6th instant, an extract of which, personal to myself, is appended.

I have the honor to inquire whether your remarks are here correctly reported, except, perhaps, the misprint of "bold" for "gold," as the remarks were quoted in other papers; and also whether there were any modifications, explanations, or limitations made by you other than appear in this report.

The gentleman who hands you this will await or call for an answer at any time or place you may designate.

Very respectfully,

BENJAMIN F. BUTLER, *Major-General.*

JAMES BROOKS, *Member of the House of Representatives.*

¹First session Twenty-second Congress, Journal, p. 740; Debates, pp. 3023–3036.

²Second session Thirty-eighth Congress, Journal, p. 137; Globe, p. 376.

Appended to the letter was the extract from the *Globe* in which Mr. Brooks was quoted as saying that—

an effort was made by the Federal Government during the pendency of the late Presidential election to control the city of New York by sending there a bold robber, in the person of a major-general of the United States.

Mr. George S. Boutwell, of Massachusetts, raised a question of order that the letter did not involve a question of privilege.

The Speaker¹ sustained the point of order, saying:

It appears from the letter just read that the gentleman from New York stigmatized, in a speech which he made on this floor, a certain gentleman as a “gold robber,” and that that language having been reported in the public papers a gentleman who supposes himself to be meant wrote the letter just read. It appears to the Chair that there is nothing in the language used in this letter which involves a breach of the privilege of this House. If he ruled that there were, then he would be compelled to rule that letters addressed by constituents to Members of Congress as to how they had voted or spoken on pending propositions were also infringements upon their rights.

We know that language, differing in some degree but still somewhat of the same character, has been used as preliminary to further correspondence under what is called the “code of honor,” but which the Chair regards as a code of murder. If the Chair thought this language could be brought within the language of what is called the “code of honor,” the Chair would have decided that the gentleman’s question of privilege was well taken. But it appears most natural, and not improper, that when a person has been stigmatized here as a “gold robber,” he should inquire whether the speech which contained the report had been correctly reported, and whether there had not been some qualifications of such a charge made by the gentleman from New York other than in this report. There is no menace in this inquiry that the Chair can see. The Chair thinks the inquiry a natural one, and not couched in improper language, and therefore rules that it is not a question of privilege.

Mr. Brooks appealed from the decision, but on the succeeding day withdrew the appeal.

2683. The House has declared that a communication from a person not a member, criticising words spoken in debate by a Member, should not be received.—On December 30, 1842,² Mr. James A. Meriwether, of Georgia, presented the following resolution:

Resolved, That the communication addressed to the Speaker of this House by Stephen Pleasanton, Fifth Auditor of the Treasury, on the 14th instant, in relation to some remarks made in the House before that time by Mr. Sprigg, a Member from Kentucky, which was received by the Speaker and laid before the House, without a knowledge of its contents, was not such a communication as ought to have been received and printed by the House; and that the same be withheld from the Journal and files of this House, and the original returned to the writer.

The letter was in relation to a statement in debate by Mr. James C. Sprigg, of Kentucky. Mr. Sprigg had criticised the light-house service, and the Fifth Auditor in his letter criticised the statement as “wholly erroneous.” Considerable debate was occasioned by the resolution, the ground being taken that Members debating on the floor should not be subjected to replies from persons outside presented and made a part of the records of the House in this way.

The Speaker³ stated that he was not aware of the nature of the communication, or he would not have presented it.

¹ Schuyler Colfax, of Indiana, Speaker.

² Third session Twenty-seventh Congress, Journal, p. 116; *Globe*, pp. 101, 102.

³ John White, of Kentucky, Speaker.

Mr. Meriwether's resolution was agreed to without division.

2684. A communication addressed to the House by an official in an Executive Department calling in question words uttered by a Member in debate, was criticised as disrespectful and a breach of privilege, and was withdrawn.—On August 12, 1848,¹ Mr. George Fries, of Ohio, by leave, presented a communication from the Commissioner of Indian Affairs, which was read to the House.

This communication was in response to a speech in which Mr. Thomas L. Clingman, of North Carolina, had denounced the Indian Bureau as thoroughly corrupt. The letter of the Commissioner was addressed "To the honorable the House of Representatives of the United States," and besides entering into a defense of the Indian Bureau charged the Member of the House making the charges with improper conduct in his representative capacity.

A motion was made by Mr. John A. Rockwell, of Connecticut, that the communication, being disrespectful in its language, be not received.

Considerable discussion arose, it being urged that the letter invaded the privileges of the House, a member being privileged as to his remarks on the floor from being questioned in any other place.

Mr. Fries withdrew the communication.

2685. A menace to the personal safety of Members involves a question of the highest privilege.—On June 10, 1876,² during debate some confusion occurred in the Hall in consequence of some glass falling from one of the escutcheons in the ceiling.

Mr. Nathaniel P. Banks, of Massachusetts, after calling attention to the danger to the lives of Members from such possible occurrences offered the following:

Ordered, That the Clerk be directed to inquire into the cause of the disturbance which has just occurred and report the facts found to the House.

The Speaker pro tempore³ said:

This is a question of the personal safety of Members and is one of the highest privilege. The Chair understands that the Hall is under the control of the Clerk, and that the Clerk has already sent a messenger to ascertain how this has occurred, and he will report to the House what it means.

The order was agreed to.

2686. An officer of the Army having written a letter, which was read in the House, falsely impugning the honor of a Member, the House condemned the action as a gross violation of privilege.

It is an invasion of privilege for a Member in debate to read a letter from a person not a Member calling in question the acts of another Member.

On April 30, 1866,⁴ Mr. James G. Blaine, of Maine, offered in the House a letter from James B. Fry, Provost-Marshal-General, impugning the official conduct

¹First session Thirtieth Congress, Journal, p. 1265; Globe, pp. 1068–1070.

²First session Forty-fourth Congress, Journal, p. 1090; Record, p. 3752.

³S. S. Cox, of New York, Speaker pro tempore.

⁴First session Thirty-ninth Congress, Journal, pp. 639, 1056, 1057; Globe, pp. 2292, 2293–2299, 3935–3948.

of Mr. Roscoe Conkling, a member of the House from New York. The letter having been read, a resolution was adopted for a select committee of five to investigate the statements made, respectively, by Mr. Conkling and General Fry, and as to alleged frauds in the recruiting service. The Speaker appointed on this committee Messrs. Samuel Shellabarger, of Ohio, William Windom, of Minnesota, Benjamin M. Boyer, of Pennsylvania, Burton C. Cook, of Illinois, and Samuel L. Warner, of Connecticut.

On July 19, 1866, the committee reported. As part of their report they say:

Your committee deem it proper most earnestly to protest against the practice which has obtained to some extent of causing letters from persons not Members of the House to be read as a part of personal explanation, in which the motives of Members are criticised, their conduct censured, and they are called to answer for words spoken in debate. Such attacks upon Members, made in the House itself and published in its proceedings, and scattered broadcast to the world at the expense of the Government, are, in the opinion of your committee, an improper check upon the freedom of debate, a violation of the privileges, and an infraction of the dignity of the House.

The committee presented the following resolutions, which were agreed to by the House—yeas 96, nays 4:

Resolved, That all the statements contained in the letter of Gen. James B. Fry to Hon. James G. Blaine, a Member of this House, bearing date the 27th of April, A. D. 1866, and which was read in this House on the 30th of April, A. D. 1866, in so far as such statements impute to the Hon. Roscoe Conkling, a Member of this House, any criminal, illegal, unpatriotic, or otherwise improper conduct or motives, either as to the matter of his procuring himself to be employed by the Government of the United States in the prosecution of military offenses in the State of New York, in the management of such prosecutions, in taking compensation therefor, or in any other charge, are wholly without foundation in truth; and for their publication there were, in the judgment of this House, no facts connected with said prosecutions furnishing either a palliation or an excuse.

Resolved, That General Fry, an officer of the Government of the United States, and head of one of its military bureaus, in writing and publishing these accusations named in the preceding resolution, and which, owing to the crimes and wrongs which they impute to a Member of this body, are of a nature deeply injurious to the official and personal character, influence, and privileges of such Member, and their publication originating, as in the judgment of the House they did, in no misapprehension of facts, but in the resentment and passion of their author, was guilty of a gross violation of the privileges of such Member and of this House, and his conduct in that regard merits and receives its unqualified disapprobation.

2687. A controversy between a Member and the officials of one of the Executive Departments as to a question of the administration of the duties of that Department was held to involve no question of personal privilege.—

On December 19, 1901,¹ Mr. David A. De Armond, of Missouri, claiming the floor for a question of personal privilege, proceeded to have read papers and to make statements concerning transactions which he had had, as a Representative, with the Post-Office Department concerning the appointment of carriers in the rural free-delivery service, and wherein his recommendations to the Department had been disregarded.

Mr. Sereno E. Payne, of New York, made the point of order that no question of personal privilege was presented.

The Speaker² said in relation to the question presented by the point of order:

¹First session Fifty-seventh Congress, Record, pp. 443–445; Journal, p. 165.

²David B. Henderson, of Iowa, Speaker.

If a Representative has a controversy with one of the Departments about patronage, the gentleman from Missouri will readily see that it does not constitute a question of personal privilege, which a Member of the House may at any time make the pretext for taking the floor and occupying the time of the House. If the gentleman thinks that attacks have been made upon him in regard to the administration of his office in his representative capacity—if something of that kind were brought before the House—the view of the Chair might be entirely different; but up to this time nothing has been submitted to the House to be read that comes within the rules as a question of personal privilege. * * * There should be some tangible matter laid before the House, the Chair thinks. * * * The gentleman knows well the difference between conclusions and facts. It seems to the Chair that the House should have specific facts before it in order that it may pass upon the question whether the facts thus presented constitute a violation of the privileges of a Member of the House. That is the opinion of the Chair. * * * The gentleman from Missouri will see that there is no tangible thing in the nature of a question of personal privilege before the House. The point of order has been made to that effect, and the Chair has ruled that that does not constitute a question of personal privilege. * * * The point of order was made against the gentleman's claim that he had a question of personal privilege when the document that he sent up was read. The Chair is well aware that a Member might be attacked physically; that there might be no document at all. * * * The Chair desires to state that it is a question for the House to decide whether a matter is a question of privilege or not. Many Speakers, for the purpose of saving the time of the House, have passed preliminarily upon questions of this kind. As to the points of order which are pending, the Chair believes that both are well taken. Such matters as that which the gentleman from Missouri is now trying to bring before the House have usually been made matters of "personal explanation" by unanimous consent. The Chair can not see that anything thus far developed by the gentleman constitutes a question of privilege, and thinks that the points of order are well taken. * * * If the Chair is to admit discussion of every disturbance that a Representative has within his district over rural free-delivery or post-office appointments the transaction of the business of this country will soon be prevented by the consideration of such questions. Therefore the Chair must hold that nothing has been presented by the gentleman that comes within the rule as a question of personal privilege. The remedy of the gentleman is in an appeal from the decision of the Chair, or to ask unanimous consent to make a personal explanation, which the Chair will be glad to submit to the House.

2688. A resolution to investigate the failure of the Post-Office Department to remove a postmaster charged with an attempt to influence a Member corruptly was held not to present a question of privilege.—On September 23, 1893,¹ Mr. John L. Bretz, of Indiana, presented, as involving a question of privilege, and caused to be read, letters from a postmaster containing a corrupt proposition intended to influence the action of a Member of Congress with a view to securing a retention of said postmaster in office.

Mr. Bretz thereupon submitted the following as a privileged resolution:

Whereas on the 16th day of September, 1893, charges of an attempt to bribe a public officer and incompetency to perform the official duties of the office were filed with the Hon. Robert A. Maxwell, Fourth Assistant Postmaster General, against the present Republican postmaster at Celestine, Ind., and the said Maxwell's attention specially called to the nature and character of said charges, and a request was made for the immediate removal of said postmaster; and

Whereas the said Fourth Assistant Postmaster-General has failed and refused to make said removal: Now, therefore,

Be it resolved, That a committee of three Members of this House be appointed by the Speaker, whose duty it shall be to investigate and inquire into the reasons, if any exist, why said removal is not made, and report to this House at an early day the result of said investigation.

The Speaker² held that said resolution was not privileged.

¹First session Fifty-third Congress, Journal, p. 109.

²Charles F. Crisp, of Georgia, Speaker.

2689. A Member is not entitled to the floor on a question of personal privilege unless the subject which he proposes to present relates to himself in his representative capacity.—On February 11, 1901,¹ during the consideration of the diplomatic and consular appropriation bill in Committee of the Whole House on the state of the Union, and while general debate was in progress, Mr. Thaddeus M. Mahon, of Pennsylvania, called attention to a meeting of Boer sympathizers over which another Member, Mr. William Sulzer, of New York, had presided, and whereof the expenses had absorbed almost all the funds raised for the cause.

Mr. Sulzer, after occupying the floor a limited time in reply, again claimed the floor for a question of personal privilege.

The Chairman² said:

Without attempting to pass upon the application of any language made by the gentleman from Pennsylvania to the gentleman from New York personally, it is the duty of the Chair to rule that any language used must have reflected upon the gentleman in his representative capacity.

Mr. Sulzer insisted that it had been intimated that he had collected funds for widows and orphans of the Boers and that these funds had not been turned over to those for whom they had been collected, and urged that this affected his position as a Representative.

After debate the Chairman held:

The Chair is ready to rule. The rule under which this question is invoked is Rule IX:

“Questions of privilege shall be, first, 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.”

Now, unless the question of personal privilege capable of being invoked here relates to conduct of gentlemen in their representative capacity, it is a restriction on the rule. The Chair is bound to say he understood nothing from the gentleman from Pennsylvania as reflecting upon the gentleman from New York individually or in his representative character. * * * The Chair holds that the gentleman has not presented a question of personal privilege.

2690. It was held in 1894 that the act of the Sergeant-at-Arms in pursuance of the law for deductions of Members' salaries for absence might not be reviewed on the floor as a question of privilege.—On April 26, 1894,³ Mr. Thaddeus M. Mahon, of Pennsylvania, presented, as involving a question of privilege, that he had received from the Sergeant-at-Arms a circular note requesting him to certify the number of days he had been absent during the current fiscal month, for which deduction should be made pursuant to section 40 of the Revised Statutes.

Mr. Mahon insisted that said section of the Revised Statutes (sec. 40) had been in effect repealed. He therefore submitted the following resolution:

Resolved, That the Sergeant-at-Arms is hereby directed to pay to Members and Delegates their salary on the 4th day of each and every month, as provided by law, and that he shall not deduct any part of a Member's salary on account of absence under the act of August 16, 1856, until the absence of a Member has been duly certified to him under a rule or some action of this House by the officer authorized to certify the same.

¹ Second session Fifty-sixth Congress, Record, pp. 2276–2278,

² William H. Moody, of Massachusetts, Chairman.

³ Second session Fifty-third Congress, Journal, pp. 358, 359.

Mr. Joseph H. Outhwaite, of Ohio, made the point that no question of privilege was presented.

The Speaker¹ sustained the point of order, holding as follows:

The gentleman from Pennsylvania [Mr. Mahon] submits a resolution which he claims raises a privileged question; and in order to determine whether this resolution does raise a privileged question it is necessary to look to the rules of the House and to the resolution itself. The rules of the House provide that the Sergeant-at-Arms shall keep the accounts of Members and pay them their salaries according to law. This House separately and alone has no control of the salary of its Members. The Constitution provides that Representatives shall receive a salary to be fixed by law. Congress has passed a law fixing the salary of Representatives, and all that this House has ever undertaken to do under its rules in dealing with the question of salaries is to provide that the Sergeant-at-Arms shall keep the accounts for the pay and mileage of Members and Delegates and pay them as provided by law. When you turn to the law you find that the Sergeant-at-Arms is required to deduct from the monthly payments of each Member or Delegate the amount of his salary for each day that he has been absent from the House, unless the reason for such absence was the sickness of himself or some other member of his family. Gentlemen state that this is not the law. It is not the purpose or province of the House of Representatives to determine that question. This House can make law, but the construction of law is for the courts and not for the House. The Sergeant-at-Arms is a bonded officer, a disbursing officer of the Government. He is charged with the duty of executing public law. If the Sergeant-at-Arms should plead the opinion of this House as to whether a law existed or was repealed, such opinion would have no effect in relieving him from any liability on his bond if such opinion were wrong. This House can not construe the law.

Now, let us see what the resolution is. First, "The Sergeant-at-Arms is hereby directed to pay to Members and Delegates their salaries on the 4th day of each and every month, as provided by law." That is the rule of the House now. If it be the purpose to change the rule, it is not a privileged question unless reported from the Committee on Rules. So that the first part of this resolution can not, certainly, be considered as privileged. What is the second?

"That he shall not deduct any part of a Member's salary on account of absence under the act of August 18, 1856, until the absence of a Member has been duly certified to him under a rule or some action of this House by the officer authorized to certify the same."

That is a proposition, not that the law for the deduction from salaries of Members is repealed by implication, not that the law does not exist, but that the Sergeant-at-Arms shall not enforce the law until the absence of Member has been certified to him under a rule or some action of the House by an officer authorized to certify the same.

Now, how does that constitute a question of privilege? That is a change of the rules. What allegation is there in this resolution that any right of a Member of this House or Members collectively has been infringed or invaded? The Chair can not see any. The Chair desires to say, in justice to the Sergeant-at-Arms, that the form of the certificate which has been read was suggested by the Chair, upon the request of the Sergeant-at-Arms. That form of certificate was intended to put it wholly within the power of the Member himself to say whether or not any deduction should be made under section 40 of the Revised Statutes.

The Chair believed then and believes now that every disbursing officer of the United States who is charged by law with the performance of a duty in paying out money has a right to make all reasonable regulations, which must be complied with by those to whom the money is to be disbursed before they can demand its payment. The regulation which the Sergeant-at-Arms has made is simply to require the Member himself to certify whether or not under that law any deduction should be made. The Chair desires to say further, so that the House may fully understand it, that as he now understands the law the Chair would not certify the pay of any Member as to the amount that might be due him for a month's salary unless the Member first furnished information as to how long he had been absent, for which deductions should be made. The Chair holds that there is no question of privilege in this resolution.

¹Charles F. Crisp, of Georgia, Speaker.

Mr. Mahon thereupon submitted, as involving a question of privilege, the following resolution:

Resolved, That it is the sense of the House that the Sergeant-at-Arms of the House of Representatives has no authority to require each Member of the House to report to him whether he has been absent from the sessions of the House, and the reasons for such absence, in the absence of any rule of the House giving him such authority, and that the notice of such requirement given by the Sergeant-at-Arms is in derogation of the rights of Members of this House.

Mr. Richard P. Bland, of Missouri, and Mr. William M. Springer, of Illinois, made the point that the resolution did not present a question of privilege.

The Speaker sustained the point, for the reasons indicated in the preceding decision of the Chair.

Mr. Mahon appealed from the decision of the Chair. Mr. Outhwaite moved to lay the appeal on the table; and the question being put, Shall the appeal lie on the table? it was decided in the affirmative, yeas 167, nays 76.

2691. One Member having, in a newspaper article, made charges against another Member in the latter's individual and not his representative capacity, a committee of the House found no question of privilege involved.

A distinction has been drawn between charges made by one Member against another in a newspaper and the same made in debate on the floor.

A charge made outside the House of disreputable conduct on the part of a Member before he became a Member has been held not to involve a question of privilege.

On May 4, 1868,¹ Mr. William Windom, of Minnesota, as a question of privilege, submitted the following:

Whereas Elihu B. Washburne, a Member of this House from the State of Illinois, did, on the 19th day of April, 1868, in the column of a newspaper published in the city of St. Paul, Minn., styled the St. Paul Press, make a violent attack upon the character of Ignatius Donnelly, a Member of this House from the State of Minnesota, in which he charged him, among other things, with bribery and corruption, and with being a fugitive from justice, in the following words: [Here follows the letter in full.]

And whereas the said Elihu B. Washburne did, on the 2d day of May, 1868, in his place on the floor of the House of Representatives, repeat said charges against the said Ignatius Donnelly, in the following words: [Here follows the words in full.]

Resolved, That a select committee of seven be appointed by the Chair to investigate the truth or falsehood of the charges so made, with power to send for persons and papers, and with leave to report to this House at any time

The Speaker² said:

The Chair is of the opinion that this is a question of privilege upon the ground that "charges affecting the character of a Member of Congress, "when made distinctly, even by a person not a fellow Member, are regarded as questions of privilege. General charges and denunciations, vague and not specific in their character, are not usually regarded as questions of privilege. But when charges have been made in newspapers by persons not holding the relations to a Member of Congress that a fellow Member does, imputing distinctly that affecting the honor and reputation of a Member, they are regarded as questions of privilege. This, however, is subject to the rules of the House; and if objection is made to the consideration of this resolution the Chair will submit to the House the question: Shall the resolution be considered at this time for its decision?"

¹ Second session Fortieth Congress, Journal pp. 650-653; Globe p. 2355.

² Schuyler Colfax, of Indiana, Speaker.

No objection was made and the resolution was considered and agreed to.

On June 1, 1868,¹ Mr. Luke P. Poland, of Vermont, from the select committee appointed to investigate certain charges made by Mr. Elihu B. Washburne, of Illinois, against Mr. Ignatius Donnelly, of Minnesota, submitted a report. The investigation had arisen over a letter written by Mr. Washburne, and published in a newspaper, charging, among other things, that Mr. Donnelly, before he was a Member of the House, had left Philadelphia under suspicious circumstances between two days. The committee say in regard to this charge:

The committee have endeavored to give the subject such careful and considerate attention as it deserves, and while anxious to do exact and equal justice to both the gentlemen interested in it, they have been equally anxious not to establish a precedent that should go beyond the proper legal and parliamentary jurisdiction and authority of this House, in sustaining and protecting its own privileges and that of its Members. And especially have your committee desired not to go beyond the true line of privilege in a case where a precedent, once established, would necessarily furnish occasion for frequent and perplexing appeals for the exercise of the power of the House for the defense and protection of the reputations of its Members from attacks having no reference to their official character.

Upon such consideration and examination as your committee have been able to give this question, they are unanimously of the opinion that the charges of disreputable conduct (or of criminal conduct, if the language will bear that interpretation), made by Mr. Washburne against Mr. Donnelly anterior to his becoming a Member of the House, are not a breach of privileges of the House, or of Mr. Donnelly as a Member, and therefore furnish no proper ground for an investigation with a view to protect and defend the privileges of the House or its Members by punishing the person violating them.

Libelous publications in reference to that parliamentary body itself are a breach of its privileges which may be punished, and so a libelous publication against a single Member of such body, in his capacity as a Member, or affecting his conduct or character as such, is equally so, as casting discredit upon the body. But a libelous publication concerning a Member in his private character and capacity only has never been regarded as a breach of privilege, either of the body of which he is a Member or of the Member himself, and he must seek redress for such private injury in the same manner other citizens do, by vindication through the public press, or by resort to the legal tribunals. The principle is much the same as that applicable to the person of a Member. If an assault be made, or other personal injury be done, to a Member while in attendance upon the House, or while going to or returning from such attendance, it is a breach of privilege; but an assault upon the person of a Member not in attendance, and in no way affecting his attendance as a Member, is not.

As has been already stated, if the words of this letter had been used by Mr. Washburne upon the floor of the House, they would have been disorderly, a breach of the privileges of the House and of Mr. Donnelly as a Member, and he could have properly been punished therefor. This is upon the ground that the use of any language upon the floor derogatory to the personal character of a Member is calculated to provoke disturbance and disorder in the proceedings, and bring the body itself into contempt and disgrace. These reasons do not apply to the publication of the same words in a newspaper a thousand miles distant.

The committee therefore asked to be discharged from the consideration of the subject.

2692. In order to afford a basis for a question of personal privilege a newspaper charge against a Member should present a specific and serious attack upon his representative character.—On January 30, 1882,¹ Mr. William E. Robinson, of New York, claiming the floor for a question of privilege, had read at the Clerk's desk extracts from newspapers criticising his conduct in championing the cause of Irish suspects imprisoned in Great Britain and reminding him that

¹ Second session Fortieth Congress, House Report No. 48.

² First session Forty-seventh Congress, Record, p. 723.

he was elected to Congress to represent a district of New York, and not an “imaginary Irish republic.”

Mr. Thomas M. Browne, of Indiana, made the point of order that no question of privilege was involved.

The Speaker¹ said:

The Chair is inclined to hold that unless a Member is criticised in his representative or official capacity in such way as to affect his standing as Representative comments by newspapers on matters that can not be brought before the House for its action are not questions of personal privilege.

The Chair then went on to speak of the difficulty in determining in such cases a rule to follow, but ended by sustaining the point of order.

2693. On May 18, 1892,² Mr. William W. Bowers, of California, claiming the floor for a question of personal privilege, stated that a Member had sent to the Clerk’s desk a paper reflecting on himself in that the matter referred to the complaint of certain settlers in a county of his district who claimed that the Government and Congress had been unconsciously used as a part of a conspiracy to defraud them. Mr. Bowers stated that he had been threatened by lobbyists in the matter, and that the presentation of the article was part of a plan, and that the article was intended as a reflection on him as Representative of the district.

The article nowhere charged Mr. Bowers by name or directly, although it might be construed as making insinuations against him.

The article having been read, Mr. William D. Bynum, of Indiana, made the point of order that there was nothing in the article giving rise to a question of personal privilege.

The Speaker³ sustained the point of order, saying:

The Chair does not see that it presents a question of privilege.

2694. A newspaper charge that a Member had been influenced in his action as a Representative by the Speaker was held to involve a question of privilege.—On March 17, 1902,⁴ Mr. Frank C. Wachter, of Maryland, rising to a question of personal privilege, had read the following from a newspaper:

While the Cuban reciprocity fight was at its warmest and the “insurgents” were making daily assaults against the Ways and Means Committee, Speaker Henderson sent for Representative Wachter, of Maryland, of the Baltimore district.

“Why are you so much interested in this sugar-beet question?” demanded the Speaker, angrily. “You have no sugarbeet interests.”

“Well, it seems fair enough to me,” replied the Baltimore man. “Furthermore, I have some constituents who own sugar-beet factories.”

“How many?”

“Oh, two or three.”

“How many have you got interested in the Sparrows Point improvement, for which \$300,000 or \$400,000 are asked?”

“My whole district is virtually interested in that.”

“Well, then, it is up to you, if you are a good Congressman, to choose between sugar beet and your item in the river and harbor bill.”

¹J. Warren Keifer, of Ohio, Speaker.

²First session Fifty-second Congress, Record, p. 4374.

³Charles F. Crisp, of Georgia, Speaker.

⁴First session Fifty-seventh Congress, Record, p. 2927.

Mr. Wachter having proceeded with remarks, Mr. James D. Richardson, rising to a point of order, stated that no question of personal privilege was involved.

The Speaker¹ overruled the point of order, stating that the Member had been attacked in his representative capacity.

2695. A Member may not present as involving a question of personal privilege a newspaper criticism of his relations with other Members or the Speaker.—On December 16, 1903,² Mr. John Lind, of Minnesota, claimed the floor for a question of personal privilege and proceeded to discuss an editorial in a newspaper, saying:

It comments upon my committee assignments and in that connection insinuates that the relations between the minority leader and myself are not cordial. Such is not the fact, Mr. Speaker, so far as I am advised and know. Our personal and political relations are cordial. Besides that, the minority leader recommended my assignment to two other committees regarded by this House as more prominent than the assignments which I received.

Mr. Sereno E. Payne, of New York, made the point of order that no question of privilege was presented.

The Speaker³ took the view that no question of privilege was presented.

2696. The House has entertained as a question of privilege and ordered the investigation of newspaper charges against a Member in his representative capacity.—On January 30, 1880,⁴ Mr. Joseph H. Acklen, of Louisiana, as a question of privilege, called the attention of the House to a newspaper publication charging him with making to the House from the Committee on Foreign Affairs an unauthorized report. Mr. Acklen having explained, offered a resolution directing the Committee on Foreign Affairs to investigate the truth or falsity of the statements in the paragraph to which he had called the attention of the House. The resolution was agreed to by the House.

2697. On May 12, 1882,⁵ Mr. Fetter S. Hoblitzell, of Maryland, as a question of privilege, submitted the following, which was considered and agreed to:

Whereas a letter appeared in the Baltimore Herald of the 4th instant reflecting on Mr. Hoblitzell, a Representative from the State of Maryland: Therefore,

Resolved, That the Committee on Claims are hereby directed to make immediate investigation into the conduct of the clerk of that committee in connection with the letter referred to and to report its action to the House at as early a day as possible.

Mr. Hoblitzell had charged that the clerk of the committee had placed a letter on the files of the committee not referred to the committee by the House, the said letter reflecting upon the conduct of Mr. Hoblitzell in connection with a certain claim.

2698. On February 25, 1884,⁶ Mr. E. John Ellis, of Louisiana, rising to a question of personal privilege, had read at the Clerk's desk an extract from a newspaper, wherein it was stated that he had received a sum of money for assisting in

¹ David B Henderson, of Iowa, Speaker.

² Second session Fifty-eighth Congress, Record, p. 287.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ Second session Forty-sixth Congress, Journal, p. 354; Record, p. 616.

⁵ First session Forty-seventh Congress, Journal, p. 1231; Record, pp. 3879, 3880.

⁶ First session Forty-eighth Congress, Journal, p. 658; Record, p. 1349.

getting a contract under the Government in the Post-Office Department. After remarks he submitted the following resolution, which was agreed to:

Resolved, That the Committee on the Post-Office and Post-Roads be instructed to investigate the charges reflecting upon Mr. Ellis, a Representative from Louisiana, in connection with star-route frauds recently published, and for this purpose are authorized to send for persons and papers.

2699. On December 4, 1862,¹ Mr. J. M. Ashley, of Ohio, claimed the floor on a question of personal privilege, and the Speaker, after learning that charges had been made in a newspaper against Mr. Ashley, said:

It has been decided that publications in a newspaper are not questions of privilege unless it is proposed to make them the basis of some action on the part of the House.

Mr. Ashley having stated that he proposed to ask an investigation, the Speaker² recognized him for a question of privilege, and he presented the following, which were agreed to by the House:

Whereas charges derogatory to the character and standing of a Representative are made in the Toledo Daily Blade and other newspapers published in the Tenth Congressional district of Ohio, in connection with certain letters written by Hon. J. M. Ashley to Hon. F. M. Case, touching his application and appointment as surveyor-general of the Territory of Colorado, of the date of February 2, 1861, March 12, March 18, and March 19, 1862, and published in said papers of September last: Therefore, be it

Resolved, That a committee of five be appointed for the purpose of investigating the truth of the charges above referred to, and instructed to inquire into the whole subject-matter, with power to send for persons and papers, to examine witnesses on oath or affirmation, and to employ a stenographer at the usual rate of compensation, with leave to report at any time.

2700. Language which may be replied to as a matter of personal privilege must reflect on the Member in his representative capacity.—On February 21, 1893,³ Mr. Joseph E. Washington, of Tennessee, submitted as a question of privilege that during the proceedings under the call he had been charged with representing corporations instead of his constituents in his opposition to the bill H. R. 9350, and proceeded to reply to said charge.

Mr. William H. Cate, of Arkansas, made the point of order that no question of privilege was presented by Mr. Washington.

The Speaker⁴ sustained the point of order, saying that the language complained of appeared to be very general and did not seem to charge any gentleman with representing railroads. The Chair would ask the gentleman from Tennessee and the House to bear in mind that a mere desire to reply to something that some gentleman had said on the floor did not constitute a question of privilege. The language complained of must be something that reflected upon the Representative in his capacity as a Representative.

2701. A newspaper charge that a Member of the House had been influenced by Executive patronage was submitted as privileged, but the House declined to investigate.

A contention that common fame was sufficient basis for the House to entertain a proposition relating to its privileges.

¹ Third session Thirty-seventh Congress, Journal, p. 36; Globe, p. 10.

² Galusha A. Grow, of Pennsylvania, Speaker.

³ Second session Fifty-second Congress, Journal, p. 106, Record, p. 1979.

⁴ Charles F. Crisp, of Georgia, Speaker.

On February 12, 1858,¹ Mr. Charles B. Hoard, of New York, arose and proposed to submit the following resolution as a question of privilege:

Resolved, That a committee of five be appointed by the Speaker to inquire and investigate whether any improper attempts have been or are being made by any persons connected with the executive department of this Government, or by any persons acting under their advice or consent, to influence the action of this House, or any of its Members, upon any question or measure upon which the House has acted, or which it has under consideration, directly or indirectly, by any promise, offer, or intimidation of employment, patronage, office, or favor under the Government, or under any department, officer, or servant thereof, to be conferred or withheld in consideration of any vote given or to be given, withheld or to be withheld, with power to send for persons and papers, and leave to report at any time, by bill or otherwise.

The same having been read, Mr. Edward A. Warren, of Arkansas, made the point of order that the proposed resolution did not present a question of privilege.

After debate, the Speaker² stated that, following the precedents in former Congresses, he would entertain the proposition so far as to submit the question to the House as to whether it did or did not involve a question of privilege.

The Speaker held that the resolution on its face presented a question of privilege, and while he doubted whether the newspaper articles which were introduced to support its allegations were such as justified the predicate of the resolution, he would submit the question to the House as to whether a question of privilege was involved. The Speaker quoted as a precedent the action of Speaker Cobb in the Thirty-first Congress.

Pending the question submitted by the Speaker, the House voted, on motion of Mr. Alexander H. Stephens, of Georgia, that it be laid upon the table.

On March 4³ Mr. Hoard modified the resolution heretofore submitted to read as follows:

Whereas the Member from New York, the Hon. Mr. Hoard, read from the Clerk's stand, in this House, the following paragraph from the New York Tribune of the 11th February, to wit:

“WASHINGTON, *Wednesday, February 10, 1858.*

“I learn that, until Monday morning, it was expected that Burns, of Ohio, would vote against the Lecomptonites. On the morning of that day, however, he came to another perception of his duty on the understanding with the President that his son-in-law should retain the valuable place of postmaster at Keokuk, Iowa, and that he himself should be gratified with the office of marshal of the northern district of Ohio when his present term in the House is completed.”

Resolved, That a committee of five persons be appointed by the Speaker to inquire if there was any collusion or bargain made between the said Mr. Burns and the President that if he, Burns, would vote to refer the President's Kansas message to the standing committee on the Territories, that the said Burn's son-in-law should retain the position of postmaster at Keokuk, Iowa, and also that he, the said Burns, should be gratified or appointed marshal of the northern district of Ohio after his present term in the House expired; and to further investigate whether any improper attempts have been made or are being made, directly or indirectly, by any person connected with the executive department of this Government, or by any other person with their advice and consent, to influence the action of any Member of this House upon any question or measure upon which the House has acted or which it has under consideration; with power to send for persons and papers, and with leave to report at any time, by bill or otherwise.

¹ First session Thirty-fifth Congress, Journal, pp. 376, 410; Globe, pp. 693, 694, 967, 968.

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

³ Journal, pp. 410, 413, 428; Globe, pp. 966–969.

The Speaker having stated the question to be, Shall the said preamble and resolution, as modified, be received and entertained on the ground that the privileges of the House are involved? A debate arose, Mr. Hoard contending that common fame was sufficient basis for the House to entertain the proposition, and quoted parliamentary authorities in support of his contention. It was urged in opposition that the investigation would be inexpedient and useless and that the report emanated from irresponsible sources.

The whole subject was laid on the table, on motion of Mr. Mathias H. Nichols, of Ohio, by a vote of yeas 92, nays 80.

2702. An "absurd and purposeless" anonymous letter proposing a corrupt bargain to a Member of the House was held by a committee of the House to create no breach of privilege.—On April 17, 1880,¹ Mr. Van H. Manning, of Mississippi, as a question of privilege, submitted the following:

Whereas a certain anonymous letter, dated House of Representatives, Washington, District of Columbia, March 4, 1880, addressed to Hon. William M. Springer, offering a bribe of \$5,000 if he would prevent the unseating of William D. Washburn, of Minnesota, the contestee in the pending election case of *Donnelly v. Washburn*, was mailed on the 8th day of March, 1880, in the post-office of the House of Representatives, and delivered to the Hon. William M. Springer, then and now the chairman of the Committee on Elections, before which said election case at that time was pending; and

Whereas said letter purports to be an attempt to corruptly influence the action of said Hon. William M. Springer as a member of said committee and of the House of Representatives; and

Whereas another private letter was sent to and received by the said Springer, in reference to the said contest, signed by H. H. Finley; and

Whereas the language by the said Springer, published in the Congressional Record of the 6th instant, in his speech on the subject before the House, is construed by many Members as a charge against said Donnelly of having inspired the writing of the said letter; and

Whereas said Donnelly has requested an investigation of said matter: Now, therefore,

Resolved, That a committee of seven Members of this House be appointed by the Speaker to inquire and report to this House as to the authorship of said anonymous letter, who sent it, and the purpose for which said letters were sent, and all other matters in connection with the same, and that said committee be authorized to inquire and report to the House thereon whether, in either or all of the letters in controversy and written to Hon. William M. Springer, there has been any breach of the privileges of the House or of any Member thereof, and said committee shall have power to send for persons and papers, etc.

This resolution was agreed to by the House.

On March 3, 1881, the committee reported,² and both majority and minority concurred in the view that there was no breach of the privileges of the House or of any Member, since the anonymous letter could not be traced to any source, and was of itself absurd and purposeless.³

2703. A newspaper article charging certain Members by name with conspiracy to defraud the Government was presented as a matter of privilege.—On December 12, 1889,⁴ Mr. Benjamin Butterworth, of Ohio, as a question of privilege, presented a preamble and resolution, providing for the appoint-

¹ Second session Forty-sixth Congress, Journal, pp. 1047, 1048; Record, p. 2501.

² House Report No. 395. The committee consisted of Messrs. John G. Carlisle, of Kentucky; George A. Bicknell, of Indiana; David B. Culbertson, of Texas; William Lounsbery, of New York; William Claflin, of Massachusetts; Thomas Updegraff, of Iowa; and Benjamin Butterworth, of Ohio.

³ This report, being made in the last hours of the Congress, was laid on the table. Journal, pp. 615, 616.

⁴ First session Fifty-first Congress, Journal, p. 18; Record, p. 161.

ment of a committee to investigate a charge made in a certain newspaper that certain persons, including several Members of the House and Senate, himself included, had entered into a corrupt contract to defraud the United States through the sale of ballot boxes. No objection was made to the receipt of the resolution as a question of privilege, and it was agreed to by the House.

2704. An accusation in a newspaper that certain Members had received an excess of mileage pay was held to involve a question of privilege.—On December 27, 1848,¹ Mr. William Sawyer, of Ohio, claimed the floor for a question of privilege, and stated that he, with most of the Members of the House, was accused, in the New York Tribune of Friday last, of having charged and received an excess of mileage, and, as a consequence, with having been guilty of fraud on the Treasury.

Mr. Sawyer thereupon demanded the right to be heard on the question as a question of privilege.

The Speaker² stated that it was for the House to decide upon the extent of its own privileges, and he therefore propounded it to the House, whether they would entertain the case submitted by the gentleman from Ohio as a question of privilege.

And the question being taken, the House decided in the affirmative, and thereupon Mr. Sawyer proceeded with his remarks.

Having concluded without moving any specific proposition on the subject, Mr. Thomas J. Turner, of Illinois, said that he rose also to a question of privilege, and stated that he, with other Members of the House, was charged in the same paper to which the gentleman from Ohio had alluded with fraud and speculation on the Treasury.

Mr. Turner proceeded to speak on the question as a question of privilege, when Mr. Robert M. McLane, of Maryland, rose to a question of order, and insisted that the gentleman from Illinois was out of order, because the decision of the House upon the case presented by the gentleman from Ohio, by which it was declared a question of privilege, was not a decision of the same effect on the case of the gentleman from Illinois. This was no question of privilege in itself; the gentleman from Illinois was therefore out of order.

The Speaker decided that the question was the same as that raised by the gentleman from Ohio, but that, on the demand of the gentleman from Maryland, he would again call upon the House to say whether the question should be again entertained as a question of privilege.

The House thereupon decided, yeas 85, nays 76, that it was a question of privilege.

2705. A newspaper article charging Members of the House generally with abuse of the franking privilege was held to involve a question of privilege.—On January 4, 1906,³ Mr. Thetus W. Sims, of Tennessee, claiming the floor for a question of privilege, asked for the reading of the following newspaper article:

¹ Second session Thirtieth Congress, Journal, pp. 152, 153; Globe, pp. 108, 109.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ First session Fifty-ninth Congress, Record, pp. 692, 693.

ABOLISH THE FRANKING PRIVILEGE?

We quite agree that something ought to be done for the relief of the Post-Office Department. Its work is simply tremendous, and, by an interesting coincidence, its usefulness is quite as great. There is no section of the governmental machinery more important or more accurately and satisfactorily conducted. But the burden put upon Mr. Cortelyou and his coadjutors can be materially lightened without impairing its efficiency. It is our opinion, indeed, that the people and the Government both would be better off if the franking privilege were abolished utterly.

That this privilege has been outrageously abused is a fact of universal knowledge. Congressmen load the postal cars with all sorts of freight—furniture, libraries, kitchen utensils, the family wash, pianos, poultry, barnyard animals, etc., without limit. They frank a cow, a washtub, or a churn as glibly as they do a letter or a speech that no one ever heard. They go further—they lend their franks in large, uncounted bunches to societies and propagandas that would flourish on the public Treasury as they already thrive upon the people's discontent. The whole system has been converted to the most abominable ends. It presents the perfected spectacle of graft. But its worst expression is to be found in the lumbering up of the mail cars, the preposterous demands upon the Department's resources of transportation, and the corresponding and concurrent crippling of the postal service in all its proper and legitimate activities.

We note the presentation of an alternative arrangement—an arrangement under the operation of which Members of Congress will receive a direct allowance for the purpose of conducting their official correspondence without cost to themselves. The expedient is most commendable. We quite agree that Members of Congress, who are but ill-paid public servants, should be spared the constant drain upon their resources involved in postage and the like. They should at least be left entirely free of artificial taxes and protected in the complete enjoyment of what small emolument has been assigned them. But this franking concession, which has grown to the proportions of insolvent and predaceous graft, this should be contracted within the limits of common decency and transformed into an explicit allowance, no matter how generous and liberal it may be.

We think there are very few Congressmen who would care to oppose this adjustment in full view of the public gaze. Why not try it, gentlemen?

Mr. Sims later proposed this resolution:

Resolved, That the Committee on the Post-Office and Post-Roads be, and hereby is, instructed to investigate whether or not there are or have been abuses of the franking privilege by Members of Congress or in the name of Members of Congress.

Question being made as to the matter, the Speaker¹ said:

The Chair hardly thinks that the article presents a question of personal privilege. * * *. The Chair will state to the House that the resolution is privileged. The Chair will read from the Digest:

"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."

Now, the gentleman from Tennessee [Mr. Sims] has had read an editorial, as he states, and having had read the editorial it seems to the Chair to involve the privileges of the House. He now sends up the resolution which had just been reported. In the opinion of the Chair, the privileges of the House are involved.

2706. It was held that a newspaper report of a Member's speech might not be examined as a matter of privilege.—On January 22, 1867,² Mr. Lawrence S. Trimble, of Kentucky, rose and proposed as a question of privilege to call attention to a report of the Associated Press of remarks made by him in the House.

¹ Joseph G. Cannon, of Illinois, Speaker.

² Second session Thirty-ninth Congress, Journal, pp. 228, 229; Globe, p. 659.

The Speaker¹ decided that the gentleman from Kentucky was out of order, on the ground that no question of privilege was involved in such a report.

Mr. William E. Finck, of Ohio, having appealed, the appeal was laid on the table, yeas 113, nays 1.

2707. A newspaper publication stating that a certain Member would unite with others in a certain legitimate course of action was held not to involve a question of personal privilege.—On April 17, 1897,² Mr. Robert E. Burke, of Texas, rising to a question of privilege, stated that he held in his hand a newspaper in which were printed the names of a number of Members, among them his own, who were credited with the intention of forming an opposition to the policy of the House of adjourning for three days at a time. Mr. Burke proceeded to state that he should vote upon the question according to the dictates of his own judgment, without reference to the opinions or purposes of other men.

The Speaker³ said:

The Chair hardly thinks this can be regarded as a question of personal privilege.

2708. No question of privilege arises from the fact that a newspaper has attributed to a Member certain remarks which he denies having used.—On July 13, 1894,⁴ Mr. Allan C. Durborow, of Illinois, as involving a question of privilege, sent to the Clerk's desk and had read an article published in a newspaper in which were attributed to him certain expressions which he denied having used.

Mr. Charles H. Grosvenor, of Ohio, made the point that the article just read did not present a question of privilege.

The Speaker⁵ pro tempore sustained the point of order.

Mr. Durborow then, by unanimous consent, made a personal explanation denying that he had in any manner expressed the sentiments attributed to him in said paper.

2709. A newspaper allegation that a certain number of Representatives, whose names were not given, had entered into a corrupt speculation was held to involve a question of privilege.

Instance wherein the Speaker submitted to the decision of the House the question as to whether or not a matter involved privilege.

It is in order to move to discharge a committee from the consideration of a proposition involving a question of privilege.

On January 12, 1891,⁶ Mr. Alexander M. Dockery, of Missouri, having claimed the floor on a question of personal privilege, submitted the following preamble and resolution, viz:

Whereas on the 1st day of December last the following preamble and resolution were introduced and referred to the Committee on Rules:

¹ Schuyler Colfax, of Indiana, Speaker.

² First session Fifty-fifth Congress, Record, p. 747.

³ Thomas B. Reed, of Maine, Speaker.

⁴ Second session Fifty-third Congress, Journal, p. 480.

⁵ James D. Richardson, of Tennessee, Speaker pro tempore.

⁶ Second session Fifty-first Congress, Journal, p. 120; Record, pp. 1196–1200.

Whereas it is alleged in the Washington correspondence of the St. Louis Globe-Democrat, under date of September 20 last, that 12 Senators and 15 Representatives, pending the passage of an act entitled "An act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes," approved July 14, 1890, were admitted to partnership in various silver "pools" by which they realized \$1,000,000 profits in the advance of the price of silver after the passage of the said act: Therefore, be it

Resolved, That the Committee on Coinage, Weights, and Measures is hereby instructed to inquire into all the facts and circumstances connected with the said alleged purchase and sale of silver, and for that purpose it shall have power to send for persons and papers and administer oaths, and shall also have the right to report at any time. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee; and

Whereas the said Committee on Rules has failed to report the resolution to the House for its action, notwithstanding the allegations of the St. Louis Globe-Democrat involves the integrity of the proceedings of the House: Therefore,

Resolved, That the Committee on Rules be discharged from the further consideration of said resolution and that it be now considered by the House.

After debate¹ on the question of order raised against the said preamble and resolution by Mr. Nelson Dingley jr., of Maine,

The Speaker² stated that, in accordance with the practice in respect to questions of this character, he would submit the same to the House, and thereupon the Speaker stated the question to be: Does the said preamble and resolution present a question of privilege? And it was decided in the affirmative, yeas 149, nays 80.

2710. A general charge of violation of law by Members, although not specifying the offense as within the existing term of service, was held to present a question of privilege.—On January 4, 1904,³ 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;"

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; 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.

¹In the debate a precedent of the Forty-ninth Congress, when a motion to discharge a committee from the consideration of a vetoed bill was held in order, was cited. (Record, p. 1196.)

²Thomas B. Reed, of Maine, Speaker.

³Second session Fifty-eighth Congress, Journal, p. 89; Record, pp. 446, 447.

Mr. John J. Gardner, of New Jersey, made the point of order that the resolution did not show particularly that Members of the present House were involved, or, if they were, that they were involved as Members of this House.

After debate, the Speaker¹ said:

The gentleman from New Jersey [Mr. Gardner] makes the point of order that the resolution does not present a question of privilege. I read from the preamble of the resolution:

“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.”

The gentleman from New Jersey says that for anything which appears in that branch of the preamble a Member of some former Congress, who way not be a Member of this Congress, may be the one referred to as having made the contract. The gentleman also cites from the report to which the resolution refers that matters therein referred to are stated to have occurred in 1899, some in 1896, and some in 1901, if my recollection of the gentleman’s remarks is correct.

The Chair is frank to say that if this were an indictment and the Chair were acting as a court that part of the indictment if separated from other portions of the instrument would, in the opinion of the Chair, be not sufficient; that the allegation ought to be made with particularity and refer to Members of this Congress. But the next clause of the resolution is as follows:

“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, etc.”

It does not appear from the allegation or from anything so far as the Chair is informed in the report, that these alleged improprieties or offenses were committed since the 4th day of March last.

Waiving, however, the want of particularity in the resolution—and the Chair refers to the same in stating the position of the gentleman from New Jersey—this resolution is presented by a Member of this House, and, while its allegations are general, perchance they may include a Member of the House touching an act committed since the 4th day of March last, when the term of office began. The Chair therefore would be slow to hold that it does not present a question of privilege. It is the duty of the Chair to rule and say, subject, of course, to the subsequent action of the House, whether or not this resolution does present a question of privilege. If in doubt, the Chair would let the House pass upon that question. The Chair, however, is not in doubt, and overrules the point of order made by the gentleman from New Jersey.

2711. A newspaper article vaguely charging Members of Congress generally with corruption may not be brought before the House as involving a question of privilege.—On July 31, 1890,² Mr. William C. Oates, of Alabama, as a question of personal privilege, submitted the following preamble and resolution:

Whereas in the National Economist of July 26, 1890, a newspaper publication known as the official organ of the National Farmers’ Alliance and Industrial Union, and which has a wide circulation, the following editorial appears on page 305, to wit: “The bond owners are now happy; they have won the fight and the bonds they now hold are payable, principal, interest, and premium, in gold only. It would be interesting to know just how many millions it took to force this bill through Congress. Men in these days of corruption and trickery do not change their avowed beliefs and betray their constituencies without a consideration. It will now be in order to placate those whom they have so wickedly betrayed;” and

Whereas the said editorial charges that a measure has been passed through Congress by bribery and the corruption of its Members the integrity of this House and the rights of the people alike demand that the truth or falsehood of the charge shall be known and dealt with as it deserves: Therefore,

Resolved, That a committee composed of seven Members of this House be appointed to investigate the said charge, and that said committee shall have power to send for persons and papers, administer

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Fifty-first Congress, Journal, p. 908; Record, p. 7976.

oaths, may employ a clerk and stenographer if necessary, may sit during the sessions of the House, and report to the House by resolution or otherwise.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the said preamble and resolution did not present a question of privilege.

After debate, the Speaker¹ sustained the point of order on the following grounds:

Whether this is or is not a question of privilege does not in the slightest degree prevent its being brought before the House at the proper time; for, even if it is not a question of privilege, any Member has a right to present a resolution and have it referred to the proper committee for examination. But the question whether this is a matter of privilege or not is one which concerns the transactions of business in the House.

It is not always easy to determine the line of demarcation between matters which are questions of privilege and matters which are not. Still, there are questions which are very very plainly on the one side of the line, and the Chair thinks this is one of them. Here is a newspaper paragraph of the very vaguest character, which makes no assertion except by implication, which makes no statement upon which anybody can be expected to predicate a belief or a conviction. That paragraph is brought before the House, and it is proposed to stop the business of the House until a committee of investigation is ordered. No gentleman on the floor, notwithstanding the number that have spoken, has in any way made himself responsible for the paragraph by expressing the slightest confidence or belief in its statements or by giving any indication that there can be any testimony produced which would have a tendency to prove either the truth or the falsity of the insinuation there made.

Now, it is within the knowledge of every Member of this House that there must be floating about at this time, as there probably have been at any time within the last ten or twenty years, paragraphs of the same kind and character almost without number; but the House will at once see the inconvenience that would result to the transaction of its business if any Member had the right, at any time, upon the production of a newspaper paragraph like this, to demand that we should proceed to investigate it to the exclusion of other business. It seems very clear to the Chair that this is not a question of privilege; and therefore, if the House thinks as the Chair does, the gentleman from Alabama, Mr. Oates, will be remitted to his right to present a resolution on this subject and have it referred to a committee in the proper form.

From the decision of the Chair Mr. Oates appealed, and the question being put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative, yeas 95, nays 71.

2712. A newspaper article in the nature of criticism of a Member's acts in the House does not present a question of personal privilege.—On February 1, 1904,² Mr. Robert Baker, of New York, claiming the floor for a question of personal privilege, asked to have read the following extract from the columns of the Washington Post:

Republican Members of the House will now be able to sleep o' nights. Representative Baker, of New York, no longer will haunt their dreams. His anger has been placated and his ferocity has subsided. He has withdrawn his threat that no Republican Member shall have unanimous consent to extend in the Record remarks begun on the floor of the House.

A week or so ago Mr. Baker wanted to make a speech, but the man in charge of the Democratic time could not give him as many minutes as he required. When the allotted minutes were exhausted, he asked unanimous consent to extend his remark in the Record. Some one on the Republican side objected. This aroused Mr. Baker's ire, and he served public notice that henceforth he would object whenever a Member on the Republican side asked unanimous consent to extend remarks.

But Saturday Mr. Baker made another speech, and again found himself short of time. He asked unanimous consent to extend his remarks, and no objection was offered. The embargo on extended Republican speeches, therefore, is lifted.

¹ Thomas B. Reed, of Maine, Speaker.

² Second session Fifty-eighth Congress, Record, p. 1469.

The extract having been read, Mr. Sereno E. Payne, of New York, made the point of order that no question of privilege was involved.

The Speaker¹ sustained the point of order, saying:

The Chair thinks it is hardly a question of personal privilege.

2713. On May 1, 1906,² Mr. John W. Gaines, of Tennessee, claiming the floor for a question of privilege, proceeded to read the following article from the Washington Post:

Mr. Gaines, of Tennessee, endeavored to be heard above the noise and confusion, Mr. Wadsworth objecting to any further discussion of seeds under the paragraph relating to "animal industry." This angered the Tennessean, and as he sat down, by command of the Chair, he managed to say that the bill was loaded with all kinds of appropriations to take care of and suppress the "mouth and foot disease, hollow horn, and hollow tail," but took away from the farmer the few seeds that he every year looked forward to receiving.

This new outburst of eloquence on the part of Mr. Gaines threw the House into convulsive laughter. When the Members had partially recovered their composure Mr. Gaines rushed down the aisle, carrying a mass of manuscript in both hands, holding it aloft, shouting that he had hundreds of letters from farmers favoring free seeds.

As Chairman Wadsworth reached out his hand for them Mr. Gaines laid them on a desk and began pulling from the bunch various documents. It developed that among these "hundreds" of letters there were an unusually large proportion of bills of various sorts and other "pub. docs." that had no relevancy to the seed question.

Mr. John Dalzell, of Pennsylvania, made the point of order that no question of privilege was involved.

The Speaker¹ ruled:

The Chair reads from the Manual:

"A newspaper article in the nature of criticism of a Member's acts in the House does not present a question of personal privilege."

The Chair has listened to the reading of the article which the gentleman furnished him. In the opinion of the Chair it does not present a question of personal privilege.

2714. A newspaper article criticising Members generally involves no question of privilege.—On April 23, 1902,³ Mr. Thomas J. Creamer, of New York, claiming the floor for a question of privilege, asked to have read an article from a New York newspaper criticising New York Members for their course in relation to a proposed public building in New York City, saying:

It is not at all surprising to learn from our special Washington dispatch this morning that "the New York Members of the House were not consulted." If New York had real Representatives instead of more than a dozen dummies in the House they would not wait to be invited by the committee. They would have to be consulted.

Unless a strenuous effort is made to have the Senate bill taken up and passed our "Representatives" are liable to learn something to their disadvantage.

The Speaker⁴ said:

This presents no question of personal privilege. * * * If the gentleman wants to ask unanimous consent for a personal explanation, the Chair will be glad to submit the request.

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Fifty-ninth Congress, Record, pp. 6199, 6200.

³ First session Fifty-seventh Congress, Record, p. 4578.

⁴ David B. Henderson, of Iowa, Speaker.

2715. A declaration in a newspaper interview by one Member that another Member had broken a party agreement was held to involve no question of personal privilege.—On December 11, 1905,¹ Mr. William B. Lamar, of Florida, claiming the floor for a question of privilege, submitted a newspaper paragraph, claiming that it reflected on him in his representative capacity:

Much of the trouble comes from the fact that he has removed from the Committee on Interstate and Foreign Commerce Dorsey W. Shackelford, of Missouri, and William B. Lamar, of Florida, the two Democrats who last year submitted to the House a subsidiary report on the Hearst railroad-rate bill.

In addition to this action, which it is claimed was taken by Mr. Williams without notice to the two men concerned, he yesterday made a statement that Shackelford and Lamar had broken faith with the caucus agreement on the Davie rate bill last session.

“There is nothing personal in this,” said Mr. Williams. “Shackelford and Lamar simply broke the party agreement reached in the caucus.”

This paragraph, as is not expressed but as was well understood in the House, referred to Mr. John Sharp Williams, of Mississippi, leader of the minority and, under an arrangement with the Speaker, the one selecting the members to be named on the minority portions of the committees.

The Speaker² held that no question of personal privilege was involved.

2716. Charges alleged to have been made against Members in the report of an agent of a foreign power and presented by a Member were held to involve a question of privilege.—On March 27, 1902,³ Mr. James D. Richardson, of Tennessee, as a question of privilege, presented a preamble and resolution, reciting that a certain secret report made to the Government of Denmark had set forth that a certain sum of money, from the amount to be paid by the United States to Denmark for the purchase of the West Indian Islands, was to be used for bribing certain Members of the United States Congress and American newspapers; and providing for a select committee to investigate the charges.

Mr. Sereno E. Payne, of New York, made the point of order that as the preamble showed the report to be secret no facts could be known to the gentleman presenting the resolution, and therefore there could be no facts on which to base a question of privilege.

In the course of the debate the Speaker⁴ said:

The Chair would like to call the gentleman's attention to the fact that the allegations are that the Members of Congress have been corrupted and bribed; also the newspapers. With regard to the newspapers, the Chair thinks that is a matter which alone would be hardly within the jurisdiction of the House. * * * And the term “Congress” includes both House and Senate. The allegations are not so specific as to show whether any Member of the House is included in the charge. In respect to this the Chair is very strongly of the opinion that that body must be the custodian of its own morals, and no specification is made here which directly affects the House, as the Chair remembers the resolution when read, although the general term would include both Houses.

Thereupon Mr. Richardson modified his amendment so as to insert the words “including Members of the House of Representatives.”

Mr. Richardson also stated upon his responsibility as a Member that he believed such charges had been made.

¹ First session Fifty-ninth Congress, Record, pp. 305, 306.

² Joseph G. Cannon, of Illinois, Speaker.

³ First session Fifty-seventh Congress, Journal, pp. 530; Record, pp. 3330–3332.

⁴ David B. Henderson, of Iowa, Speaker.

Thereupon the Speaker said:

The Chair desires to say, on the point of order made by the gentleman from New York [Mr. Payne], that it is clear, especially as the matter has been amended at the suggestion of the Chair, that this is a matter of high privilege. It has troubled the Chair somewhat to decide how much we should be governed by the statements made by a member of a foreign government.

But the Speaker concluded that, as the gentleman from Tennessee had stated that he believed the charges had been made, he was clearly of opinion that the point of order was not well taken. Therefore he overruled it, and the resolution was admitted.

2717. A declaration upon the floor of the House, that a statement made by a Member on his own responsibility is false, presents a question of privilege.—On June 10, 1886,¹ Mr. Leonidas C. Houk, of Tennessee, rising to a question of privilege, recalled a certain statement which he made on the 30th of March preceding, regarding events happening in Tennessee during the war, and the following declaration made in reply thereto by Mr. James D. Richardson, of Tennessee: “As a Representative from the State of Tennessee I denounce the statement as false.”

Mr. Nathaniel J. Hammond, of Georgia, made the point of order that no question of privilege was involved, as it was merely a controversy between two gentlemen as to a matter of history.

The Speaker² ruled—

The Chair is in some doubt about this question. A few days ago the Chair had occasion to make a ruling upon a somewhat similar question; in fact, very similar in some respects although quite different, the Chair thinks, in others. In this case it appears a statement of the gentleman from Tennessee, not a quotation or the repetition of some statement made by somebody else, adduced as evidence, but a personal statement of his own, was denounced as false upon the floor of the House.

In the case which was before the House a few mornings since a gentleman had cited certain evidence in support of a charge he had made, and the gentleman from Pennsylvania, Mr. Kelley, denounced that as a slander, but without imputing to the gentleman who had cited the evidence any personal misstatement. Here, as the Chair has already stated, it appears from what the gentleman from Tennessee, Mr. Houk, has just stated, that the statement made by him on his own responsibility as a Representative on the floor was denounced as false, which the Chair is inclined to think * * * a question of privilege.

2718. An employee of the House having in a newspaper charged a Member with falsehood in debate, a resolution relating thereto was entertained as a question of privilege.

Priority of a question of privilege over a merely privileged question.

Early custom of the Speakers to leave to the House to decide whether or not a proposition involved privilege.

On January 10, 1846,³ Mr. Garrett Davis, of Kentucky, moved the following resolution:

Whereas John P. Heiss, a person in the employment of this House, having in a newspaper charged Charles Hudson, a Member of this House, with falsehood in debate:

Resolved, therefore, That the said John P. Heiss be dismissed from the employment of the House as one of its printers.

¹First session Forty-ninth Congress, Record, p. 5516; Journal, p. 1850.

²John G. Carlisle, of Kentucky, Speaker.

³First session Twenty-ninth Congress, Journal, p. 223.

Mr. Reuben Chapman, of Alabama, objected to the reception of the resolution as not in order pending the motion of Mr. Hannibal Hamlin, of Maine, that the rules be suspended and that the House resolve itself into Committee of the Whole House on the state of the Union.

The Speaker¹ stated that the resolution was only in order as a question of privilege, and that it was for the House, and not the Speaker, to decide whether the resolution did or did not involve the privileges of a Member of this House.

The House decided, 116 to 57, that the resolution did involve a question of privilege.

The record of the debates² shows that the Speaker declared the motion of Mr. Hamlin undoubtedly a privileged motion, which could at any time be made by the rule, but that there was this difference between the two motions—that the motion of the gentleman from Maine was a privileged question and the other was a question of privilege, and must put everything else aside. There followed some argument as to whether it was really a question of privilege. It was urged in support of the contention that the letter aimed a blow at the freedom of debate on the floor.

2719. One Member having charged another with perverting facts in a debate, the Speaker allowed the latter to raise a question of personal privilege.—On February 18, 1886,³ Mr. Byron M. Cutcheon, of Michigan, claiming the floor for a question of personal privilege, alleged that Mr. Edward S. Bragg, of Wisconsin, had in debate this day charged him with perverting facts in a certain table of statistics published by him in the Record of the previous day's debate.

Mr. Nathaniel J. Hammond, of Georgia, having raised a question of order that no question of personal privilege was involved, after debate the Speaker⁴ said:

The gentleman from Michigan rises to a question of personal privilege, and says that the gentleman from Wisconsin, in his remarks, has questioned his motives; or, in other words, attributed improper motives in the use of the table in question. This is not a question affecting the dignity of the House itself or the integrity of its proceedings, but it is a question of personal privilege made by the gentleman from Michigan. Now, of course, the Chair can not determine whether any question of personal privilege is involved unless he can ascertain exactly what was said.

The remarks of the gentleman from Wisconsin being read, showed that he had charged the gentleman from Michigan with printing as the losses of one day's battle at Bull Run, the losses occurring during about two weeks of time.

The Speaker thereupon allowed the gentleman from Michigan to have the floor on a question of personal privilege, saying that "the remark made by the gentleman from Wisconsin might, without any strained construction, be understood as attributing to the gentleman from Michigan a disposition not to be ingenuous in the discussion of the bill."

2720. A mere difference between two Members in debate as to matters of fact involves no question of privilege.—On March 13, 1894,⁵ Mr. Elijah A. Morse, of Massachusetts, claimed the floor to present a question of privi-

¹ John W. Davis, of Indiana, Speaker.

² Globe, p. 177.

³ First session Forty-ninth Congress, Record, p. 1624.

⁴ John G. Carlisle, of Kentucky, Speaker.

⁵ Second session Fifty-third Congress, Journal, p. 244.

lege, and proceeded to discuss certain matters of fact concerning which he differed from the opinion which had been expressed by other Members of the House.

Mr. Benjamin A. Enloe, of Tennessee, made the point that no question of privilege was presented.

The Speaker¹ held that a mere issue between two Members as to matters of fact does not present a question of privilege, and therefore sustained the point of order.

2721. A difference of opinion as to historical facts, a Member not having made a false statement knowingly with intent to deceive the House, does not give rise to a question of personal privilege.—On January 27, 1886,² Mr. Charles A. Boutelle, of Maine, claiming the floor upon a question of personal privilege, referred to some resolutions recently presented by him in regard to the removal of a tablet or inscription from the engine room of the dry dock at Norfolk, Va., and announced his intention to file certain historical data in answer to the statement of Mr. George D. Wise, of Virginia, concerning the dry dock.

Mr. Hilary A. Herbert, of Alabama, made the point of order that no question of personal privilege was raised.

The Speaker³ ruled:

It happens almost every day in the discussions on the floor that Members differ in their statements respecting facts, especially historical facts, such as the one involved in this case, and unless there is some improper motive attributed, some purpose to deceive or impose upon the House, or some reflection upon the representative character of a Member, the Chair can not see that any question of privilege is involved. It frequently happens that gentlemen rise for the purpose of making "personal explanations" with the consent of the House, but those are not, technically speaking, under the rules of the House, matters of privilege. The Chair has not been able to see, from what has been read by the gentleman from Maine, that the gentleman from Virginia in his remarks imputed to him any improper motive or purpose whatever; but the two gentlemen differed simply upon a question of fact. The Chair sustains the point of order made by the gentleman from Alabama.

Again, on June 8, 1886,⁴ a question arose concerning remarks published in the Congressional Record as a speech delivered by Mr. Joseph Wheeler, of Alabama, wherein certain statements were made concerning the late Secretary of War Edwin M. Stanton.

Mr. William D. Kelley, of Pennsylvania, having replied to these statements,

Mr. Wheeler, on the ground of its being a question of privilege, claimed the floor to reply to Mr. Kelley, who, he asserted, had charged him with perverting a session of the House, with having slandered the dead, and with having stated to the House that which might be regarded as an infringement of the truth.

Mr. William W. Brown, of Pennsylvania, made the point of order that no question of privilege was presented.

The Speaker³ held that unless some statement in the speech of Mr. Kelley imputed improper or corrupt motives to Mr. Wheeler, or that he had made a false statement knowingly, with intent to deceive the House, no question of privilege was presented by Mr. Wheeler. The Speaker also held that in a discussion of a proposi-

¹ Charles F. Crisp, of Georgia, Speaker.

² First session Forty-ninth Congress, Journal, p. 490; Record, p. 925.

³ John G. Carlisle, of Kentucky, Speaker.

⁴ First session Forty-ninth Congress, Journal, p. 1835; Record, pp. 5419, 5420.

tion which implies in any degree the censure of a Member of the House there must necessarily be allowed more latitude of expression in reference to that matter than in the ordinary discussion of a matter of legislation pending before the House.

2722. Reference in debate to a Member as a source of information, gives the Member no claim to the floor for a question of personal privilege.—On May 16, 1902,¹ Mr. Thetus W. Sims, of Tennessee, was recognized for a question of privilege; and having addressed the House and resumed his seat without making any motion, Mr. John W. Gaines, of Tennessee, claimed the floor for a question of privilege, saying, “my very honorable colleague states that he based his vote and action in this Methodist Church matter upon information received from me and from a letter that was directed to me by the book agent of that concern,” and further proceeding in explanation of his action on that claim. Mr. Sims had criticised the management of that claim, but had not called in question the actions of Mr. Gaines further than to refer to him as a source of information.

Mr. Sereno E. Payne, of New York, made the point of order that Mr. Gaines had stated no question of personal privilege.

The Speaker² sustained the point of order.

2723. A Member may not bring before the House as a question of privilege charges of disreputable conduct on his part before he became a Member.—On April 15, 1879,³ Mr. J. R. Chalmers, of Mississippi, in the course of a personal explanation, presented a resolution providing for a committee to investigate the charges made that he, while an officer in the Confederate army, was a participant in the “Fort Pillow massacre.”

Questions were raised as to whether or not a Member might bring such a question forward as a question of privilege.

The Speaker⁴ said:

The Chair thinks that this is hardly a question of privilege. It is in the nature of a personal explanation. The Chair is inclined to believe the point of order which was intended to be made by the gentleman from Ohio [Mr. Garfield] is a correct one; that this does not embrace a question of privilege; that it does not relate to any stricture upon the gentleman from Mississippi in reference to anything done by him during his occupancy of a seat upon this floor. The Chair has listened to it as a personal explanation with the apparent consent of the House.

The House, on May 7, laid the resolution on the table.

2724. A Member is not entitled to raise a question of personal privilege on account of a newspaper charge relating to his conduct while a Member, but not as a Member.—On February 27, 1860,⁵ Mr. John Cochrane, of New York, claiming the floor for a question of personal privilege, read an extract from the New York Tribune reflecting upon his course in relation to the recent visit of the New York Seventh Regiment to the city of Washington, and claimed that, inasmuch as the said article charged him with having been chairman of the committee of arrangements, when he was not even a member of the committee, a question of privilege was thereby presented.⁶

¹ First session Fifty-seventh Congress, Record, pp. 5365, 5366.

² David B. Henderson, of Iowa, Speaker.

³ First session Forty-sixth Congress, Journal, pp. 81, 263, 265; Record, pp. 455, 1125.

⁴ Samuel J. Randall, of Pennsylvania, Speaker.

⁵ First session Thirty-sixth Congress, Journal, p. 382; Globe, p. 896.

⁶ The Journal does not give the newspaper extract in full, but only as printed here.

The Speaker¹ decided that no question of privilege was involved in the matter as presented by Mr. Cochrane.

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

2725. A proposition to investigate the propriety merely of a citizen's conduct at a time before he became a Member, may not be presented as a question of privilege.

Review of precedents relating to investigations of charges in regard to conduct of a Member at a time preceding the existing term of service.

The Speaker may, on a difficult question of order, decline to rule until he has taken time for examination of the question.

On April 26, 1904,² during debate on the bill (S. 2163) entitled "An act to require the employment of vessels of the United States for public purposes," Mr. William Bourke Cockran, of New York, in the course of his remarks, proposed as a matter of privilege a resolution, which he read.

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

Debate having arisen, and Mr. Cockran having asked for the present consideration of the resolution, the Speaker³ said:

The resolution having been presented and a point of order made upon it, the Chair declines to rule upon the point of order until he has had an opportunity to examine the precedents.

On April 27⁴ the Speaker submitted to the House his decision, as follows:

Yesterday, during consideration of the bill relating to the use of certain vessels belonging to the United States, the gentleman from New York [Mr. Cockran], claiming recognition for a question of privilege, proposed a resolution, which the Clerk will read.

The Clerk read as follows:

"Whereas the Hon. John Dalzell, a Member of this House and of its Committee on Ways and Means, has charged on the floor that the Hon. William Bourke Cockran, a Representative from New York and a member of the same committee, had been paid money by a political party to support a candidate for the Presidency nominated in opposition to the party with which the said William Bourke Cockran had theretofore been affiliated; and

"Whereas the said charge, though denied specifically on this floor by the said William Bourke Cockran, has not been withdrawn by the said John Dalzell; and

"Whereas said charge if true establishes such conduct as should unfit any man for membership in this House, and if false should be so declared and its author censured severely: Therefore, be it

Resolved, That a select committee of five Members be appointed by the Chair to inquire into the truth of said charge, and to report the testimony with their conclusions thereon to this House at its session beginning the first Monday of December next; and be it further

Resolved, That said committee be, and it is hereby, given full power to compel the attendance of such witnesses and the production of such papers as the Members thereof may deem necessary to the full and proper discharge of the duty hereby imposed on them."

Rule IX of the House is as follows:

"Questions of privilege shall be, first, 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."

¹ William Pennington, of New Jersey, Speaker.

² Second session Fifty-eighth Congress, Record, pp. 5655, 5657.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ Journal, pp. 693, 694; Record, pp. 5750, 5751.

Now, it is manifest that under the rules of the House the gentleman from New York may not interrupt the orderly course of business to present an extraneous matter unless that matter involves a question relating to the integrity of the House itself, or, what is the same thing, the integrity of one of its Members in his representative capacity.

A preliminary question presents itself first: Does the allegation presented in the preamble of the resolution recite accurately the charges alleged to be made by the gentleman from Pennsylvania?

As the language referred to was uttered on the floor, within the hearing of all the House, and is a part of the Record, it is possible for the Chair to form an opinion; but while that is so, the question is one of fact, relating to the interpretation of language, and more properly belongs to the House itself to decide, should the decision of the question of law bring the matter within the field of the House's jurisdiction. Therefore the Chair dismisses this branch of the inquiry.

Assuming the declarations of the preamble to establish *prima facie* what they assume to establish, is a question of privilege presented?

The Chair is warranted in taking judicial knowledge of the fact so abundantly established in the debate that the offense set forth as charged against the gentleman from New York, if committed at all, was committed while the gentleman from New York was neither a Member nor a Member-elect of this House.

May the House punish a Member for that which he did in his capacity as a citizen, before his election as a Member?

In view of the high constitutional importance of this question, the Chair on yesterday declined to rule until he had examined the precedents thoroughly. He finds that the question has often arisen, and that while there has been some diversity of opinion, there is in the main a well-defined line of decisions indicating that the House may not take such action.

As early as 1796 the charge was made against Humphrey Marshall, of Kentucky, a Member of the United States Senate, that he had committed the crime of perjury in Kentucky eighteen months before his election to the Senate. After careful examination the Senate found that it did not have jurisdiction under the Constitution to take cognizance of the alleged offense. It should perhaps be said in this connection that the case of William Blount, who was expelled from the Senate in 1797 for treasonable designs against the United States, has sometimes been cited as a precedent the other way; but the Chair does not find that this particular question was discussed in that case. And the case of John Smith, charged with complicity in the alleged conspiracy of Aaron Burr, and whose proposed expulsion failed in the Senate in 1807, can hardly be drawn into precedent.

In 1799 the House declined to expel Matthew Lyon for a violation of the alien and sedition law, committed while a Member but before his reelection to the then existing House, the point being especially urged that his constituents had reelected him with a full knowledge of his actual prosecution and conviction.

In 1858 it was proposed to expel from the House Mr. O. B. Matteson, who had resigned from the preceding House to escape expulsion for corruption in his legislative acts; but the House, after careful examination by a committee, declined to punish him, it being urged that he was amenable only to the people of his district.

Later, in 1875, in a case referred to in section 31 of the Parliamentary Precedents, the majority of the Judiciary Committee, citing the case of Humphrey Marshall, concluded that the Constitution did not vest in the House jurisdiction to try a Member for an offense committed before his election. In that case the offense charged was the bribery of Members of the preceding Congress.

It should be stated that this decision was rendered in the full knowledge of the famous Credit Mobilier case in the preceding Congress, in 1872, when the House censured two Members for bribery of fellow-Members, committed before their election to the existing House, but while they were Members of the preceding Congress. It should be noted that the Members in this case were censured on the report of a select committee, and that the Judiciary Committee of the House, in an elaborate report presented by Mr. Benjamin F. Butler, of Massachusetts, combated strongly those conclusions as to the right to punish. The report of 1875 was made in the Congress of which Mr. Randall was Speaker.

In the case of Brigham H. Roberts, which was referred to yesterday, it was alleged, if the recollection of the Chair is correct, that Roberts was actually engaged in the practice of polygamous cohabitation not only before his election, but up to the time his case was decided.

The Chair might also refer to the case of William N. Roach in the Senate in 1893, wherein the Senate, after debate, neglected to investigate a charge that Mr. Roach had been an embezzler at a time previous to his election to the Senate.

It will be observed that in only one of the cases cited has the House assumed to punish a Member for an act committed prior to his election to the then existing House, and that case dates to a period of great popular excitement.

As to acts committed outside the House, and having no relation to the legislative capacity of the Member, the Chair finds even less grounds for proceeding.

In 1879 a Member from Louisiana, Mr. Acklen, claiming the floor for a question of personal privilege, asked an investigation of a charge that he had committed the crime of seduction in Louisiana at a time prior to his election. Mr. John H. Reagan, of Texas, having objected that no question of privilege was presented, Mr. James A. Garfield, of Ohio, sustained Mr. Reagan's position, holding that the House had no jurisdiction. Mr. Speaker Randall expressed his concurrence in Mr. Garfield's opinion, but submitted the case to the House. And the House, without division, decided that no question of privilege was involved.

Again, in 1884, Mr. William Pitt Kellogg, of Louisiana, asked, as a question of privilege, that the House investigate his alleged connection with the star-route frauds, certain testimony reflecting on his conduct having just been given before a committee of the House itself. Mr. William R. Morrison, of Illinois, made the point of order that no question of privilege was involved. Mr. Speaker Carlisle said:

"The House has no right to punish a Member for an offense alleged to have been committed previous to the time when he was elected a Member of the House. That has been so frequently decided in the House that it is no longer a matter of dispute."

Mr. Nathaniel J. Hammond, of Georgia, urged that the House should not investigate the conduct of a Member at a time prior to his election, and on his motion resolutions proposed by Mr. Kellogg were referred to the Committee on the Judiciary. It does not appear that that committee ever reported on the matter.

So it seems to the Chair that even if it had been alleged on the floor that the gentleman from New York had committed an actual crime in 1896, and even if it were an ascertained fact that he had committed a crime at that time, it would be very doubtful under the precedents cited whether or not he would be punishable by this House, and hence, as a necessary consequence, whether or not a resolution of investigation would involve a question of privilege.

But the Chair feels justified in taking cognizance of the fact that what is alleged to be charged constitutes no crime. At most the only question is one as to the propriety of the conduct of a private citizen. The House could not rightfully punish him if it desired so to do. The Chair thinks that a reading of the decision of the United States Supreme Court in the case of *Kilbourne v. Thompson* will raise a serious doubt as to whether the House could compel a syllable of testimony under this resolution.

Therefore the Chair holds that the resolution may not be entertained as a question of privilege.

Mr. John S. Williams, of Mississippi, having appealed, the appeal, on motion of Mr. Payne, was laid on the table by a vote of yeas 170, nays 126.