

Chapter CX.

CONSIDERATION “IN THE HOUSE AS IN COMMITTEE OF THE WHOLE”

1. Provisions of Jefferson’s Manual. Section 4923.
 2. Consideration is under five-minute rule. Sections 4924, 4925.
 3. The previous question applies. Sections 4926–4930.
 4. The motion to refer in order. Sections 4931, 4932.
 5. Substitute amendments permitted. Sections 4933, 4934.
 6. Withdrawal of amendments. Section 4935.
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4923. The procedure known as consideration “in the House as in Committee of the Whole.”

Consideration “in the House as in Committee of the Whole” is by unanimous consent only, as the order of business gives no place for a motion.

The House, while acting “in the House as in Committee of the Whole,” may refer to a committee, use the previous question, deal with disorder, take the yeas and nays, or adjourn.

Mr. Jefferson, in Section XXX of his Manual, defines the functions of the House when acting as in Committee of the Whole: ¹

* * * Though it acts in some respects as a committee, in others it preserves its character as a House. Thus (a) it is in the daily habit of referring its business to a special committee. (b) It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House.² * * * (c) It would doubtless exercise its powers as a House on any breach of order. (d) It takes a question by yea and nay, as the House does. (e) It receives messages from the President and the other House. (f) In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

4924. Under the latest ruling, when a bill is considered in the House as in Committee of the Whole, it is considered under the five-minute rule, without general debate.—On February 19, 1906,³ it was proposed to consider in the House as in Committee of the Whole the bill (H. R. 12864) to provide for the purchase of certain coal lands in the Philippine Islands, and to authorize the lease

¹The House may, under its ordinary rules, act as in Committee of the Whole only by unanimous consent, since the rules governing the order of business and admissions of motions make no provision for a motion to consider a matter “in the House as in Committee of the Whole.”

²For changes in effect of previous question see section 5443 of Vol. V, of this work.

³First session Fifty-ninth Congress, Record, p. 2682.

of same and of the Batan Military Reservation for the purpose of securing a local coal supply to the United States Government in the Philippine Islands, when a question was raised as to general debate.

The Speaker ¹ said:

The Chair will state, for the information of the House, that under the latest ruling if this motion should prevail then the bill would come immediately before the House for consideration under the five-minute rule, without general debate, except as general debate may be had by unanimous consent.²

4925. On February 28, 1905,³ the House was proceeding to consider "in the House as in Committee of the Whole "the bill (H. R. 18464) to amend the homestead laws as to certain unappropriated and unreserved lands in South Dakota.

Mr. Eben W. Martin, of South Dakota, rising to a parliamentary inquiry, asked if there would be debate other than the debate on amendments under the five minute rule.

The Speaker ¹ said:

This is a proceeding by unanimous consent to consider the bill in the House as in Committee of the Whole under the five-minute rule. The Chair is inclined to the opinion that the consideration of the bill under that order would be under the five-minute rule unless it is determined otherwise by unanimous consent. * * * It occurs to the Chair, however, that the first reading of the bill in the House is not required; that the regular order would be to read the bill for consideration under the five-minute rule for amendment, paragraph by paragraph. * * * House bills in the House ordinarily are considered subject to the previous question as a whole. There is no five-minute rule in the House of Representatives under the rules of the House. The Chair knows of no way by which debate can be cut off in the House except by the operation of the previous question. This bill is to be considered in the House as in Committee of the Whole, and it seems to the Chair that the better rule would be, and is under such an order, for the bill to be read under the five-minute rule. Much can be said on the other side. The Chair has not looked up the precedents himself, but the Chair is informed that the precedents are conflicting, but that the weight of practice seems to be to consider such bills under the five-minute rule, and unless the precedent should be clearly in favor of general debate, under an agreement of this kind or a special order of this kind, the Chair would be inclined to think that the better rule would be that it should be considered under the five-minute rule. Under the circumstances, the weight of precedents being in favor of that view, the Chair is very clearly of the opinion that the bill should be read for amendment under the five-minute rule.

After consideration had proceeded for a time, but before the reading of the bill for amendments had been completed, Mr. Martin moved the previous question on the bill and pending amendments to the final passage.

¹ Joseph G. Cannon, of Illinois, Speaker.

² In one instance general debate was permitted. On December 7, 1900 (second session Fifty-sixth Congress, Record, p. 166), the bill (H. R. 3717) "making oleomargarine and other imitation dairy products subject to the laws of the State and Territory into which they are transported, and to change the tax on oleomargarine," was under consideration in the House as in Committee of the Whole.

During the progress of the general debate, Mr. William W. Grout, of Vermont, moved that general debate be closed at a quarter past 4 o'clock, and that then the bill be read under the five-minute rule, and the five-minute debate be continued for half an hour longer.

The Speaker (David B. Henderson, of Iowa, Speaker) held that the motion was in order only in the simple form of fixing a time for closing general debate.

Mr. Grout then moved that general debate be closed at quarter past 4 o'clock, and the motion was agreed to.

³ Third session Fifty-eighth Congress, Record, p. 3673.

Mr. John F. Lacey, of Iowa, raised a question of order:

Mr. Speaker, under the order of the House, this bill has to be considered in the House as in the Committee of the Whole, and the previous question is not in order until the bill has been so considered. Debate may be closed on a paragraph, but at the conclusion of the first paragraph and before the bill has been read in full, the previous question on the whole bill would not be in order.

The Speaker ruled:

The Chair is informed that under prior rulings, under similar orders, when a bill is in the House as in the Committee of the Whole the consideration of it proceeds under the five-minute rule, but that the House does not lose its control by a majority over the bill, and that it is in the power of the House to order the previous question upon the bill and amendments pending, if there be any. Otherwise the bill, even if it had been gone through entirely, would be subject to indefinite amendment and the House would be powerless to express its will, acting by a majority.

4926. During consideration of a bill "in the House as in Committee of the Whole" the previous question may be demanded while Members yet desire to offer amendments.—On February 7, 1877,¹ Mr. Henry Waldron, of Michigan, from the Committee on Appropriations, presented the bill (S. 1222) to supply deficiencies in the appropriation for public printing and binding for the current fiscal year, and the House proceeded to consider it in the House as in Committee of the Whole.

During the consideration of the bill under the five-minute rule, Mr. Waldron moved the previous question.

Mr. Greenbury L. Fort, of Illinois, announced that he wished to propose an amendment.

Mr. Omar D. Conger, of Michigan, made the point of order that when the House permitted the bill to be considered in the House as in Committee of the Whole, that carried with it the right to amend and to debate the amendment, five minutes for and five minutes against.

The Speaker² said:

The Chair overrules the point of order, and holds the gentleman from Michigan has the right to demand the previous question.³

4927. On April 27, 1887,⁴ a bill relating to a subtreasury at Louisville, Ky., was under consideration in the House as in Committee of the Whole.

Mr. James B. McCreary, of Kentucky, moved the previous question on the engrossment and third reading of the bill.

Mr. Frank Hiscock, of New York, made the point of order that, as the debate under the five-minute rule had not yet taken place, the motion for the previous question was not in order.

The Speaker pro tempore⁵ held:

The present occupant of the chair, if there had been no previous ruling on this subject, would be inclined to sustain the point of order. But the Chair finds in the Digest the ruling of the Speaker of the

¹ Second session Forty-fourth Congress, Record, p. 1321.

² Samuel J. Randall, of Pennsylvania, Speaker.

³ Mr. Speaker Keifer also ruled this way on January 6, 1883. (Second session Forty-seventh Congress, Record, p. 928.)

⁴ First session Forty-ninth Congress, Record, p. 3893; Journal, p. 1412.

⁵ William M. Springer, of Illinois, Speaker pro tempore.

House which the Clerk has just read. It is to the effect that the consideration of bills in the House as in Committee of the Whole, under the five-minute rule, does not in any way limit the operation of the previous question. The previous question may be ordered at any time after the five-minute debate has begun upon the bill. So the Speaker has held, and it has been the uniform practice of the House.

4928. On February 9, 1899,¹ the House was considering, “in the House as in Committee of the Whole,” a joint resolution (H. J. Res. 358) to amend the war-revenue act.

Mr. Albert J. Hopkins, of Illinois, proposed an amendment, and after debate thereon demanded the previous question on the bill and amendment.

Mr. William H. Moody, of Massachusetts, made the point of order that the demand for the previous question was not in order in the House when sitting as a Committee of the Whole.

The Speaker² said:

The Chair thinks that the practice has been different. It has been frequently done.

4929. On February 13, 1905,³ Mr. Joseph W. Babcock, of Wisconsin, asked unanimous consent for the consideration in the House as in Committee of the Whole of the bill (S. 3343) to authorize the Anacostia, Surrattsville and Brandywine Electric Railway Company to extend its street railway in the District of Columbia.

A question arising as to the procedure under such an order, and the effect on the right to offer amendments, the Speaker,⁴ responding to a parliamentary inquiry by Mr. Charles L. Bartlett, of Georgia, said:

It would be within the power of the gentleman in charge of the bill to cut off amendment by calling for the previous question. Of course, it takes a majority to order the previous question. Whether the gentleman would do that or not, is a matter between the gentleman from Wisconsin and the gentleman from Georgia.

4930. During consideration “in the House as in Committee of the Whole” the previous question may not be moved on a single section of a bill.

A Member may not submit a question of order to the House except by appeal.

Instance wherein the Chair submitted a question of order to the decision of the House.

On December 18, 1884,⁵ the House was considering the Interstate Commerce bill in the House as in Committee of the Whole, when Mr. John H. Reagan, of Texas, proposed to move the previous question on the first section of the bill.

Mr. Roswell G. Horr, of Michigan, made the point of order that the motion was not in order.

After debate, the Speaker⁶ held:

The Chair recognizes not only the difficulty of this question under the rules of the House and under the order made in this particular case, but also the importance of its correct decision, as constituting,

¹ Third session Fifty-fifth Congress, Record, p. 1654; Journal, p. 152.

² Thomas B. Reed, of Maine, Speaker.

³ Third session Fifty-eighth Congress, Record, p. 2499.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ Second session Forty-eighth Congress, Journal, p. 127; Record, pp. 333–344.

⁶ John G. Carlisle, of Kentucky, Speaker.

perhaps, a precedent to be followed hereafter; for, of course, whatever is decided here, so far as it may be based entirely on the rules of the House, will apply to other bills as well as to this. The order of the House made last March was that this bill should be considered in the House as in Committee of the Whole on the state of the Union. If the bill were actually being considered in Committee of the Whole on the state of the Union, it is conceded on all sides that the House would still have power, under an express rule, to close debate not only upon a pending amendment, but upon the whole section or paragraph under consideration. Therefore the question presents itself at once whether the House, when considering a bill in the House as in Committee of the Whole on the state of the Union, has less power to close debate than if it were actually in the Committee of the Whole on the state of the Union. The most the Chair can do is to assimilate the proceedings of the committee in the House as nearly as possible to the proceedings in the Committee of the Whole on the state of the Union.

It has always been held when the House is considering a proposition as in Committee of the Whole it must be read by section or paragraph, as the case may be; but at the same time it has been held that the previous question may be ordered on a pending question; that the yeas and nays may be called, which can not, of course, be done in the Committee of the Whole on the state of the Union; that a motion to recommit or reconsider may be made, or a motion to lay on the table, which are not proper motions to be made in the Committee of the Whole on the state of the Union. And it has always been the practice of the House, and in fact had been ruled in the House repeatedly, that debate could not be closed otherwise than by the previous question.

Now the Chair feels somewhat embarrassed by what transpired a few days ago in reference to this matter, and he has some difficulty in determining whether that amounted to an agreement or understanding on both sides of the House that there should be unlimited debate and unlimited opportunity for amendment, or whether it simply meant the House should proceed in regard to this bill in the usual way bills are considered in the House as in Committee of the Whole on the state of the Union.

There is another difficulty about entertaining a motion for the previous question on a section of the bill. * * * It will be observed that the rules¹ of the House prescribe exactly what the effect of the previous question shall be—that is, that it shall bring the House to a direct vote upon the main or pending question, which presupposes that there is a question pending. The gentleman from Texas demands the previous question, not upon any pending motion or question, but upon the section under consideration.

Suppose the House shall order the previous question upon it; what vote is to be taken after that is done? It must be apparent that there is no vote to be taken on the section itself, nor is there anything upon which the previous question can operate, its only effect being to cut off debate and amendment; and the Chair, therefore, is of the opinion that when considering a bill in the House as in the Committee of the Whole House on the state of the Union, a motion for the previous question can not be entertained unless there be some question actually pending before the House upon which the vote should be taken after the previous question is ordered. If there was an amendment pending, that, of course, would be a question upon which the vote would be taken. So the Chair thinks that the gentleman's motion is premature, at all events.

Mr. James H. Blount, of Georgia, asked of the Chair whether a motion to limit debate on the section might not be made after the analogy of the similar motion used to limit debate in Committee of the Whole.

The Speaker said:

It has been decided more than once that such a motion could not be made with reference to a proposition actually pending in the House; that the only way debate can be closed and the House brought to a direct vote upon a proposition is to move the previous question.

Now, the Chair has intimated his opinion, but is not inclined to decide now what effect the previous question would have if it could be ordered at all on the section. The Chair has simply declined to entertain a demand for the previous question upon the section of the bill when there is no question pending in regard to that section at all.

¹ Section 1 of Rule XVII. See section 5443 of Vol. V of this work.

Mr. Horr then offered an amendment to the section, and Mr. Hilary A. Herbert, of Alabama, moved to close debate on the pending amendment and the section. Mr. Herbert then requested that this question be submitted to the House:

Mr. Herbert having moved to close debate on the pending section and amendment, submitted the following as a question of order: Is it in order, when a bill is under consideration in the House as in Committee of the Whole under the five-minute rule, to move to limit debate on a pending section, and on that motion demand the previous question, such order to have the same effect as if the bill were in Committee of the Whole?

The Speaker said:

The gentleman from Alabama does not submit the question to the House, and the Chair does not recognize the right of a Member on the floor to submit a question of order to the House except by an appeal. The Chair submits this question to the House—that is, the question of order now pending. * * * The gentleman from Alabama moves to close debate on the pending amendment and the section of the bill under consideration; the gentleman from Ohio [Mr. Keifer] makes the point of order that this can not be done. The Chair now submits the question to the House, whether it is in order to make a motion to close debate on a pending amendment and on the section under consideration when the House is considering the bill as in Committee of the Whole House on the state of the Union.¹

On a yea-and-nay vote the House decided, yeas 150, nays 88, that the motion made by Mr. Herbert was in order.

Mr. John D. Long, of Massachusetts, having inquired as to the effect of this vote on propositions to amend the section further, the Speaker said:

The Chair has just said that he would entertain further amendments, but without debate—in other words, he would give this motion precisely the same effect which it would have if made and carried when the bill was actually under consideration in Committee of the Whole on the state of the Union.

4931. A bill being under consideration “in the House as in Committee of the Whole” a motion to commit was decided to be in order, although the reading by sections had not begun.—On January 19, 1892,² the House was considering, as in Committee of the Whole, the bill (H. R. 3513) providing for the public printing and binding and the distribution of documents. This consideration was in pursuance of a special order, adopted January 13 and providing—

That said bill shall be considered in the House; that it shall be first read throughout and then by items, and as each item is read it shall be open for amendment and debate as under the five-minute rule of the House when in Committee of the Whole for the consideration of appropriation bills, except that the previous question may be ordered at any time on any item of said bill, after debate, when the House shall so determine.

After debate on the bill Mr. John J. O'Neill, of Missouri, moved that the bill be recommitted to the Committee on Printing.

Mr. James D. Richardson, of Tennessee, made the point of order that the motion was not in order, on the ground that the House was then considering the bill as in Committee of the Whole House, pursuant to a special order of the House that it should be so considered, and that the bill not having yet been read by sections the order of the House had not been executed.

The Speaker pro tempore,³ in response to the point of order, stated that the motion to recommit was one mode of consideration, and in the opinion of the Chair

¹The motion to close debate on a paragraph or section of a bill in Committee of the Whole, since this decision, has been made undebatable by a rule.

²First session Fifty-second Congress, Journal, pp. 31, 32; Record, pp. 303, 432.

³Benton McMillin, of Tennessee, Speaker pro tempore.

it was for the House to determine how far it will go after the adoption of a special order before it applies any one of the various methods of disposition to the measure.

4932. On April 28, 1900,¹ the House was considering the bill (S. 2799) to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, etc., reported from the Committee on War Claims, and under consideration in the House as in Committee of the Whole.

There having been general debate, and the reading of the bill by sections for amendment not having begun, Mr. George W. Ray moved that the bill be referred to the Committee on the Judiciary with certain instructions.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order against the motion.

The Speaker pro tempore² held that the motion to refer was in order although the consideration of the bill by sections had not been entered upon.

4933. A bill being under consideration "in the House as in Committee of the Whole" an amendment in the nature of a substitute is in order only after the consideration of the bill by sections has been completed.—On April 23, 1894,³ the House resumed the consideration of the bill (H. R. 6171) to authorize the Metropolitan Railroad Company to change its motive power for the propulsion of cars, the same being considered in the House as in Committee of the Whole.

Section 3 of the bill having been read, and Mr. James D. Richardson, of Tennessee, having proposed a substitute for that section, Mr. William J. Coombs, of New York, demanded that the question be first put on agreeing to a substitute for the whole bill which he had heretofore proposed and had had read at the desk.

The Speaker pro tempore⁴ held that the substitute for the whole bill would not be in order until the consideration of the bill by sections had been completed, inasmuch as the bill was being considered in the House as in Committee of the Whole.

4934 On July 16, 1894,⁵ the House was acting under a special order providing for the consideration of the bill (H. R. 4609) "to establish a uniform system of bankruptcy" in the House as in Committee of the Whole.

After general debate, the amendments recommended by the Committee on the Judiciary were agreed to in gross, and, by unanimous consent, were considered subject to amendment in like manner as other parts of the bill.

Mr. George W. Ray, of New York, and Mr. W. A. Stone, of Pennsylvania, submitted the question of order: At what period of the consideration would it be in order to move a substitute for the pending bill?

The Speaker pro tempore⁶ held that the substitute would be in order after the reading of the bill by sections for amendment should be concluded, and not before.⁷

¹ First session Fifty-sixth Congress, Record, p. 4822, 4823.

² Charles H. Grosvenor, of Ohio, Speaker pro tempore.

³ Second session Fifty-third Congress, Journal, pp. 350, 351; Record, p. 4002.

⁴ Alexander M. Dockery, of Missouri, Speaker pro tempore.

⁵ Second session Fifty-third Congress, Journal, pp. 484, 485; Record, p. 7560.

⁶ James D. Richardson, of Tennessee, Speaker pro tempore.

⁷ This bill was considered under a special order, which limited the reading of the bill for amendments to two hours.

4935. During consideration of a bill “in the House as in Committee of the Whole” an amendment may be withdrawn at any time before action has been had on it.—On March 3, 1898,¹ the House, as in Committee of the Whole, was considering the bill (H. R. 5359) to amend the postal laws relating to second-class matter, when the question arose as to whether or not an amendment offered by Mr. James M. Griggs, of Georgia, might be withdrawn. The special order under which the bill was considered specified that the bill should be considered in the House and that it should “be read through for amendments under the five minute rule.”

The Speaker² said:

The Chair finds the matter in this rather curious condition: That the House is considering the bill in the House as in Committee of the Whole. In the House the amendment can be withdrawn, and in the Committee of the Whole it can not.

Mr. Eugene F. Loud, of California, here called attention to the fact that, under the special order, the “five-minute rule” was the only provision of the Committee of the Whole applying.

The Speaker replied:

The Chair is inclined to the opinion * * * the gentleman from Georgia can be recognized to withdraw his amendment and to substitute for it what he desires.

¹Second session Fifty-fifth Congress, Record, p. 2440.

²Thomas B. Reed, of Maine, Speaker.

