

the pending business by the Chair. The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House. On occasion, the Chair has reversed as erroneous a decision previously made (VI, 639; VII, 849; VIII, 2794, 3435).

§ 379. House's control over question of the Speaker. In Parliament, all decisions of the Speaker may be controlled by the House. *3 Grey, 319.*

The Speaker's decision on a decision of order is subject to appeal by any Member (clause 5 of rule I).

SEC. XVIII—ORDERS OF THE HOUSE

§ 380. Keeping of the doors of the House. Of right, the door of the House ought not to be shut, but to be kept by porters, or Sergeants-at-Arms, assigned for that purpose. *Mod ten. Parl., 23.*

§ 381. Right of the Member to demand execution of the subsisting order. The only case where a Member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it.

As a request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily, a Member has the right at any time to demand the "regular order" (IV, 3058). If the regular order is demanded pending a request for unanimous consent, further reservation of the right to object thereto is precluded (Speaker Foley, Nov. 14, 1991, p. 32128). Occasionally a Member may incorrectly demand the "regular order" to assert that remarks are not confined to the question under debate. On such an occasion the Chair may treat the demand as a point of order requiring a ruling by the Chair (May 1, 1996, pp. 9888, 9889).

§ 382. Parliamentary law for clearing the galleries. Thus any Member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there

is not a quorum present. *2 Hats.*, 87, 129. How far an order of the House is binding, see *Hakew.*, 392.

Absent an existing order for that purpose, a Member may not demand that the galleries be cleared, because this power resides in the House (II, 1353), which has by rule extended the power to the Speaker (clause 2 of rule I) and the chair of the Committee of the Whole (clause 1 of rule XVIII), but not to the individual Member.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, when it is called for, whether the House will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full [which in Senate is at noon].

§ 383. Parliamentary law as to proceeding with orders of the day.

The rule of the House providing for raising the question of consideration (clause 3 of rule XVI) has, in connection with the practice as to special orders of business, superseded this provision of the parliamentary law. The House always proceeds with business at its hour of meeting, unless prevented by a point that no quorum is present (IV, 2732).

Orders of the day may be discharged at any time, and a new one made for a different day, *3 Grey*, 48, 313.

§ 384. Orders of the day now obsolete.

The House found the use of "Orders of the day" as a method of disposing business impracticable as long ago as 1818, and not long after abandoned their use (IV, 3057), although an interesting reference to them survives in clause 1 of rule XIV. The House proceeds under rule XIV unless that order is displaced by the use of special orders of business or the intervention of privileged business.

When a session is drawing to a close and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes comes to a resolution that no new bill be

§ 385. Business at the end of a session.

brought in, except it be sent from the other House. 3 *Grey*, 156.

This provision is obsolete so far as the practice of the House is concerned, because business goes on uninterruptedly until the Congress expires (clause 6 of rule XI).

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. *Raym.*, 120; *Jacob's L. D. by Ruffhead; Parliament*, 1 *Lev.*, 165, *Pitchara's case*.

§ 386. Effect of end of the session on existing orders, especially as to imprisonment.

The House, by clause 6 of rule XI and the practice thereunder, has modified the rule of Parliament as to business pending at the end of a session that is not at the same time the end of a Congress. A standing order, like that providing for the hour of daily meeting of the House, expires with a session (I, 104–109). The House uses few standing orders. However, in the first session of the 104th Congress, the House continued a standing order regarding special-order and morning-hour speeches for the remainder of the entire Congress (May 12, 1995, p. 12765). In 1866 the House discussed its power to imprison for a period longer than the duration of the existing session (II, 1629), and in 1870, for assaulting a Member returning to the House from absence on leave. Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House (II, 1628).

Where the Constitution authorizes each House to determine the rules of its proceedings it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to

§ 387. Jefferson's views as to the constitutional power to make rules.

participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

The House has frequently examined its constitutional power to make rules, and this power also has been discussed by the Supreme Court (V, 6755). It has been settled that Congress may not by law interfere with the constitutional right of a future House to make its own rules (I, 82; V, 6765, 6766), or to determine for itself the order of proceedings in effecting its organization (I, 242–245; V, 6765, 6766). It also has been determined, after long discussion and trial by practice, that one House may not continue its rules in force to and over its successor (I, 187, 210; V, 6002, 6743–6747; Jan. 22, 1971, p. 132). Congress may bind itself in matters of procedure (II, 1341; V, 6767, 6768), but its ability to so bind a succeeding Congress has been called into doubt (V, 6766). In one case the Chair denied the authority of such a law that conflicted with a rule of the House (IV, 3579). The theories involved in this question have been most carefully examined and decisively determined in reference to the law of 1851, which directs the method of procedure for the House in its constitutional function of judging the elections of its Members; and it has been determined that this law is not of absolute binding force on the House, but rather a wholesome rule not to be departed from except for cause (I, 597, 713, 726, 833; II, 1122). In modern practice, existing statutory procedures, including provisions of concurrent resolutions, are readopted as Rules of the House at the beginning of each Congress (see, *e.g.*, H. Res. 6, Jan. 4, 1995, p. 462). This practice was codified in clause 1 of rule XXVIII (current rule XXIX) when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 75, see § 1105, *infra*). Where the House amended a standing rule of general applicability during a session and the amended rule did not require prospective application, the rule was interpreted to apply retroactively (Sept. 28, 1993, p. 22719).

As to the participation on occasions of ceremony, the House has entered its orders on its journal; but it rarely attends outside the Capitol building as a body (July 25, 2002, p. 14645), usually preferring that its Members go individually (V, 7061–7064) or that it be represented by a committee (V, 7053–7056) or other delegation (May 28, 1987, p. 14031). It has discussed, but not settled, its power to compel a Member to accompany it outside the Hall on an occasion of combined business and ceremony (II, 1139). But the House remains in session for the inauguration of the President on the portico of the Capitol (Jan. 20, 1969, pp. 1288–92) and the mace is carried to the ceremony.